



HM Government

Managing Surplus Government Property

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	1 June 2021	Guidance withdrawn as no longer reflecting current government policy or organisations
v2.4	7 July 2023	Revised guidance circulated as 'Disposal of Government Property (Real Estate)' following inter-departmental consultation on 2.1 - 2.3
2.5	27 September 2023	Renamed as 'Managing Surplus Government Property' to reflect further inter-departmental consultation.
2.5	May - July 2024	Revised after further consultation.
2.5	19 August 2024	Released to the Government Property Community for internal government trial.

Comments should be submitted to: govs.property@cabinetoffice.gov.uk

Publishing note, August 2024

This functional guidance will be kept under review to ensure it remains aligned with new government priorities as they develop. Further revisions are intended.
Users are invited to submit feedback.

This guide replaces the previous 'Guide for the Disposal of Surplus Land'. The change of title indicates greater emphasis on reviewing options and combining multiple factors when considering the disposal or re-use of surplus property assets. The aim remains to achieve optimal benefit from government assets in the public interest.

The guidance relates only to real estate.

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1.0 Part One - Overview

1.1 Purpose

Identifying surplus government property is an essential part of the drive for high-performing estate management. It is an enabler for achieving and maintaining property portfolios that are efficient, fit-for-purpose and sustainable, meeting present and future needs. Redeploying assets can make an important contribution towards wider government priorities such as economic growth or Net Zero.

Identifying 'surplus' assets is normally done in relation to the specific remit of an individual government organisation. However, their potential value should be considered in relation to the whole of the government agenda. Whilst an asset may be surplus to one government organisation, it may be of use to another, besides its commercial potential to achieve useful revenue. Both perspectives should be included when considering the available options (see Parts Two and Three of this guidance). If no longer needed for the current use, property assets should change hands into new, more productive uses. The new use may be achieved through transfer to another government department, another organisation in the wider public sector, or a new commercial or other non-government ownership.

Alternative uses of land or buildings can give a significant boost to housing, economic regeneration, new infrastructure or ecosystems that are vital for our national and global wellbeing. A new use can increase pride of place in communities, even if involving only small plots of land or redesigned car parking. Changed management can introduce new, more sustainable uses of land and buildings.

Government organisations are expected to prepare strategies and programmes for the management of property assets as part of their financial responsibility. The starting point is HM Treasury guidance 'Managing Public Money'¹ and the 'Green Book'². Following this central guidance, consideration should be given to whether, and how, property assets could be redeployed, bearing in mind government policy and the value that can be realised in terms of financial or non-financial benefits.

If it is clear that a property asset should be redeployed, a business case should be prepared in line with the five case model of the Green Book, along with its supplementary Business Case guidance for projects and programmes³. These guides provide a framework for appraising and evaluating a range of options for the use of existing public resources. Different options should be considered to test the scope of possible beneficial outcomes. For example, the scope for land or buildings to contribute towards environmental targets should be considered, especially in relation to the retained estate.

A rationale for transfer or sale should be constructed bearing in mind the five cases: Strategic, Economic, Commercial, Financial and Management.

The scale of resources devoted to constructing a business case should be proportionate. For most purposes the Strategic Case should indicate the initial direction and scope in relation to government policy. The Green Book covers the appraisal of social value, sometimes known as public value: "Social or public value ... includes all significant costs and benefits that affect the welfare and wellbeing of the population, not just market effects. For example, environmental, cultural, health, social care, justice and security effects are included. This welfare and wellbeing consideration applies to the entire population that is served by the government, not simply taxpayers."

The full range of possibilities should be analysed for central government property assets, in relation to:

1. disposal to a new central government use
2. the interests of the wider public sector

¹ [HM Treasury Managing Public Money](#)

² [The Green Book: appraisal and evaluation in central government - GOV.UK \(www.gov.uk\)](#)

³ [Guide to developing the programme business case](#) / [Guide to developing the project business case](#)
[Revert to Front](#)

3. potential for sale on the open market

This approach will ensure that all relevant aspects of the national economy are taken into account.

During options appraisal it should be remembered that a disposal is a form of negative spending: it may result in a capital receipt; there may also be a corresponding saving in running costs, year on year. Comprehensive evaluation should take an overview for HM Government, considering all the different purposes for which a property asset may have value and the practicalities of realising it. This will often require collaboration across departmental and other organisational boundaries.

Disposals and transfers are a normal part of turnover in government property assets. Over a period of time asset management can typically involve initial acquisition, investing in maintenance, adaptation (such as re-fit or refurbishment) and eventually a disposal or transfer when the asset is no longer required. This life-cycle is described in the Government Functional Standard, GovS 004: Property which requires every government organisation to make a regular review of the assets it holds and the options available for their use. Each organisation is required to have a Strategic Asset Management Plan itemising significant proposals for changing or continuing the use of its estate, including (if applicable) a 'pipeline' of disposals. Each change should be the subject of a proportionate business case.

Functional guidance

This guidance is intended for all who work in the government property function, primarily estate management professionals or others in strategy and policy teams of central government departments and their arm's length bodies. However, colleagues working in other public bodies might also find its contents useful. Notes on practice areas and technical processes are provided in the Annexes, to complement guidance on current and developing government policy.

This guidance supports the [Government Property Strategy](#) and forms part of the governance and management framework for the property function.

Definitions

References to **property** can apply to land, buildings or infrastructure.

Disposal means the transfer of a freehold or leasehold interest by way of sale or other agreement.

Surplus describes property that is no longer required for the purposes of the organisation that currently holds the asset. It may apply to the whole or part of a property unit.

1.2 Background: previous guidance

Previous guidance on property disposals was published in March 2017 following a transparency review, setting a target for disposing of £5bn of public assets by 2020⁴. The main emphasis at that time was on generating capital receipts. The guidance was withdrawn in 2021 as it no longer reflected the full spectrum of government policy and the capital receipt target had been met; also, several named organisations no longer existed, and the government was developing revised objectives.

This new guidance seeks to address present circumstances and new initiatives for 2024 onwards.

1.3 Contents and Structure

Four sections provide progressively greater detail, following a broad outline:

1. Introduction - overview
2. Identifying surplus property
3. Optimal use - the policy framework
4. Practice considerations - transfers, marketing, etc.

All four sections are intended to help users understand agreed norms and processes for government decision-making and professional practice, including essential considerations prior to open market sale or asset transfer. All are aimed at the optimum use of government property. Annexes provide supplementary notes on problematic practice issues and dynamic aspects of disposal processes. The guidance may be revised if new ministerial priorities emerge or improvements can be made.

1.4 Objectives

Disposals can support a range of objectives. These include:

- making government property more efficient and sustainable by reducing maintenance liabilities and critical infrastructure risks
- reducing running costs, or releasing financial capital for reinvestment
- facilitating service reforms, such as smarter working, digital and technological innovation
- unlocking land for housing and economic growth
- redistributing economic investment across the UK
- enabling initiatives towards delivering Carbon Net Zero and Biodiversity Net Gain
- additional benefits in the form of Social Value, including good design and placemaking

These objectives are set out in greater detail in various policy statements and commitments outlined below (section 3) and comprehensively in the Government Property Strategy 2022-2030. Work to deliver the strategy is expected to drive efficiency by monitoring and comparing metrics of cost, size and utilisation, within different portfolios, leading to new disposals.

Strategy and Programmes

The Government Property Strategy 2022-2030 had an associated package of property efficiency measures. These should contribute to a 5% efficiency savings target set for all departments, and to a £500m per annum pipeline of capital receipts. A disposals programme has been running through the current spending review period (SR21), led from within the Cabinet Office by the Office of Government Property (OGP), in close consultation with other departments who focus their attention on a range of policy priorities, according to their remit.

⁴ Guide for the Disposal of Surplus Land, Government Property Unit, Cabinet Office, 2017

One important focus for the re-use of public sector land is new housebuilding. Another is the regional balance of economic activity. Opportunities to establish a pipeline of disposals that could contribute to these major ambitions, besides overall Exchequer benefits, should be reviewed.

A range of government priorities and missions exists, for education, health, the economy and the environment. Each is the responsibility of the relevant department of government or its agencies. When property asset disposals occur, the potential interests from all parts of government should be brought into consideration. If there is conflict between them, an appropriate means of resolving issues should be found or created. In practice, there will usually be an optimal outcome that can be decided by straightforward collaboration and the application of appropriate techniques or methodologies. In the rare event that different public sector interests conflict, and there is no accepted technical means to guide a resolution (including the local development plan), a political steer from government ministers will be necessary. Local authorities may be able to make an input to their deliberations.

By working closely together and sharing information about strategic property asset management, programme teams can enhance their reporting to ministers about mission delivery. Changes outlined in the Strategic Asset Management Plans for each organisation are expected to show how more efficient property management is expected to make a significant contribution to the overall business aims of departments.

Independently of specific programmes, the Government Property Strategy commits the government's property function to work towards a 'smaller, better, greener' estate. This applies to every government property portfolio, according to the needs of the public services it provides.

Smaller

Aiming for a smaller estate creates new disposal opportunities. Planned reduction in the size of the Civil Service can be expected to drive consolidation, especially with regard to the office portfolio: lease breaks are expected to be taken and exits delivered, unless there is good reason for retention. Change programmes will encourage relocation to a regional Government Office Hub or alternative public sector accommodation outside London. Exits from leased office buildings will reduce the lease capital employed across the estate. Offices are, however, only one part of the government estate. Other portfolios are also expected to be transformed by effective strategic asset management, pursued on a continuous basis.

Better

Parallel programmes are expected to lead to better quality buildings. Among the drivers are health and safety, operational consistency and user experience. Some of the necessary investment can be funded by disposals of poor performing real estate.

A [Facilities Management Strategy](#) has been published to provide Government departments with direction and guidance to ensure the highest quality facilities management services. Whilst these services concentrate on the operation and maintenance of retained buildings, they also help to identify those property assets that are especially inefficient, expensive, difficult to maintain, or poorly performing with regard to sustainability, and so can inform decision-making on disposals.

Greener

Disposals planning should also achieve progress towards the Greening Government Commitments. Transformation to reduce carbon footprint, consumption of water, or production of waste can all be included within the planning criteria for potential changes.

An expected addition to the policy landscape is the Land Use Framework being developed by Defra, the Environment Agency, the Forestry Commission and associated government bodies⁵. This may need to be assimilated into the overall set of considerations for decision-making about government property across the UK. For example, tree planting is likely to be one priority: this can be done on a range of sites, of different sizes. It can involve land that is becoming surplus to other uses or that continues to be used in association with defence training, prisons, schools, hospitals (etc.) and has capacity for supplementary planting. As a result of this policy some land might be retained and not transferred or sold.

Governance

Disposing of land and buildings is a technical process that occurs within frameworks of legislation and professional practice. Besides needing to consider policy objectives, government organisations also need to take account of various processes, restrictions or circumstances that relate to property, especially the authority to act in relation to government assets. For example, all central government property held by government departments or agencies is held in a single ultimate legal ownership of the Crown, but Secretaries of State have power to act on behalf of the Crown (see GovS004, 3.3). Some have dispositive powers, others do not; so the capability to manage disposal programmes or projects varies. Proposals for asset disposal should ensure that competent advice has been received on ownership and governance, including any matters relating to registration of title with HM Land Registry.

A disposal project can be aimed at a specific outcome, such as releasing capital or reduced running costs, a transfer of resources for public services, or reducing new demands on Exchequer funding. The governance of each disposal process needs to be tailored to its particular circumstances.

Devolved Administrations have jurisdiction over property in Northern Ireland, Scotland and Wales.

Incentives

The use of revenue spending capacity and capital funding that is released by property disposals can be a vital part of new investment and planning for improved public services. The ability to use funds from a disposal can greatly incentivise the organisation responsible for service delivery. To this end, HM Treasury has allowed departments to retain capital income from surplus asset sales, and at times has allowed retention between financial years. This is subject to spending framework rules (Consolidated Budgeting Guidance), including those on underspent income from asset sales being carried forward without being surrendered to HMT at year-end. Such arrangements can allow reinvestment in a subsequent financial year. Expectations in this regard should be checked with the relevant HM Treasury spending team.

2.0 Part Two - Identifying Surplus Property

One fundamental activity of strategic asset management planning is identifying surplus property. As required by the functional standard, government departments should regularly review the need for

⁵ For example, since 1 April 2019 new Scottish Government agencies have taken forward work previously undertaken by Forestry Commission Scotland, and Forest Enterprise Scotland took on new responsibilities following the full devolution of forestry to Scotland.

their property holdings. Their governance arrangements should ensure that arm's length bodies are also undertaking appropriate reviews.⁶

Government departments are also guided to routinely examine their asset base by Managing Public Money⁷, published by HM Treasury, which advises that departments should not hold property speculatively and should dispose of assets which are surplus to requirements within three years (or, for residential property, within six months). The Green Book is HM Treasury's guidance on how to appraise policies, programmes and projects. The Balance Sheet Review also contains useful orientation on how to consider the public interest in holding and valuing property assets. In addition, the [Public Value Framework](#) is a practical tool for understanding how public money is turned into policy outcomes, and the criteria within the framework can be helpful across a range of scenarios from policy development to design of a delivery system.

Managing Public Money

4.10 Assets

4.10.1 All public sector organisations own or use a range of assets. Each organisation needs to devise an appropriate asset management strategy to define how it acquires, maintains, tracks, deploys and disposes of the various kinds of assets it uses. Annex 4.15 discusses how to set up and use such a strategy.

4.10.2 It is good practice for public sector organisations to take stock of their assets from time to time and consider afresh whether they are being used efficiently and deliver value for public funds. If there is irreducible spare capacity there may be scope to use part of it for other government activities, or to exploit it commercially for non-statutory business.

It is the responsibility of each government organisation to determine whether or not property vested in it is providing good value for money or is surplus⁸. Each one should consider whether their holdings (in total or in part) are:

- currently being utilised to deliver core operational functions
- needed for future operational functions
- integral to continuity or resilience of service delivery
- held for commercial purposes related to their remit

or are potentially available for disposal, in line with government policy.

Identifying property assets as surplus should be part of a regular and comprehensive review process involving the review of entire portfolios (see Strategic Asset Management Plans, 2.1 below). Portfolio planning allows the opportunity to consider the scope for consolidation of property holdings by

⁶ A few government organisations (for example, Homes England and London & Continental Railways) trade in property, much of it transferred from other government organisations as surplus, and hold it for their statutory objects and those set by Government (such as house building or economic regeneration). These organisations are expected to acquire, invest and dispose of land in line with their business objectives. Consequently most of their property assets (i.e. the non-operational assets) cannot be deemed 'surplus' as they are held for a purpose. Nevertheless they may have surplus assets. This guidance should be applied in an appropriate way, according to the purpose of the organisation.

⁷ HM Treasury Managing Public Money:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf

⁸ For information Part 8 of the Housing and Planning Act 2016 included provisions requiring public authorities to report on land they hold that is surplus to their requirements. Powers were prescribed for the government to issue guidance on determining whether land is surplus for reporting purposes.

reconfiguring operational activities, facilities and services. Special attention should be paid to large sites, and also to sites with significant proportions of car parking or undeveloped land, to identify the potential for releasing part of a site for alternative uses.

In addition to considering the efficiency of individual assets, portfolio reviews should also include the scope for reducing maintenance liabilities and running costs, improving building condition and reducing carbon footprint.

Reviews should therefore involve other assets (land, buildings or infrastructure) besides vacant sites. Each asset should be assessed against present and foreseeable circumstances and the scope for adjustments within the portfolio, including the scope for sharing resources with other government bodies and within the wider public sector. For example, One Public Estate initiatives focus on the scope for creating mutual benefit between central and local government and other public sector organisations.

2.1 Strategic Asset Management Plans

A continuous and strategic approach to the management of government property is fundamental to efficiency and also to the successful delivery of public services and policy outcomes. To manage its estate effectively every government organisation is expected to have a Strategic Asset Management Plan (SAMP), refreshed at least annually, which may be maintained either in-house or in conjunction with a delivery partner. SAMPs should cross-refer to other strategies and delivery plans.

The Office of Government Property (OGP) asks all Departments and ALBs to share the working copy of their SAMP with the Cabinet Office each year and commissions a copy for publication to implement cross-government coordination and transparency objectives.

Each SAMP should include an outline of any change programme that will deliver estate reform, linked to a Pipeline of property events (Forward Look) listing expected changes to leaseholds, significant investment requirements or financial commitments, and intentions for the deployment of freehold holdings: a subset of those changes might be the disposal of surplus property assets.

2.1.1 Pipelines and Disposals

Pipelines should set out how proposed disposals will support Departmental strategic objectives in the Outcomes Delivery Plan or other strategic objectives, such as those of the Government Property Strategy. The SAMP should confirm that resources are available to achieve the intended changes.

SAMPs and their related Pipelines should reflect a recent review of all land, buildings and infrastructure and of the capacity and capability of the relevant organisation(s) to implement their delivery plans. An assurance review, in an appropriate and proportionate way, should precede or accompany the SAMP, to ensure that the plan's contents are realistic, including any disposals.

Once individual assets are identified as surplus, a pathway to their release should be outlined with the minimum of delay, to include:

- a business case showing realisable benefits
- a rationale for the disposal, related to organisational strategy and government policy
- appraisal of indirect effects, notably on the portfolio of which the asset forms a part
- economic, social and environmental impacts of the proposal
- a disposal plan based on good practice (see Part Four and Annexes)

2.2 Declaring Property Surplus

To promote efficiency, HM Government organisations should avoid sales of property on the open market that could satisfy the needs of another part of the government and which could be transferred without an open market sale. This avoids unnecessary market activity, such as competitive bidding between public sector organisations or a repurchase following a sale.

The Office of Government Property maintains the Register of Surplus Public Sector Land (which may be renamed Register of Surplus Public Sector Property) and Government Property Finder⁹ services on behalf of HM Government. This is done in collaboration with government departments, their sponsored bodies and other public sector organisations, such as local authorities and NHS Trusts. These services help promote the identification of surplus government property and facilitate re-use of surplus property within government. It is therefore a requirement that all central government organisations and NHS bodies enter details of their surplus property on the Register.

Before any site is listed as available to the market, public sector bodies should be given an opportunity during an adequate period of time (currently at least 40 working days) in which to express an interest. Notification should say that a new site has been entered into the Register of Surplus Public Sector Land. The Register, currently an application within e-PIMS, may be managed to give notification to public sector organisations representing priority alternative uses.

Separate guidance for users is supplied in a Register User Manual within e-PIMS (Help). Some limitations to notification arrangements may apply during the transition from e-PIMS to the replacement system, InSite.

If an expression of interest is received, the disposal process should be paused and not proceed to offers on the open market, until the necessary conversations or negotiations have taken place. A reasonable length of time should be allowed for this purpose, proportionate to the scale and value of the asset.

Once the period of time has elapsed for expressions of interest from public sector bodies, and any additional time to investigate them, an offer for sale may be placed on the open market. Information about such offers should be made available to the public, online or via commercial estate agents.

Three successive stages for providing information about a potential government property disposal should be identified, for:

- i. Other HM Government Departments
- ii. Wider Public Sector
- iii. Open Market

Notification does not necessarily imply that preference will be given to the same party in the eventual disposal: this will depend on calculation of the 'best consideration' (Best Value) that can be achieved in return for the sale or transfer of the asset – see also Part Four.

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For information about the Register of Surplus Public Sector Land [Property] contact:

epimsservicedelivery@cabinetoffice.gov.uk

The [Government Property Finder](#) website allows anyone to search sites for sale on the Government estate and is open to the public once the period for advance notice to government and public sector organisations has expired (provided the information is not marked 'public data exempt').

Engagement with other public sector bodies should include appropriate communications, recognising the importance of place-making and community interest in the locality.

Marketing and negotiation for any transaction should be conducted in a professional manner, having recourse to specialists, if necessary, such as independent valuers.

2.3 Right To Contest

An individual or a public or private body can have the 'Right To Contest'¹⁰, which applies to the current use of government and local authority land, whether formally declared surplus or not. (See 3.5.8 below.)

3.0 Part Three - Optimal Use: the policy framework

3.1 Reasons for Disposal

The Government Functional Standard for Property and the Government Property Strategy together create a mandate and framework for decision-making over the acquisition, retention or disposal of property assets. Reasons for disposal might include:

- low utilisation
- high running costs
- maintenance liabilities
- poor suitability
- difficulties of repair or adaptation (to achieve efficiency or decarbonisation)
- changed circumstances - declining business need

In addition, reasons for disposal may include opportunities for new, more beneficial uses, supporting government priorities or realising asset value: these can apply to property that is still in use. Evaluation of assets during the course of routine asset management should take account of whether the current use is sub-optimal, and might be changed to a better, alternative use.

3.2 Government Property Strategy

The Government Property Strategy (2022-30) sets out a vision for reforming the government estate through three broad 'missions', plus a number of associated programmes and cross-cutting enablers. One of the missions is "Smaller, Better, Greener", which explicitly indicates a reduction in the size of the government estate, where appropriate, leading to disposals.

The strategy sets out objectives that will promote transformation of the government estate for the years 2022-30. It is applicable to all types of land and buildings held by government departments and their Arm's Length Bodies,¹¹ including offices, warehouses, laboratories, schools, hospitals, prisons and other operational portfolios. The overriding aim of the strategy is to guide the management of the government

¹⁰ Advice on this entitlement is provided at <https://www.gov.uk/guidance/right-to-contest>

¹¹ It principally covers land and buildings; wider infrastructure such as roads and railways are out of scope and covered by the [National Infrastructure Strategy](#); excluded are assets held by property companies as stock for their business, e.g. Homes England or London and Continental Railways.

estate in the national interest. It informs the development of strategies for workforces and workplaces – people and locations - bearing in mind the contribution of both to place-making.

The Government Property Strategy (GPS) is supported by thematic sub-strategies. Two are for Sustainability and Facilities Management. They both highlight how government organisations are expected to take an appropriately commercial approach to managing their estates. Property that is high-cost or high-maintenance in operation, or less sustainable (for example having a high carbon footprint), should be prioritised for review as potential disposals.

The Government Property Agency (GPA) is increasingly taking on responsibility for holding and managing general purpose, non-specialist property portfolios. These comprise office and storage buildings, some of which are used by a number of government departments. Multi-departmental strategies are represented in asset management plans (SAMPs) that are prepared by the GPA.

Cross-cutting enablers for the property function that implement the strategy (GPS) comprise:

- InSite, a new national digital national asset register being developed to replace e-PIMS (Electronic Property Information Mapping Service) the current central database for government property. InSite will allow a better overview of the whole government estate. Central government departments are already mandated to record property assets on the new database in accordance with the Property Data Standard, using e-PIMS in the interim¹².
- National Property Control, which, following a review, continues to require government organisations to obtain approval from the Office of Government Property for new spending and also for disposals. For both, the emphasis has been moved from the final transaction to the Pipeline of forthcoming property events. For disposals, an entry in a Pipeline and the Register is required.
- Annual reporting to Parliament in the State of the Estate Report has been revised to take a portfolio approach and match the missions of the Government Property Strategy
- Government Property Profession is building professional skills and capabilities across the Civil Service through standards, professional development and talent schemes.
- An agreed performance management framework should bring together strategy, delivery and departmental planning in an end-to-end assurance process.

Each of these enablers can assist government organisations in planning their disposals. Monitoring the implementation of the Government Property Strategy will drive efficiency by comparing metrics of cost, size and utilisation across the different portfolios through Key Performance Indicators.

A particular focus is on the extent to which disposals contribute to the reduction of backlog maintenance liabilities.

The annual State of the Estate report to Parliament monitors the outcomes of work by the government property function. The report is required under Climate Change legislation, and presents an overview of the sustainability of the government estate. In recent years it has also reported on its efficiency, costs and some other factors. Now there is a separate [Government Estate: Annual Data](#) publication.

¹² The InSite programme, previously called the Digital National Asset Register, is a cross-government programme to make improvements in accessing and analysing accurate, timely data from across the entire Government estate. It was a commitment in the [Declaration on Government Reform 2021](#) to deliver changes in three areas - data, people and technology.

3.3 Options appraisal

If a government property asset is not required for its present use, an options appraisal should determine how to maximise benefits from it through a disposal (including transfer). Prospects should be considered for enhancing the value and / or benefits to be derived from the asset by obtaining a new planning permission. Sale of a freehold, exit from leases, and adjustments to other forms of tenure may all be in scope. Barriers to a disposal should be assessed for their significance. Confidentiality should be preserved if a potential disposal involves sensitive information.

Achieving the highest sale price via the open market will not always deliver the maximum benefit to the public interest or to implementing policy¹³. An options appraisal should follow recognised methodology, advised by the HM Treasury Green Book or Cabinet Office guidance, especially if significant capital and revenue sums are involved. The appraisal should consider the cost-effectiveness of feasible new uses and the potential benefits accruing from each of them.

As a part of an options appraisal, reference should be made to the Infrastructure and Projects Authority's 'Transforming Infrastructure and Projects' Roadmap, which references societal outcomes and the United Nations' Sustainable Development Goals. The Roadmap describes how suitable methodology should be adopted to plan and monitor the outcomes of any commitment to achieve social value amongst the benefits realisation of a project.

If it is determined that property is not required for any government use, and it is also surplus to the needs of public sector organisations, it should be subject of further assessment to determine the best approach to open market disposal (see section 4.5).

3.4 Preferred outcomes – after stakeholder engagement

Local engagement should form a timely part of the disposal process. Local authorities should be consulted about government disposals in a way that allows all realistic options to be considered, including any that require local authority approval. Local authorities will be notified of disposals during the initial period when proposed disposals are registered. Consultation may be arranged either directly or through the use of agents.

If more than one public sector body is interested in acquiring property, or wishes to influence decisions over its future use, a multi-factorial appraisal should be organised by the present holder of the asset to consider the relative benefits of each option in the public interest. Each interested party should be engaged adequately and all aspects of public policy taken into account, with an attempt made to agree the best course of action. If no agreement is possible, the Office of Government Property should be asked to facilitate a resolution. In exceptional cases, if there is no technical solution to setting priorities, the advice of government ministers should be sought to achieve a positive outcome.

3.5 Government Policy Priorities

In constructing a business case for a disposal, the full range of government policy objectives should be considered. There is no general hierarchy of priorities. The unique nature and potential of each asset should be assessed, taking account of its location and feasible alternative uses, and strategic objectives should guide the options appraisal.

¹³ The 2019 Parkhurst Road High Court judgement confirmed the principle that value should reflect all planning policy requirements, not only an affordable housing obligation (which was the subject of that case).

Organisations holding surplus property assets should consider what alternative use or uses could support government priorities and how to identify a framework for calculating their value. Considerations should include, but are not limited to, the following:

3.5.1 Land for Housing

Increasing the volume of new housebuilding is a high priority for government. The Ministry for Housing, Communities and Local Government (MHCLG) is responsible for promoting new housing development to meet the calculated need, in suitable locations. In England, its agency Homes England acts as a facilitator for new residential development (excluding Greater London). The Devolved Administrations have housing responsibilities in other parts of the UK.

All government organisations, as they reconfigure their estates, should consider whether they are holding property assets that are particularly suited to the creation of new homes.

A related issue is the need for NHS key worker housing. This can be one element of local housing shortage. Creative schemes can enable new developments to provide homes to rent or allow discounted sales to first time buyers¹⁴.

Homes England acts as a disposals agency for government organisations needing to transfer assets, and can provide expertise for handling of marketing and redevelopment. Government departments should work with the Agency if a proposal relates to housing or regeneration.¹⁵

Attention should be paid to the value of enabling land, such as ransom strips and land for infrastructure that can unlock regeneration projects. Such land assets might not themselves be used for housing but have significant potential value for development on adjacent sites.

3.5.2 Schools Programme - LocatED

LocatED Property Limited (LocatED) is a limited company incorporated under the Companies Act 2006 in September 2016 and whose sole shareholder is the Secretary of State for Education. It is a non-departmental public body (NDPB) established to acquire sites for the government's schools programme and has a framework agreement with the Department for Education.

The activities of LocatED can involve the acquisition of additional property if it plays a role in supplying new school sites. Some land may afterwards become surplus to requirements, or mixed developments can be a result. The Secretary of State for Education may at least temporarily become accountable for property assets during the course of such transactions and site redevelopment.

LocatED also provides strategic advice to Responsible Bodies within the education sector on the efficient use of property and the disposal of surplus land.

¹⁴ The [First Homes](#) scheme is one example.

¹⁵ [Homes England - Land Transfer Model](#)

Spending Review 2013 announced a package of reforms for the disposal of government property assets, including centralising disposals in the (then) Homes and Communities Agency. From April 2015, all developable and viable surplus land and buildings held by Government or its agencies in England have been expected to be transferred to the HCA (now Homes England) for disposal using the Land Transfer Model (subject to an assessment for the Free Schools programme or any other relevant programme - see Annex 1). Ministry of Defence and NHS Trust land was exempted from the Land Transfer Model, though separate arrangements could be agreed.

All government organisations should, in consultation with LocatED, consider the potential for providing school sites in their appraisal of surplus property.

3.5.3 Open Land - Land Use Policy

Government organisations that are responsible for the environment have been working to develop a new Land Use Framework. Defra, the Environment Agency, Forestry Commission (or Forestry and Land, Scotland) and others should be consulted about initiatives for supporting the Greening Government Commitments, including the potential to use land for forestry/woodland and other means of increasing carbon sequestration or renewable electricity generation. Efforts to maintain environmental quality such as Natural England's Nutrient Mitigation Scheme should be considered.

Emerging land use policy may indicate preferred uses of land, if it is surplus to other requirements, for investment in natural capital, such as a biological reserve (for biodiversity), floodwater management, wastewater management or another vital use of open land – in addition to leisure and recreational value of countryside, which in some circumstances allows multi-use management regimes.

Most importantly, policies including Net Zero Carbon and statutory requirements such as Biodiversity Net Gain¹⁶ should influence the design and scale of new development, for example the proportion of land to be built on versus 'green' uses. A calculation may be necessary for offsetting the impact of new development. These and other considerations affect 'placemaking', the perceived character of the urban and rural environment.

The Office of Government Property has issued a [Net Zero Estate Playbook](#), which sets out how to approach decarbonisation of government property. A Sustainability Strategy add further detail on how the Government Property Function will work to deliver against key commitments.

3.5.4 Planning Permission

New uses for government property are subject to planning legislation and policy and should be aligned within the Town & Country Planning framework. The [National Planning Policy Framework](#) (NPPF) should be the starting point for consideration of new development options, followed by the relevant statutory local plans, including Neighbourhood Plans, other guidance and regulations. The NPPF refers to economic, social and environmental objectives needing to be considered, and emphasises quality of design and placemaking.

Revisions to the planning policy framework are in preparation, with the potential for changing the development assumptions, legislation and regulations, and the nature of planning obligations, such as Section 106 Agreements and the Community Infrastructure Levy. (Any such changes could require a revision of this guidance.) Planning for surplus assets should take into consideration the potential effect of such changes.

Part 8 of the Housing and Planning Act 2016¹⁷ has not been brought into force, but was intended to improve the effectiveness and transparency of public sector asset management and disposals of land and building assets. Government organisations should keep in mind its provisions and consider whether to apply its principles¹⁸.

¹⁶ Environment Act 2021

¹⁷ Housing and Planning Act 2016 - <http://services.parliament.uk/bills/2015-16/housingandplanning.html>

¹⁸ These include:

- engagement with local authorities and other specified public authorities when developing proposals to dispose of surplus land

Besides these aspects of the Town & Country Planning framework, government organisations should have regard to the Sustainable Development Goals set by the United Nations. These are largely incorporated in the Greening Government Commitments and can be reviewed using the Infrastructure and Project Authority's Transforming Infrastructure Projects Roadmap.

3.5.5 Modern Methods of Construction

Public land and building projects can be used to encourage the activity of innovative developers and modern methods of construction, for example building homes at up to double the rate of traditional house builders through off-site manufacturing. This approach to accelerated construction should be evaluated amongst the options for new uses. In some areas, Homes England and local authorities may be able to advise on opportunities to complement the growth agenda and contribute to new housing schemes.

3.5.6 Heritage Assets

Government property includes heritage assets of significant historic, architectural, archaeological and artistic interest. In any disposal, asset managers should consider how heritage value might be conserved or enhanced. This should be done before, during and after sale or transfer. Heritage value should be protected whether statutory protection has been applied (such as Listed Building or Scheduled Monument) or not.

Disposal of heritage assets should be handled in accordance with government policy for their protection and conservation. (See Annex 2.)

Specialist advice is available from Heritage England, including a guidance note, The Disposal of Heritage Assets. The Protocol for the Care of the Government Historic Estate 2017 applies as a mandatory requirement, including the duty to ensure that the significance of any heritage asset is taken into account when planning change or development. The protocol requires regular condition surveys and planned programmes of repairs and maintenance.

3.5.7 Right to Contest

The Cabinet Office, HM Treasury, and the predecessor of the Ministry of Housing, Communities and Local Government introduced provisions in 2014 to allow any member of the public, business or local authorities to challenge government use of property if they believed a better use could be made of it. Consultation has been carried out on the possible reform of part of these provisions, but for the time being they allow a challenge if all the following criteria apply:

-
- publishing a report setting out land and buildings which have been retained as surplus for at least 2 years (6 months for residential property) and the reasons for retention
 - directing specified bodies to dispose of land
 - applying existing requirements on the Government estate for reporting on improving efficiency and sustainability to the military estate.
 - local authorities being required to report on improvements to the efficiency and sustainability of buildings which form part of their estate, similar to requirements in respect of the central government estate.

Part 8 of the Act includes a number of powers to set out more detailed provisions in secondary legislation and guidance.

1. The land is owned by a central government department or one of its arm's length bodies, and
2. the site:
 - could be put to better economic use
 - is potentially surplus or redundantor
3. the land is owned by a local authority or certain other public bodies¹⁹ and:
 - is empty or under-used
 - there are no plans to bring it back into use

More detailed information in relation to this process can be found at:

<https://www.gov.uk/guidance/right-to-contest>.

Queries can be sent to the Office of Government Property²⁰

3.6 Weighing Alternative Uses

Where surplus land or buildings are potentially suitable for more than one priority use, then consideration should be given jointly by the interested parties to determine the most beneficial end use in the public interest, taking account of local priorities or any other relevant considerations.

As far as possible, agreed methodologies should be adopted to assess the benefits that could be realised from proposals under consideration. The effort required for such methods of appraisal should be proportionate to the scale of the benefits likely to be achieved. Scenarios should be realistic. Assessment should include social, environmental and economic benefits. If possible, these should be measurable; however, some benefits cannot be monetised. Informed judgement should be applied to gauging how much weight should be attached to them in decision-making. More information is available in the Green Book and Guides to developing business cases²¹.

3.7 National Property Control - Approval to Dispose

The Office of Government Property (OGP, part of the Cabinet Office) operates a spending control on behalf of HM Treasury: the National Property Control (NPC) serves to assure property transactions are good value for money and in alignment with policy. Organisations within the scope of the NPC must include all freehold disposal proposals within a Pipeline that is shared with OGP, as well as giving the mandatory notification to other government organisations in the central Register of surplus property. Each individual disposal does not require specific NPC approval unless selected for further examination, but if a sale-and-leaseback arrangement is involved a specific NPC approval is required.

²² Government organisations are expected to consult with OGP before a plan to dispose is progressed beyond inception, via their SAMP or a related Pipeline.

¹⁹ Homes England is not covered by this provision (as its land/property Levelling-up and Regeneration Bills not surplus to its own purposes) but the agency acts responsibly and responds to requests. The responsible Secretary of State can direct disposal.

²⁰ Email: ogpsecretariat@cabinetoffice.gov.uk. Postal address: Office of Government Property, 10 South Colonnade, Canary Wharf, London, E14 4PU

²¹ [The Green Book: appraisal and evaluation in central government - GOV.UK \(www.gov.uk\)](#)

²¹ [Guide to developing the programme business case](#) / [Guide to developing the project business case](#)

²² Cabinet Office Controls: <https://www.gov.uk/government/publications/cabinet-office-controls>

OGP will maintain consultation arrangements with HM Treasury in reviewing business cases for disposal of assets, including sale and leaseback. OGP will:

- ensure that appropriate opportunity is given for disposal protocols (such as notification to other public sector bodies)
- consider whether the proposed disposal plan is appropriate within the wider context of the Government Property Strategy and its overview of the central and civil estate
- assess whether a disposal plan is likely to achieve best value for money

Complex transactions, or proposals involving multiple related acquisitions, refurbishment and disposals, need a coherent narrative to be assembled. Collaboration over Pipelines should allow for a timely review process. IPA and OGP can be expected to support the coordination of disposal pipelines, especially for projects that constitute part of the Government Major Projects Portfolio.

4.0 Part Four - Transfers and Marketing: best practice

4.1 Relevant Considerations

4.1.1 Reusing Property within Government - Transfers

Through their SAMP and Pipeline processes and collaboration with OGP and other government organisations, estate management teams should be able to identify whether property assets that are surplus to their remit should remain within the Government estate, for use by other government interests. If so, arrangements should be made for internal transfer.

Transfers between central government Departments or other government organisations should normally be made at Market Value unless another basis for valuation is more appropriate, such as Equitable Value (previously known as Fair Value)²³. Valuation should be certified by a qualified valuer, unless the transfer is being made as part of a Machinery of Government change, in which case it may be unnecessary. Managing Public Money at A4.15.11 states that, “Public sector organisations may transfer property among themselves without placing the asset on the open market, provided they do so at market prices and in appropriate circumstances”.

Guidance on disposals at less than market value is given below (4.1.5)

A valuation certificate is sufficient to satisfy requirements for achieving ‘best consideration’ (best value). Managing Public Money, Box A4.15C, sets out a protocol for transfers of assets²⁴.

4.1.2 Valuation

Property is recorded in government accounts at a value that might not reflect its potential disposal value. Often referred to as the ‘book value’, the notional value can be calculated in a number of ways, for example using depreciated replacement cost (DRC) for specialised assets or current value in existing use, which is often referred to as Existing Use Value (EUV). A valuation based on EUV reflects the use of land or property at the date of valuation and assumes that the same use will

²³ Market Value is only one of the RICS Red Book’s seven Bases of Value. Equitable Value may be a more appropriate basis of value for transfers between two government organisations. (See also 4.1 Practice Notes)

²⁴ See [Managing Public Money](#).

continue into the future, ignoring higher or lower value alternative uses. Initial cost or previous valuation figures sometimes remain in property records as the book value, although the use or value has changed over time.

Government organisations should ensure that their property records are up to date and that they are aware of the possible Market Value (MV) of their land and property, particularly if any possible change of circumstances is imminent. HM Treasury Green Book²⁵ provides details on the valuation of land and buildings. Managing Public Money advises that assets should be valued at market prices using the guidance on property valuation provided by the Royal Institution of Chartered Surveyors Valuation Professional Standards (The Red Book)²⁰, which explains agreed global standards for valuation work and the basis for valuations, identifying acceptable assumptions. The basis for valuation that is ultimately chosen may differ from Market Value, but MV provides an appropriate initial valuation to use as a benchmark.

Making a valuation involves cost, so decisions should be made carefully on when and how often to incur them. New valuations should be made if there is reason to think that the market value or 'true' value diverges significantly from the book value. They are also appropriate when an asset becomes surplus, or an opportunity arises for a beneficial disposal.

4.1.3 Financial consequences of disposal

The financial consequences of a transfer of property to alternative uses should be assessed by comparing different options. If transfer to another public body involves a reduction in the potential financial receipt from a sale on the open market, a calculation of the opportunity cost (income foregone) should be made, and consideration given to whether or not there is any means of compensation from an appropriate source of funding. In such calculations, a distinction should be made between costs or constraints that would be imposed on any development, in public or commercial sectors (such as planning obligations) and those that are additional, arising because of expectations arising because the assets currently belong to the government or in the public sector. (See also 4.1.5 below)

4.1.4 Disposal on the Open Market - Accounting Officer responsibilities

Managing Public Money (MPM) section A4.15.14, provides advice to public sector organisations disposing of land and property assets. Any consideration of a disposal should demonstrate that value for money and appropriate transparency have been taken into account, as well as the benefits to be gained from a timely disposal.

MPM gives Accounting Officers a framework for making value for money decisions on the disposal of land for the Exchequer as a whole.

4.1.5 Disposal at less than Market Value

Disposals may be considered that involve the release of surplus assets at less than Market Value if taking into account wider considerations such as economic, environmental and social benefits.²⁶ [The](#)

²⁵ HM Treasury Green Book

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063330/Green_Book_2022.pdf ²⁰ Royal Institution of Chartered Surveyors Valuation Professional Standards (The Red Book) <http://www.rics.org/uk/knowledge/professional-guidance/red-book>

²⁶ Case law concerning the obligation on local authorities not to dispose of surplus land for less than 'best consideration' (under s123 of the Local Government Act 1972) should be taken into account, including the 2019 Parkhurst Road High Court judgement. (See also: footnote, page 17)

[Green Book \(2022\)](#) published by HM Treasury²⁷ sets out techniques that should be applied when making an appraisal of complex, multi-factorial proposals, aiming to promote efficient policy implementation and resource allocation across Government. The Green Book emphasises the need to take account of wider social costs, benefits and risks of proposed policies, programmes and projects - including the impact on natural capital - to ensure the proper understanding of value and use of public resources. It recognises non-use values (such as heritage value) and non-market values (such as community value), and allows that in some cases it may be justifiable to choose an option which does not generate the highest possible receipt. However, some organisations may be exempt²⁸ and there are consequences to choosing a valuation other than market value which need to be assessed.

A future Annex is intended to provide greater detail on approaches to assessing social value for use in options appraisals (Annex 6). Procurement Policy Note 06/20 sets out guidance on social value in relation to government procurement (see [PPN 06/20](#) - taking account of social value in the award of central government contracts) and provides a Social Value Model. Meanwhile, recognised and widely agreed criteria should be used wherever possible. For example, a distinction should be made between different externally imposed project costs, affecting valuation:

1. General environmental protection overheads or community contributions such as those imposed by a planning permission, for example a standard infrastructure levy²⁹ or a required level of social housing
2. Contributions to specific local social, economic or environmental goals, as benefits in kind or in financial support, that are additional to the general requirements (such as additional green infrastructure within an economic regeneration scheme, or a higher proportion of social housing within a redevelopment).

Each cost category should be accounted separately in the business case. Specific additional contributions (2) are those which occur only in the particular project as a result of the assets involved being government property assets.

In all cases, comprehensive accounting should show that the overall development delivers positive net benefits.

The Public Value Framework should be used as a practical approach to maximising the value delivered from public spending, improving outcomes for citizens. Details are given in the Government Functional Standard GovS 006: Finance.

The following considerations then apply:

- If a concessionary disposal is being considered at a sale price other than market value, in order to achieve specified benefits, a value for money calculation is still required³⁰. A range of feasible options is expected to be analysed.

²⁷ See the [Green Book \(2022\)](#)

²⁸ See footnote 17 on page 22.

²⁹ The Levelling Up and Regeneration Bill contains a proposal for a new Infrastructure Levy, which would replace the existing Community Infrastructure Levy, Section 106 agreements and affordable housing developer contributions with a single flat-rate levy based on the final sale value of a development.

³⁰ Managing Public Money defines 'gifts' as including "all transactions economically equivalent to free and unremunerated transfers from departments to others, such as:

- loan of an asset for its expected useful life
- sale or lease of assets at below market value (the difference between the amount received and the market value is the value of the gift)

- Possible situations in which concessionary prices may be agreed include sale to:
 - a heritage body (such as the National Trust)
 - local community interests
 - as a contribution to local economic growth or regeneration
 - to create or sustain environmental (ecological) benefits
 - to achieve other aspects of Social Value (in a recognised methodology, such as National TOMS³¹)

and, in these situations, arrangements for overage or clawback should be considered to protect against future disposals or change of use to higher value use, outside the agreement.

- Appraisal following Green Book guidelines is expected to be consistent between different government organisations:

“..there is an understandable and undeniable expectation that the various arms of government are joined up and will deliver optimum joined up public services. This understanding must inform the design of proposals in general and the choice of costs and benefits used in appraisal.” ³²

In such cases the Accounting Officer and Minister should confirm the arrangements for disposal at less than market value, following consultation with the Office of Government Property (Cabinet Office) and HM Treasury. A business case should show the price thought to be obtainable in the market and the benefits accruing in terms of social value, and should show how the value of those benefits equals or exceeds any income foregone. More information is available in the Green Book and Guide to developing business cases. The Green Book recommends a combination of relevant appraisal frameworks. It says:

“The Treasury’s five case model is the means of developing proposals in a holistic way that optimises the social / public value produced by the use of public resources.”

Business cases proposing the realisation of social value from a government property disposal should include an accounting that shows who is expected to pay for those benefits. This accounting will assist in identifying any public subsidy. Transfer of funds between cost centres may need to occur to compensate the vendor for loss of income, when asset value is being passed to another organisation to support its distinctive objectives. This may involve different government departments or other organisations, and will need to ensure that the cost can be borne from existing budgets or by accessing special funding.

Recognition of social value need not always involve financial transfer if there is no external funding available and the disposing authority is willing and able to bear the cost. It is essential in such cases that departments and ALBs ensure that any losses of potential income are scored correctly, in particular determining whether they are scored as a loss or as a grant to the beneficiary of the reduced purchase cost. In such cases, Departments must make sure that they have both the appropriate ambit and legal powers to make such grants. In some cases, it may be more efficient for a department with the appropriate ambit and powers to make a cash grant to the recipient, enabling them to purchase the land at full market value.

4.1.6 Capital Allowances

Government does not claim Capital Allowances, which are a tax relief to account for the depreciation of Plant and Machinery in property. However, most purchasers of government buildings (pension funds and charities are excluded) will be able to make these capital allowance claims, following purchase, which

Treasury approval is currently needed for all gifts valued at more than £300,000.

³¹ Themes, Outcomes, Measures

³² [The Green Book: appraisal and evaluation in central government - GOV.UK \(www.gov.uk\)](#) / [Guide to developing the programme business case](#) / [Guide to developing the project business case](#)
[Revert to Front](#)

could be a significant sum. Disposing organisations should consider whether there are likely to be Capital Allowances that could be claimed and, if so, highlight this fact to would be purchasers. The sale price may then take into account their value. This will probably involve an assessment being made and a report added to the marketing pack. A cross-government framework might enable site by site assessments to be made, but the onus is on the selling organisation to satisfy themselves that the purchasers are aware of the value of any capital allowances that could be claimed.

4.2 Disposals Monitoring and Performance Reporting

Disposals of surplus Government property are expected to support priority policy areas. Understanding how the property function is performing in these areas is essential to implementing these policies through action across the whole of government.

Each government organisation holding property assets (land, buildings or infrastructure) that potentially could become surplus to requirements and support government policy should record and monitor their actions in relation to them:

- updating their Strategic Asset Management Plan, including
 - aligning it to their latest property strategy
 - analysing alternative use options for the assets they hold
 - compiling a Pipeline of property events, proposed changes, and planned disposals
- completing the Register of Surplus Public Sector Land
- engaging with other public sector organisations that have a presence in the same location(s)
- assessing market demand and potential receipt from any feasible disposal
- recording outcomes in appropriate accounts and reports

Performance by each government organisation or portfolio regarding their disposals of property should be reported in an annual Transparency Report (if required) or in-year reporting to an efficiency and disposals programme managed by OGP. The same data should be reflected in the State of the Estate report.

4.3 Preparing for Disposal by Sale

Public bodies should be aware of the implications of disposals for their financial reporting. Finance centres should be advised of property being identified as surplus so that correct valuations and estimates of cost, receipts and savings can be prepared. These actions will help to manage and mitigate issues of impairment, record changes appropriately on balance sheets, and make suitable accounting entries and updates to asset registers when the sale is completed.

4.3.1 Disposal Objectives

Once an organisation deems an asset to be surplus to all public sector requirements, disposal objectives should be identified to guide how the responsible person seeks to bring the property to market.

A single disposal may support multiple strategic and operational objectives. This guidance should guide handling any competing objectives. The identified objectives should align to the disposing organisation's property strategy and its Strategic Asset Management Plan and Pipeline, as well as other delivery plans, its broader business strategy and government policy generally, including the Functional Standards and the Government Property Strategy.

Typical operational objectives may include:

- Flexibility - scope to offer the asset to alternative purchasers
- Agency - commissioning suitable agents to manage the disposal
- Budget – achieving the best price obtainable, consistent with applicable standards and policy
- Timeliness – to fit with reprovisions, relocations, new acquisitions, or other disposals
- Quality – raising the standard of remaining accommodation or operational efficiency

Besides operational and organisational objectives, strategic objectives may include:

- Supporting service transformation or cross-government change programmes
- Supporting wider policy objectives - for example, economic growth or sustainability

Maximum sale price is not the sole determinant of value for money. Other factors include: the likelihood of a successful disposal; identifying the most reliable supplier; impact on other public sector interests; meeting Government targets for financial receipts.

Expected benefits of a disposal should be clearly defined as objectives at the outset, with ongoing monitoring as the disposal project proceeds, to ensure the realisation of those benefits.

4.3.2 Disposal Strategy and Team

Once a property asset has been identified as suitable for sale on the open market, and the disposal objectives have been clearly established and signed off by the Senior Responsible Owner (SRO), a strategy and plan should be developed for disposal of the site by a team of competent people.

It is essential that a suitably experienced disposal team is assembled to provide appropriate commercial, legal and professional support throughout the disposal process, proportionate to its requirements. Peer review and experience of best practice amongst other government organisations should be used to confirm the best approach. (For example, LocatED, the education sector property company, has expertise on transfers, acquisitions and sales.)

The SRO will be accountable to the Accounting Officer for the disposal, and accordingly should take responsibility for oversight of the disposal team. The team should include representatives from Property (Estates) and Finance teams, who can identify any necessary operational inputs. Core skills needed to successfully deliver the objectives of the disposal may typically include expertise in development planning or sales and marketing, with an established track record.

4.3.3 Approvals and Route for Sale

If disposal by sale on the open market is agreed, various options for the method of disposal are available, such as private treaty, tender and public auction. Each of these should be considered in relation to the asset type, any specific characteristics, and conditions in the market.

When formulating the disposal strategy, the decision makers should take into account the objectives of the disposal, advice from property and legal professionals, available disposal routes, and a number of further considerations:

- the tenure or interest held in the property to be sold
- length of term remaining in a leasehold
- special characteristics such as restrictive covenants
- current occupation, such as sole or multiple occupancy, or ability to offer vacant possession
- any potential special purchaser

- opportunities for realising latent value, perhaps through a merger of interests by land assembly or obtaining planning consent for redevelopment or a change of use
- constraints such as planning restrictions or heritage building characteristics (Listed Building, Conservation Area, or unusual structure)
- factors impacting market appeal.

The disposal project manager should review the disposal strategy with property and legal advisers in the context of these considerations when seeking initial approval in principle (for example via the relevant SAMP or disposal Pipeline) and keep them in mind subsequently. The business case is likely to need agreement on delivery assumptions and tactical choices as well as strategy.

The disposal strategy should also take account of the following practical considerations:

- lead times - recognising periods of time required for consultation or to obtain approvals
- market pricing - obtaining appropriate valuation and agency advice to establish the likely realisation value
- determining whether either of the above (timing and price) could be improved by undertaking minor works to the property
- choice of marketing and advertising methods
- synergy - considering the impact if more than one property is placed on the market at the same time
- need to sell under certain conditions (possibly impacting the price)
- ensuring each member of the disposal project team understands the disposal strategy, maintains momentum, and knows its requirements, including confidentiality.

Pre-application engagement with planning authorities can improve the efficiency and effectiveness of a planning application. The local planning authority should be provided with sufficient information to provide an authoritative view on the development options.

The disposal strategy should provide a clear framework for the approach to be taken to obtaining planning permission or other consents, marketing and related publicity, and these working assumptions should be recorded, along with the policy support and justification for the proposal.

4.3.4 Procurement Rules and Property Disposals

If a disposal involves procuring works or services, procurement rules may apply. The Senior Responsible Owner should seek advice on the latest UK Government guidance on procurement and whether the disposal is subject to regulations.

Works or services needing to be procured might for example include:

- a developer providing some professional services
- demolition and/or remediation
- an outcome required by a certain time, or to a certain standard
- infrastructure to be provided before development can begin
- interim facilities

4.3.5 Internal and External Advisers

Government organisations may have internal advisers available to provide legal, property or financial expertise, but if not they should consider how it can be obtained. At project initiation, the project manager should assess whether internal resources are capable of providing the necessary support,

and if uncertain should take advice from peers within the property function or from the Office of Government Property. Key points are:

- The Valuation Office Agency can offer independent valuation and professional property advice to public sector bodies. Contacts may include the Valuation Office Agency's DVS division.
- The Government Property Law Hub operates within the Commercial Law Group of the Government Legal Department.
- For property transactions involving significant capital or revenue sums, financial expertise should be sought that is proportionate to the task, such as providing projections or complex accounting. HM Treasury spending teams, Commercial function within the Cabinet Office, and the Infrastructure and Projects Authority (IPA) are all able to guide estates and project managers in assembling adequate resources.
- The Crown is indivisible, and agents internal to government can be appointed by direct award or used for an additional 'value for money' test: VOA, GPA and others may be asked for an opinion that VFM is being achieved.

Such resources should be called upon to assist in the process of determining which professional advisers are required and how appointing them should be approached.

Whilst external advisers may be procured to supply professional and technical advice, they should support decision-making within government rather than becoming a surrogate for it. The Senior Responsible Owner for the disposal retains the responsibility for decision making and must ensure that sufficient capability and resources are available, acting as an 'intelligent client' for service providers. Terms and conditions for their engagement should be recorded.

Specialist Advisers

Some tasks require specialist advice, such as making clawback arrangements, investigating development plan situations, or understanding how compensation or Crichton Down Rules might apply. If no internal advisers or consultants have the necessary expertise a business case should be made for the engagement of specialist consultants. If at all possible, this need should be identified when setting up the disposal project as part of the outline business case.

Specialist legal advice may also involve expert knowledge on issues such as:

- landlord and tenant legislation
- conveyancing
- restrictive covenants
- conditional contracts

Specialist financial advice may include expert knowledge on issues such as financial appraisals, accounting standards, modelling or cost benefit analysis.

4.3.6 Appointing Advisers and Agents

Disposal project managers should normally make use of framework agreements existing between their organisation and consultancies or agents, if they can supply the required assistance. Alternatively, they may refer to framework agreements held by Crown Commercial Services³³, or another government organisation, such as Homes England.³⁴ (See Annex 4). These bodies have framework agreements that can be used to appoint a contractor directly or to run a mini- competition:

³³ Crown Commercial Services: <https://www.gov.uk/government/organisations/crown-commercial-service>

³⁴ Homes England: <https://www.gov.uk/government/organisations/homes-england>

framework incumbents are invited to provide details of the service that they will provide in response to a requirement, and at what price.

If specialist advice is not available from a supplier on an existing framework, disposal project managers might need to undertake a new procurement in accordance with current procurement rules. Departments can contact Crown Commercial Service to clarify the services available via property@crownccommercial.gov.uk

If agents or advisers are to be invited to tender, the disposal project manager should ensure that the process for appointment accords with the client's own procurement rules, including any formal process for:

- tender preparation
- advertising in appropriate places or to selected suppliers, on a framework
- tender invitation includes required processes, in notes on roles and responsibilities
- receipt of tenders is appropriately coordinated, with an impartial person overseeing

It is not always necessary to carry out a formal tender process.

4.4 Optimising the Disposal Process

To improve the efficiency of disposal projects a disposal team should develop an appropriate client brief. This should ensure that disposal is taking place under optimal conditions, for example the correct amount of de-risking has been undertaken, the right market segment targeted, and a selection process is in place for the right agent to be appointed.

The following precautions could avoid unnecessary delay.

4.4.1 Due Diligence

General

Timely due diligence checks can anticipate issues over title and boundaries, rights of way, wayleaves, encumbrances, restrictive covenants, the rights of other occupiers (etc.). Any such issues should be investigated and resolved or at least clarified prior to formally declaring the property surplus. Failure to undertake sufficient checks of this nature at the outset may lead to protracted negotiations, inflating costs while the asset is out of use and increasing the risk of a transaction collapsing.

Due diligence should include detailed understanding of easements or covenants over a freehold property which could encumber new owners if passed on. In particular, covenants that are pertinent to a current government owner might pass on to the next, if not rescinded. Time limited covenants also need to be understood.

A new owner may seek to have a covenant or parts of it rescinded if they are able to trace the person or company which has the beneficial ownership. If a covenant is not enforceable then an application can be made to the Land Registry to remove it from the deeds. If it is enforceable, it may be possible to negotiate with the party that has the benefit of the covenant to remove it by entering into a Deed of Release.

Any need for transfer of title from one government department to another should be considered in relation to the requirements of HM Land Registry. Registration of title to a new owner (which may be a different Secretary of State) may be desirable for various reasons, including plans for subsequent

redevelopment or changes of use or tenure. Legal advice on the effects of current legislation and regulations should be obtained, along with an estimate for the potential costs of conveyancing.

Legal

Legal due diligence should confirm clean title and discover any constraints relating to disposal of assets. If the property is leased, time should be taken to ensure that disposal is permissible under the terms of the lease. A critical point may be whether a lease allows the property to be offered to third parties - typically after the landlord gives permission - including whether new occupations are restricted to Government organisations or specific Departments. Leaseholds will often have restrictions on the use to which a property may be put if assigned or who might be permitted to occupy the accommodation - often referred to as “Third Party Rights”.

All central government property (held by a government department or executive agency) is ultimately held in a single legal ownership under the Crown, but for any asset it is necessary to consider who in government (which role-holder) has the asset vested in them. For freehold and long leasehold assets, disposal requires certainty over who has dispositive powers (see functional standard GovS 004, 3.3 Legal implications of ownership).

Legal due diligence checks should also include investigation into any potential impact of the Crichel Down Rules³⁵ relating to historic compulsory purchase and the rights of previous owners.

Physical

Physical due diligence should reconcile the actual situation on site with the legal position and the particulars issued. For example, potentially problematic matters might involve party walls, boundary markers, drainage channels, contamination, infestation, or any uncertainty about the likelihood of vacant possession at the expected point of transfer. Demolition or remediation - including restoring invisible characteristics such as nitrate levels - may need to be anticipated as part of the transaction.

Financial

Financial due diligence should include comparing the ‘book value’ with a current valuation³⁶ of the asset and the financial consequences for the asset-holding organisation and for the Exchequer upon disposal, taking account of whole life costs and any reprovision.

Devolved Nations

Some aspects of property law and practice are significantly different in Scotland compared to England and Wales and Northern Ireland. Public sector bodies are advised to have regard to their own internal guidance or obtain appropriate professional advice about separate jurisdictions.

4.4.2 Investment Prior to Disposal: de-risking

Investment prior to disposal (de-risking) can provide greater certainty for potential purchasers and help to deliver a successful transaction or a larger receipt. The case for any investment prior to disposal should be considered early and set out in the disposal strategy.

De-risking activity could include:

- Legal: resolution of issues over title

³⁵ Crichel Down Rules: <https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance>

³⁶ Normally produced according to the ‘Red Book’ guidance from the Royal Institution of Chartered Surveyors.

- Technical: producing reports and surveys, such as for ecology, topography or ground investigations
- Planning: pre-application engagement to improve the prospect of planning permission, and shortening the time required to obtain it. Enquiries to the local authority may need to be made in confidence if information is not yet in the public domain. Non-disclosure agreements may be appropriate to reduce the risk of disruption or added cost if information is leaked.
- Planning conditions: obtaining outline approval or approval subject to conditions, to find pathways to approval avoiding wasted effort on details; also use of special guidance, e.g. Brownfield Registers; or (for housing-led development) separating matters of principle from technical detail
- Physical: works such as remediation, decontamination and demolition
- Infrastructure: providing physical or social infrastructure (e.g. roads or community facilities).

Investment prior to disposal should be proportionate to the value of the asset and recoverable from it, corresponding to the disposal objectives. Any decision to invest should be based on a robust analysis of options. Advice should be sought from professional advisers if there is uncertainty about likely outcomes.

4.4.3 Capturing Future Uplift in Development Value

It should be apparent from work undertaken when preparing the Strategic Asset Management Plan whether surplus property assets have redevelopment potential beyond an initial disposal. Government organisations should consider how taxpayers might benefit from subsequent increases in value. For example, where property is sold without the benefit of planning permission, or where market conditions indicate, provision should be made to secure a share in development profits through overage or clawback clauses³⁷:

‘Overage’ means claiming back an element of increased value where there is a general uplift in the market or the market value of the end-use is not known at the time of sale.

‘Clawback’ refers to claims for all or part of windfall gains, for example resulting from the purchaser unexpectedly obtaining planning permission for a change of use or a greater volume of development than anticipated at point of sale.

Examples might include:

- where it is difficult to gauge the eventual commercial potential of a property
- where a particular purchaser or partnership might have greater capacity for optimising the value of a development than a government department
- where a developer improves upon an initial planning permission by subsequent consents
- disposal of a Listed Building

It should be remembered that clawback and overage provisions may give rise to complex legal issues. They may be difficult to enforce after time has passed, owing to:

- difficulty in monitoring the increase in value of the property when it no longer belongs to the initial owner
- agreeing the quantum of the increase with the purchaser, after time has passed
- ensuring that payment of a share of the uplift is protected

³⁷ Overage/clawback arrangements are not allowed on transfers between public sector bodies except under certain circumstances, needing approval. (For example the Transfer Model implemented for Homes England received HM Treasury approval. Relevant guidance could be shared.)

Clawback levels are usually designed to diminish over time until they expire and the purchaser is able to dispose of the property without reference to the previous owner.

Disposal teams should seek advice at the outset to determine the best way to proceed if wanting to capture future uplift in value. The potential effects within the market can be explored by inviting offers with and without clawback or overage provisions.³⁸ Any formula that is to be applied should be clear and explicit in the subsequent sale agreement.

Other methods may be considered for protecting or sharing an increase in development value, such as retention of ransom strips and options to purchase.

4.4.4 Conditional Sales

Conditional Contracts

Conditional contracts become binding when a relevant event takes place (*conditions precedent*) or they can terminate when a relevant event occurs (*conditions subsequent*). Offers made for a property 'subject to contract' may also be subject to conditions, such as those within the planning consent or requirements for asbestos survey, legal checks, site measurement, etc. Exchange and/or completion of contracts will be conditional upon resolution of the issues.

Amongst risks inherent in a conditional contract for the vendor is that a condition might not be met satisfactorily by the purchaser, so leaving the contract in doubt. The issue might arise from an action by a third party, for example where planning consent is granted subject to unacceptable conditions. In such circumstances, which may occur some considerable time after the exchange of contract, if contract conditions are not satisfied the disposal might not proceed at all. In such a case it will be helpful if the parties anticipated that the transaction fails, or alternatively that vendor and purchaser will agree an adjustment to the terms, including the price. Contracts may provide for the parties to withdraw or to adjust the terms. This is a complex area and should be carefully controlled by the disposal team's Senior Responsible Owner, working with legal advisors, to cover all the necessary contingencies.

It is important to make sure that any condition attached to a disposal is explicitly stated in the contract, including the deadline by which it needs to be satisfied. Conditions precedent and subsequent should be clearly shown. All correspondence with the prospective purchaser regarding the disposal should acknowledge the prevailing conditions. Any agent should ensure that negotiations are undertaken with clear understanding of them by all parties.

Controlling Development End Use - Building Leases

If a government organisation wishes to ensure that a site is actually used for the purpose for which it was released, a freehold disposal may not be the most appropriate type of contract. In an unfettered freehold sale, the vendor is less able to control what is ultimately delivered. For example, land sold for social housing might subsequently be turned to commercial use, contrary to government priorities. To better handle such circumstances, 'Building Leases' have been developed as a form of disposal contract, granting permission to the purchaser to occupy the land for the purposes of the development for a maximum period of time. The freehold of the land is retained by the vendor until the development is completed, and then is sold.

Similar considerations may apply where there is a requirement to monitor or report on post-sale activity. A Building Lease may offer a means of ensuring adequate information is provided. Building

³⁸ Homes England has internal guidance that may be shared on this topic.

Leases can also be used to specify the number of units to be built, or ensure that delivery is achieved within a specified timeframe. They allow sites to be sold on a deferred payment basis (Build Now Pay Later).

Any disposal route will need to satisfy public procurement legislation if obligations are to be imposed, as a Building Lease will be deemed to be a contract for works.

If it is decided to use a Building Lease as a form of contract it can be facilitated by disposing of the site through the Homes England Delivery Partner Dynamic Purchasing System, which ensures a procurement compliant route is followed. (See Annex 3.)

If a degree of control is necessary beyond the initial development, consideration should be given to creating a ground lease for a significant period, rather than a freehold sale. For example, this might enable the creation and retention of Key Worker housing.

Joint Ventures

In some development scenarios, government organisations may not realise the full potential value of their assets by outright sale: they may do better by opting for a joint venture. Partnership or profit-sharing arrangements may yield a better return. They may also present a more attractive offer to investors in the property market, (where some are applying 'ESG' - Environmental, Social and Governance – criteria). JVs can give an ability to influence developments later into the delivery phase, when demands might arise that were unknown when the initial partnership was set up.

Joint ventures need greater legal, marketing and other kinds of expertise than straightforward sales, and it is essential that appropriate professional advice is obtained. Some joint ventures, especially those involving the formation of new companies, are automatically deemed novel and require HM Treasury approval, depending on how they are established and governed, and on how sharing of risk and reward is managed.

Joint ventures can bring in a partner organisation with specialised expertise, or take a disposal forward in a more agile way. It is important to check that the partner is backed by adequate financial resources. They should offer the right combination of financial status and proven track record in achieving a successful development.

Joint venture arrangements allow the government to benefit from growth in value of a development after completion. The main disadvantage is that negotiations can be complex and time consuming. Care must be taken to ensure that reduced receipts at the outset are offset by realistic estimates of later income. The developer's costs and sale terms should be checked by a competent person to ensure that the predicted profit share is likely to be achieved. A critical element is the agreement on 'base value' to be paid at the outset or in stages as the development proceeds. Another is the 'development profit' calculation - the difference between development value and development costs, to be shared between the parties on agreed terms. Consideration should be given, at an early stage, as to the allocation of risk between the partners to ensure, as far as possible, that the public sector's liability is minimised and is not open-ended.

Depending on the structure and role of the JV, an opportunity may be available to become a longer-term partner. If so, the joint venture might be in scope for procurement rules. Advice should be taken on the structure and operation of the JV to ensure that the requirements and related risks are understood, and mitigating action taken accordingly.

(See also 'Other Disposal Methods', 4.5.6)

4.5 Disposal Routes and Marketing

In order to ensure that value for money is realised, an open competition may be needed with an appropriate route to market being selected. Whilst not being exhaustive, below are outlined some of the benefits and limitations of using different disposal routes. They include sale by private treaty, by public auction, and by competitive tender; also, for comparison, procuring a developer, negotiated disposal or other disposal methods.

When evaluating options to dispose of property assets by sale, if government organisations do not have in-house expertise they should take advice on the most appropriate disposal route, allowing for predictable costs and lead times. Selecting the most appropriate method of sale is vital to achieving value for money.

4.5.1 Sale by Private Treaty (Bilateral Transaction)

This is the method most widely used in the United Kingdom. Vendors make it known that a property is for sale, usually through agents who circulate particulars of the property to potential purchasers. When one or more potential purchasers have expressed an interest, terms of sale are negotiated with a preferred buyer. Private treaty relies on an element of goodwill on both sides.

The vendor can decide whether or not to accept an offer. Vendors should make it clear that they reserve the right to reject any offer, and should do so if good commercial reasons apply.

The main characteristics of a sale by private treaty are:

- It is usual for the asking price to be quoted
- Offers are not all received at the same time
- Offers are made 'subject to contract'
- The timescale for completion of the transaction is not fixed until exchange of contract

There are 'pros and cons':

Pros	Cons
The vendor sets the price	The extent of market testing is limited by the degree to which details are circulated and the property advertised
The vendor, to a large extent, determines the pace of the sale	
Special purchaser may bid higher than the market	May miss out maximising synergistic value due to special purchaser
Marketing costs may be lower	There is no firm contract at the point of offer and acceptance

Private treaty negotiations can extend over a considerable period of time. Correspondence might become protracted because the purchaser has concerns regarding the physical nature of the land, legal status, or other issues such as a simultaneous interest in another property.

In principle, to ensure genuine competition amongst potential purchasers through the marketing process, government organisations should optimise exposure to the market. This might require

public auction (see below) but a reasonable level of market exposure can be achieved in sale by private treaty, providing the following steps are followed:

- targeting specific market segments through choice of advertising media and agents
- inviting offers from all interested parties
- identifying preferred offers (which may or may not be based on the financial amounts)
- managing offers – keeping bidders interested if not ‘preferred’ bidders, i.e. when there could be a better offer but the deal is not confirmed
- negotiating terms with preferred bidders
- agreeing terms, obtaining approval, proceeding with the legal transaction.

The aim should be to maximise competitive advantage. For example, a private treaty approach might be appropriate where a sitting tenant expresses an interest in purchasing the occupied property, however a suitably qualified valuer should give written assurance that the price offered is equal to or higher than the market value.

In England and Wales and in Northern Ireland property transactions need to be made in writing. In Scotland, under the terms of the Requirements of Writing (Scotland) Act 1995, a contract may be created unintentionally by an exchange of letters. Care should therefore be taken in Scotland to ensure correspondence or verbal statements are not deemed to form part of a contract.

4.5.2 Sale by Public Auction

Professional property advice should be sought to establish whether an auction is the most appropriate method of disposal for any particular asset.

Pros	Cons
Quick, certain and fair route to sale, contract is established on the day	Specialist skills required
Good for the sale of small, commonplace investment properties or for secondary or tertiary properties where traditional methods of marketing might not attract sufficient interest	Potential purchasers may have limited time to undertake investigations prior to sale which may lead to more cautious bids
Interest and competition in the saleroom on the day may generate more interest from potential purchasers and lead to a price in excess of the estimated market price	Rely on sufficient interest and competition in the saleroom on the day and may miss out on bids from potential special purchasers ³⁹
Conditions of public accountability are seen to be satisfied	Some potential purchasers dislike auctions and may be deterred from bidding

³⁹ A special purchaser may offer a higher price because of distinctive individual interest, for example in the case of residential estates, farms or the owner of adjacent property. In such cases, a sale by auction should only take place if negotiations with the special purchaser have been unsuccessful.

The vendor can be satisfied that, on the day, the best possible price was achieved	Auctions can have high marketing costs
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A clear advantage of this option is that when the hammer comes down a contract has been created. This focuses everyone's minds, as there is no time to reconsider.

When preparing for a disposal by auction, preparation must be meticulous. Conditions of sale are published with the auction prospectus. It is vital that the auction is sufficiently advertised using an auctioneer appropriate to the type of property being disposed of, and that the property has sufficient exposure to the market. It is also important that the auction prospectus is accurate, as a sale following incorrect auction particulars or misstatements may lead to a rescission or price abatement if the purchaser litigates.

Vendors may provide a guide price to assist potential purchasers. The sales agent / property adviser should indicate whether there should be a reserve price. If so, it should be set close to the time of the auction and remain confidential between seller and auctioneer. Legal advisers should be instructed to draw up conditions of sale in advance of advertising the auction.

If a bid is accepted at auction the prospective purchaser must lodge a deposit at the time. Completion follows in accordance with the conditions of sale issued in the auction prospectus.

4.5.3 Sale by Competitive Tender

Informal Tender

Informal tenders tend to be used in cases where there are issues that make a Private Treaty or a Formal Tender sale difficult, or where demand is likely to be restricted due to the nature of the property.

Informal tender is similar to a private treaty sale except that the land is marketed for a set period of time, after which marketing ends. This allows the vendor to look at a number of bids simultaneously. This option might be most appropriate where there is no procurement of works or services.

Pros	Cons
Increased flexibility to purchaser and vendor over the terms of the offer	The prospective purchaser is not bound to proceed
Gives vendor the opportunity to share in future uplift in development value through mechanisms such as overage and clawback	
Allows the parties to clarify and negotiate final terms of the sale, especially useful where overage or clawback provisions need to be negotiated	Risk that any accepted offer may not complete as bid may be subject to outstanding issues/conditions
Allows the market to determine the most valuable use; developer bears the risks and costs of planning; permits full investigation and removes uncertainty	

In an informal tender, bids are usually invited from selected parties, subject to contract. Bids might be subject to conditions, such as planning permission being granted or negotiations over some aspect of a proposed development scheme being resolved. Bids can also be invited by public advertising. The vendor is not usually obliged to accept the highest or any bid.

Provided a number of offers are received, there will be an element of competition, which may be of assistance to vendors in subsequent negotiations. This method of sale is most often used for larger sites suitable for redevelopment.

Formal Tender

Formal tender is a useful method of disposal but care needs to be taken to ensure that there has been full exposure to the market, with clear particulars. Formal tenders tend to be used in order to create certainty in terms of timescales but can be lengthy and costly for prospective purchasers.

Pros	Cons
Public accountability is self-evident, clearly demonstrates the sale process has been fair, with the highest compliant bid winning the process	Time and expense bidders must incur on detailed investigations without certainty of being successful
Provides certainty on timing and costs	Can deter potential bidders and may not be a suitable method in a weak market
Promotes sale to a wide market, sale above the estimated market value may be achieved	The tender procedure can involve large numbers of interested parties and can be time consuming and expensive
Could promote a higher bid from a purchaser with a particular interest (special purchaser)	Overage or other similar requirements have to be set out up-front

In a formal tender the 'Conditions of Sale' (the contract terms) are sent out with the sales information. Prospective purchasers return the entire document, including the conditions of sale, signed and enclosing a deposit. The vendor then normally has a set period within which to make a decision on the bids received.

Once a bid is accepted and the deposit banked, a contract has been made. The prospective purchaser therefore has to carry out detailed investigations prior to submitting an offer, without knowing the likelihood of acquiring the land. Unless the market is very strong, the number of bids received will generally be fewer than under informal tender or private treaty.

Formal tenders require specific preparation including:

- Property and legal advisers drawing up the 'Conditions of Sale' and tender documents.
- The property adviser or selling agent advising on the reserve price.
- Protocol for sale to the highest bidder above the reserve or to the bidder offering greatest benefits overall
- Protocol to apply if the highest bid marginally fails to clear the reserve price, including whose advice should be sought as to whether it should be accepted.
- How to thoroughly check bidders' creditworthiness and sources of finance prior to accepting any bids.

4.5.4 Procured Approach

Procurement compliant processes are required where a public body wishes to procure works or services that will enable development on their land, for example in enabling infrastructure or managing the pace of delivery or quality of homes built.

Homes England's Delivery Partner DPS is a procurement rules compliant solution that can speed up the process of appointing a developer for residential led development.

The DPS can be used to procure a developer who will take responsibility for all stages of the development, from obtaining planning permission through design and construction of homes (with associated infrastructure) to marketing and sales⁴⁰.

For further information, see Annex 3.

4.5.5 Negotiated Disposal

If it seems likely that a better outcome would be achieved, a disposal on a non-competitive (negotiated) basis may be preferred. Circumstances in which this might apply include when:

- there is little interest in an asset;
- bids fail to achieve minimum quality / output levels;
- a complex development is envisaged;
- there is evidence that bids have not extracted the full potential from the asset (in terms of value, quality or outputs)
- there is a special purchaser or single user interest

Negotiated disposals should be at Market Value in accordance with Managing Public Money. Advice should be sought from professional and legal advisers. Government organisations should avoid situations where a form of negotiated disposal results effectively in an unsatisfactory joint venture, in which development costs and/or risk are borne inequitably between parties to the transaction.

4.5.6 Other Disposal Methods

Where circumstances indicate that conventional methods of disposal are unlikely to be successful, alternative disposal routes can be considered. For example, if there are unfavourable market conditions or complex assets to be sold, or multiple stakeholders are pursuing multiple interests or objectives, creative options for disposals should be examined such as joint development or asset-backed investment vehicles.

Alternative routes should always be considered if there is either a clear financial advantage to the government or the overall social, economic or environmental benefits of the development can be increased. There may be a benefit from working with another party such as an adjacent landowner (which may be another government asset-holder) or using a developer or land assembly promoter to optimise the disposal. Descriptions of such arrangements, depending on the parties involved, might include:

- Collaboration Agreement, Joint Venture (contractual or unincorporated), Collaborative Agreement, Cooperation Agreement - where the disposing body intends to work with another party to dispose of an asset

⁴⁰ Scotland

- Landowner's Development Agreement - where a landowner engages a developer to undertake the development on its behalf
- Promotion Agreement - where a promoter applies for planning permission on land owned by another party and takes the land to the open market once it has been obtained.

Any exceptional approach must provide the best value for money and meet standards for propriety and safeguarding the public interest, following HM Treasury approval in principle.

4.5.7 Marketing - Agents and Incentives

Disposal agents and legal advisers should be clearly briefed on objectives, processes to be employed, and roles and responsibilities of everyone involved in a disposal. It is essential that government organisations and their advisors are open and transparent in their dealings with each other, including carefully documenting all advice provided, noting any potential conflicts of interest, decisions taken and reasons why a particular sale method has been chosen.

Disposal agents should regularly report on progress. It is common to use performance related fees to incentivise delivery. Agents can be expected to advise on likely market(s) to target and how they propose to undertake marketing. Agents will also advise on advertising costs so that a budget can be agreed.

Agents should be encouraged to identify and target any special purchasers. If more than one potential purchaser is identified it is important to maintain interest amongst all of them, even after an acceptable offer has been received. By maintaining the highest possible level of market interest for as long as possible, the vendor's interests are protected in the event of one particular sale not proceeding.

4.5.8 Maximising Market Exposure

Markets for property may be influenced by a number of factors, including:

- Potential occupants of the property in its present use
- Potential occupants of the property for a different use
- Potential investors looking to secure a suitable tenant.

Vendors and their advisers and agents should carefully assess who to target in marketing strategy. This stage of the process can be tested through an assurance review, examining whether all market sectors have been explored and the market thoroughly tested for interest. Approval can then be sought from the Senior Responsible Owner to proceed to the next stage of identifying preferred buyers and agreeing terms.

4.6 Negotiation, Sale and Completion

Assembling a suitably experienced disposal team should include appointing someone to lead it who has a good track record in negotiation and who will ensure that due attention is given to the aims of the disposal before the negotiations begin.

4.6.1 Preparation

Key considerations prior to negotiations should include:

- Strengths and weaknesses of the vendor's negotiating position
- Parameters within which a transaction would be acceptable.

4.6.2 Negotiation phase

Negotiators should be ready to deal with all the responses that can reasonably be anticipated. They should have considered a range of possible reactions to their proposals, and should have prepared a risk register. Examples of considerations to take into account are:

- the interests of any 'special purchaser' who would benefit more from the acquisition than any other
- shortages of similar properties, such that potential purchasers may be prepared to pay a premium
- surpluses of similar properties, such that potential purchasers can readily choose another property
- backlog maintenance costs and dilapidations liability, if the property is retained
- the landlord's likely reaction if aiming to surrender a lease, especially in terms of void period and uncertainty about another tenant.

4.6.3 Agreement of Terms

Agents negotiating on behalf of a government organisation should be adequately briefed to plan their negotiations accordingly. They should be enabled to understand the decision-making process within the client organisation that may be necessary for agreeing terms, in principle or conditionally. The agent should know what information can be revealed and when, whilst seeking to obtain the best possible outcome.

Agents should ensure that they have had clear communication with the disposal project manager, and be certain about their level of delegated authority and when they would need to refer to others for a decision. Reporting and decision-making processes should be agreed in advance of the negotiations in order to ensure that offers are passed through to decision-makers in a timely manner. Legal advisers should be given a clear role, with instructions at appropriate times, notably in respect of contract preparation and the conveyancing process.

Disposal project managers should schedule the approvals that are required in order to complete the disposal, and initiate the necessary actions in good time to obtain them, including assembling any report required to recommend the terms for acceptance. The schedule should take account of relevant committee cycles or time allowed for responses.

As negotiations with a preferred purchaser may not complete successfully, it can be important to retain the interest of other prospective purchasers, to create a 'reserve list'. The approach to dealing with multiple interested parties should be discussed between agents and their client organisation.

Where a government organisation is proposing to **let or sublet** property, property advisers should provide reports and consult on critical matters during the negotiation of terms. Lease terms should be drafted with due regard to their potential impact throughout the entire term of the lease.

Negotiating agents and representatives should consider proposed purchasers, assignees or tenants in terms of:

- track record
- intentions
- commercial standing (including availability of funding for the particular transaction).
- risk assessment

- subsidy control implications
- certainty of success
- potential implications of the acquisition.

A disposal process should not enter contractual negotiation and plans for exchange until there is a high likelihood of successful completion.

Propriety and Ethics

Negotiations should always take into account the guidance of the [Government Functional Standards](#), including those for Commercial, Property, Finance, Counter-Fraud and Project Delivery.

Clause 6.12 of the standard for property discusses the financial, commercial and legal aspects of property transactions, saying amongst other things that “Contracts for the construction, purchase or leasing of new buildings, or other property services, shall be entered into or renewed only after completing due diligence, taking account of the financial status and stability of the supplier.”

Any negotiation with a purchaser who is found to be taking part in illegal activity should be suspended. If any doubt emerges about the behaviour or values of a potential purchaser, immediate investigation should begin, using professional codes of conduct and upholding the Civil Service Code and the declared values of the government organisation. If necessary ethical matters can be referred to the Director General for Propriety and Ethics in the Cabinet Office.

4.6.4 Liaison with Legal Advisers

Ideally, legal advisers and negotiating agents should be appointed at the same time so that they can confer as negotiation proceeds. Draft contract terms and conditions should be discussed during negotiations and confirmed with legal advisers prior to final agreement.

Project managers should establish when legal advisers will require instructions, at different stages of the disposal process, whether they are being given delegated authority to transact documents, and whose authority enables them to act.

4.6.5 Sales Due Diligence

Agents for a government property disposal should undertake adequate checks to ensure that:

- agreed terms represent value for money
- the transaction meets the objectives set
- the proposed purchaser is able to complete the purchase as agreed.

Before committing to any transaction, government organisations or their agents should ensure that it does not involve tax avoidance or money laundering. Particular care should be exercised when a potential purchaser is domiciled offshore. Government Functional Standard GovS 013: Counter Fraud should be applied in the interests of avoiding fraud, bribery and corruption.

4.6.6 Sales Subject to Conditions

As a general rule, sales contracts should be kept as simple as possible, to reduce the risk of deterring potential purchasers with complex contract terms. It also helps to minimise costs. If a disposal is dependent on conditions being met (such as securing planning consent) the contract should be constructed in as clear and straightforward a way as possible, using everyday language, unless technical terms are necessary. The conditions should be laid out so that each one is described individually and interdependencies are clearly visible.

[Revert to Front](#)

4.6.7 Completing the Deal

Once a purchaser has been found, and terms have been agreed, the remaining steps to completion of the transaction should be managed to minimise the risk of any party to the transaction losing confidence and withdrawing. Competent project management at this stage includes appropriate, timely communication with all parties and stakeholders.

Legal advisers usually handle exchange of contracts and completion of the disposal. A process should be put in place to monitor progress and initiate the actions needing to be taken. Essential activities to ensure completion on time include:

- obtaining the necessary approvals and signatures for exchange to take place
- securing consent required from the superior landlord (if the disposal is a lease assignment or subletting)
- arranging for financial sign-off, and monies to be transferred at the appropriate time

A risk assessment should be maintained, identifying issues that require attention in order for the disposal to progress and complete satisfactorily. It might be prudent to undertake a further due diligence exercise, just prior to commitment to a transaction, to ensure that:

- the disposal has followed due process and all necessary matters have been addressed
- the proposed purchaser, assignee or tenant is able to complete
- the disposal still represents value for money and expected benefits will be realised.

An assurance review prior to final completion might help to satisfy the Senior Responsible Owner that all necessary checks have been completed, the transaction delivers value for money, and it should proceed.

Separate Jurisdictions

In Scotland, property transactions take a different form from England and Wales with regard to conclusion and settlement. Following agreement on the terms within the missives, the contract is concluded by legal advisors and at that stage becomes binding on both parties.

In freehold disposals there is often a delay between completion of a contract and settlement, normally 14 to 28 days, to allow conveyancing to be completed.

In leasehold disposals, the settlement often occurs at the same time as the conclusion of missives, with execution of the lease by both parties taking place shortly thereafter.

4.7 Post-transaction monitoring and recording

Once a government property asset has been sold the responsible organisation should:

- update asset register records / the estate terrier
- update the central e-PIMS database (or InSite, when active), promptly making records historic (see section 6 of the e-PIMS User Manual)
- update their Pipeline of property events and any disposal programme reporting to OGP
- arrange to monitor contracts that include arrangements to share any future value uplift, highlighting:
 - dates when payments are due

- conditions that may trigger a future payment
- record rights or easements granted over the property
- make suitable arrangements for any part of the property retained by the vendor
- ensure payments made or received are included in appropriate reporting, such as programme returns or the State of the Estate report
- ensure that any required progress report is provided with a “shape file” (site/ phase boundary) to show any phased delivery.

Annex 1 - References

[Government Property Strategy 2022-30 \(replacing Government Estate Strategy 2014 and 2018\)](#)

[Register of Surplus Public Sector Land](#)

[Government Property Finder](#)

[Government Financial Reporting Manual](#)

[HM Treasury; Green Book](#) - Appraisal and Evaluation in Central Government

[HM Treasury; Managing Public Money](#)

[Housing and Planning Act 2016](#)

[Net Zero Estate Playbook](#)

[Royal Institution of Chartered Surveyors \(RICS\) Valuation Professional Standards \(The Red Book\)](#)

[Crichel Down Rules](#)

Heritage Estate

[Historic England website](#)

[Disposal of Heritage Assets](#)

[Protocol for the Care of the Government Historic Estate](#)

Social Value

[Public Sector Procurement - Social Value](#)

Information for public authorities, businesses and other organisations on public procurement policy.

Procurement

[Procurement Policy Notes](#)

PPN 06/20 deals with Social Value, and supplies a Social Value Model.

Planning

[National Planning Policy Framework \(NPPF\)](#)

[Plain English Guide to the Planning System](#)

Spend Controls

[National Property Control](#)

Annex 2 – Heritage Assets

If government property has been identified as of historical, architectural, or archaeological interest, disposal should take account of how its heritage value might be conserved.

There is a specific market sector for heritage assets, so consideration should be given to whether they are marketed as a separate lot, if part of a wider disposal. Investors in general housing, for example, may discount their offers to reflect the need to protect a heritage asset. Specialist developers of heritage assets may be better placed to deal with conservation issues. Appropriate advice should be sought to ensure the best solution is identified.

Information about all aspects of heritage protection is available on the Historic England website⁴¹ and from equivalent bodies for the Devolved Administrations - Cadw, Historic Environment Scotland and the Northern Ireland Environment Agency. At the UK national level, culture is a devolved responsibility; at international level cultural heritage is led by the UK government, through DCMS.

Guidance is available from the Department for Culture, Media and Sport (DCMS) on commemorative heritage assets that have become contested.

Identifying the Heritage Estate

A heritage asset is defined in the National Planning Policy Framework (NPPF)⁴² (for England) as, “a building, monument, site, place, area or landscape positively identified as having a degree of significance meriting consideration in planning decisions.”

Heritage assets include nationally designated assets and assets identified by the local planning authority through planning processes, including local listing. The NPPF defines a designated heritage asset as a World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area.

Government organisations should retain details of all property assets that are heritage assets in their care. This information should inform the management of these assets and considerations related to disposal. Actions should be in accordance with the Protocol for the Care of the Government Historic Estate⁴³. A Statement of Significance can be a helpful way to clarify the heritage values attached to a heritage asset, and their relative importance. Where a site raises complex heritage issues, a conservation management plan may be required during an operational phase, and may in some circumstances also be followed by a new owner.

Disposing of Heritage Assets

Any public body considering disposal of a heritage asset should follow published government guidance⁴⁴. Expertise is available for England and the Devolved Administrations from dedicated teams such as the Government Historic Estates Unit (GHEU) within Historic England which helps government departments and other public bodies, such as the Royal Household, to look after the historic buildings and structures in their care. GHEU should be asked to advise at an early stage

⁴¹ Historic England website: www.historicengland.org.uk/

⁴² National Planning Policy Framework (NPPF): www.gov.uk/government/publications/national-planning-policy-framework--2

⁴³ Protocol for the Care of the Government Historic Estate: www.historicengland.org.uk/images-books/publications/protocol-for-the-care-of-the-government-historic-estate/

⁴⁴ [The Disposal of Heritage Assets](#)

when preparing proposals for development or disposal of heritage assets that are of national importance.

The local planning authority has responsibility for any commemorative historic asset that has been in place for over 10 years and may add its own conditions to reinforce expert recommendations.

Disposal check-list

Relevant considerations for heritage assets might include the following:

Prior to market:

- active protection through regular inspection and maintenance, even if the property is unused (necessary associated costs reckoned)
- large historic sites managed holistically, to avoid isolating significant features
- potential risks assessed for heritage property during disposal process, e.g. vacant period
- feasibility of alternative uses within acceptable adaptations
- potential alternative uses (for discussion with the local planning authority, which may result in a Supplementary Planning Document being produced).
- statutory protection restricting economic use
- scope for disposal to a charitable trust
- options to re-use an asset in preference to disposal

During marketing:

- choice between freehold or leasehold basis
- supplying information about historic significance and condition
- method of sale: private treaty, informal or formal tender
- conditional or unconditional sale (e.g. leasehold provisions relating to future maintenance or alternative uses)
- explore progressive transfer: **licence** giving temporary use of the property, without security of tenure; **short term lease** (less than 7 years); **long term lease** (over 25 years); **sale of freehold** (either sole basis or partnership agreement).
- subject to overage or clawback

Post disposal (where possible):

- inspection regime
- maintenance
- change notices and permissible works (equipment and services)

In determining the 'best consideration' outcome for a heritage asset, bid evaluation should consider long term sustainability. Terms on which a heritage asset is transferred from public to private ownership should strike a balance between the financial interests of the disposing body and securing social, economic or cultural benefits.

Alternative methods of sale may need to be considered to enable heritage assets to be taken into the most appropriate new ownership. In some cases, new trusts have been established to take on ownership and management.

Annex 3 - Engaging Advisers: Dynamic Purchasing System

Homes England's Delivery Partner DPS is a public procurement compliant system that can be used for residential led development on public sector land where the procurement of works is involved. It speeds up the disposal process by requiring a 'call for competition' to be undertaken, rather than a full tender exercise.

Delivery Partner DPS suppliers comprise leading house builders, developers and contractors who have a track record of delivering housing-led schemes and have been fully vetted through an application process. This DPS has been procured by Homes England but can be used by other public sector bodies, free of charge, when disposing of land and when procuring construction works.

Under the Delivery Partner DPS, all development opportunities are competitively marketed.

Developers and housebuilders can apply to join the DPS at any point, providing flexibility to accommodate market changes and also ensuring that all active developers in a specific market are able to tender for a site.

The Delivery Partner DPS can be used to procure a developer to take responsibility for all stages of the development process, from obtaining planning permission, through design and construction of homes and associated infrastructure, to marketing and sales. It can also be used for soft market testing, which provides the opportunity of gaining views from DPS Members on the viability and best way to approach a specific proposal before offering the opportunity to the market. DPS Members can provide soft market testing and early stage viability advice free of charge.

Services that can be procured through the Delivery Partner DPS include:

- Development and disposal of mixed-use, housing-led sites; mixed-use elements to include community facilities and retail or commercial development, ancillary to and in support of housing.
- Refurbishment / retrofit of existing houses, residential buildings, empty homes and associated buildings.
- Refurbishment, restoration, conversion of heritage or other buildings for residential use
- Demolition, site remediation and enabling works to prepare sites for residential or mixed-use development.
- Development of Extra Care accommodation.
- Self-build enabling as part of a larger development.
- Maintenance and site management.

Public bodies wishing to procure through the Delivery Partner DPS are required to sign up to an access agreement with Homes England, which confirms that they will take responsibility for their procurement. There is no obligation on Partners to use the Delivery Partner DPS once they have signed up: provision of Homes England funding is not dependent on Partners using the Delivery Partner DPS.

Once the access agreement has been signed, Homes England will provide the Partner with access to the e-tendering system, which holds additional information necessary to enable them to use the Delivery Partner DPS. Homes England will offer help and advice in use of the Delivery Partner DPS only if required, otherwise partners are free to proceed with their own procurements through the Delivery Partner DPS.

Further information can be found at [Procurement frameworks and Delivery Partner Dynamic Purchasing System information - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/procurement-frameworks-and-delivery-partner-dynamic-purchasing-system-information)

The DPS Team can be contacted at deliverypartnerprocurement@homesengland.gov.uk

Homes England's Technical Frameworks (Panels)

Homes England maintains a number of professional and technical frameworks to help with the delivery of its programmes. The relevant frameworks are also available for use, free of charge, by a number of other public sector bodies to assist with development related services. The frameworks have been procured through fully compliant Find a Tender Service (FTS) processes, and offer a quick and efficient means to procure high quality, good value development related technical services such as property and project management, engineering, planning, and multidisciplinary services. Six frameworks have been available to Other Public Sector Bodies (see below; for current arrangements see [website](#)).

Framework	Summary of Core Services
Property and Financial Professional Services 2022-2026	Lot 1 – Property Professional and Technical Services · Property Advisory Services · Land and Property Agency Services · Estate and Facilities Management Services · Property Investment, Appraisal and Compliance Services · Valuation Services · Lead Consultant and Project Management Services · Development Structures and Partnering · Office Accommodation · General Services · Design Quality Assessment Programme Lot 2 – Financial Advisory Services · Corporate Financial Advice · Due Diligence · Capital Structure Analysis · Financial Modelling · Market Assessment · Tax and Accounting Services · Auditing and Assurance Services · Counterparty Advice and Assistance · Restructuring and Insolvency Advice and Services · Environmental, Social, and Governance Advice · General Services

Multidisciplinary Technical Services 2019-2023 20 Framework Suppliers	• Project and Cost Management • Development Monitoring • Corporate Risk Management and Governance • Technical and Site Investigation • Engineering Design • Architecture and Landscape Design • Planning • Consultation • Masterplanning and Urban Design • Construction Design & Management (CDM) Services • Property Advisory Services • General Services
Asbestos Services in Buildings and Structures 2019-2023 7 Framework Suppliers	• Asbestos Management Surveys and Management Plans • Refurbishment and Demolition Surveys • Sample Analysis, Air Monitoring and Clearance Testing • Preparation of Tender Documents, selection of asbestos removal contractors • Management and supervision of asbestos removal contractors • General advice regarding asbestos
Land Survey 2019-2023 5 Framework Suppliers	• Topographic Land Survey Services • Measured Building Survey Services • Services/Utilities Mapping • Setting Out Services • General Services
Strategic Research and Economic Analysis 2020-2024 25 Framework Suppliers	· Strategic Economic Advice and Modelling · Economic Appraisal and associated research and analysis · Impact Assessment and Evaluation · General Services

Development Monitoring and Management Services 2021-2025 15 Framework Suppliers	· Monitoring Surveyor Services · Compliance Inspector Services · Project and Cost Management Services · General Services
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Users of the frameworks have reported significant savings in procurement time. Rates provided are competitive, in many cases much lower than for comparable panels or for open procurement.

Homes England continues to manage awards/contracts from previous frameworks, as the contract length often exceeds the 4 years of the framework. DPP3 ended in July 2021. The replacement solution is the Delivery Partner Dynamic Purchasing System (DPDPS), operational from September 2021. Development opportunities previously promoted via DPP3 are being promoted via the DPDPS.

Further information on the frameworks and their Suppliers can be found on GOV.UK at: [Homes England technical and professional frameworks - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/homes-england-technical-and-professional-frameworks) The Homes England Commercial team can be contacted at Commercial@homesengland.gov.uk. Departments will be required to sign up to a [Technical frameworks access agreement](#) with Homes England to use the frameworks.

Annex 4 - Practice Notes

This annex outlines additional factors affecting disposal practice that might require consideration.

Adjacent Property, Ransom Value

Some properties have a critical relationship to their surroundings. For example, a 'ransom strip' of land provides access to a potential development site. The adjacent land increases the value of the strip, well beyond its intrinsic value.

Similarly, the value of notionally surplus land may lie in its ability to provide 'green infrastructure' for adjacent buildings, or other development in a portfolio. This potential value should be taken into account when considering alternative uses or disposal.

If government organisations hold property that could be critical for wider development the potential value should be fully assessed. It is legitimate to dispose at a price above normal market expectations. The scope for entering a joint venture should be considered, or for retaining identified access land in order to have influence over a larger development in future.

Local agency advice should be obtained to ensure full awareness of the potential value of land assets, especially through land assembly. Government organisations should make themselves aware of any adjoining ownerships and development potential. Consideration should be given to how adjacent properties might be aggregated for a more valuable disposal, for example through a Land Owner's Agreement.

In such agreements, suitable clauses might be needed in contract to protect the government share of the enhanced value (such as a 'build out' clause) if ownership changes. If there is retained land within a development partnership arrangement, other suitable protections might be necessary. These could be set out in a Method Statement alongside a contract. Considerations should include any additional surplus assets not yet being offered, and whether these might warrant delaying a sale until the value of all parts can be optimised.

Options to Purchase

Definition: in the specific context of a property contract, an 'option' is the right of one or more parties to do something (such as make a purchase) or to require another party to do something in future, the relevant circumstances being defined by the terms of the contract.

The Crown does not usually grant options to purchase. Such contracts are not recommended unless there are exceptional circumstances involving predictable outcomes or contingencies over a short timescale. Examples might be a prospective purchaser needing time to obtain a specific planning consent, or waiting for local infrastructure to be provided before acquiring the property.

An option is a risk: after time has passed there might be little market demand; a developer might have failed to assemble land for development, such as in a town centre regeneration scheme, or to get planning permission. In most situations, a disposal should be secured within a fixed time limit, to expire unless it takes effect in a predetermined set of circumstances.

Options relying on a trigger event should be defined clearly in a written agreement, describing precisely what the event is, so that the option is enforceable. If the disposal price is affected by the trigger event, the process for making a value calculation at the relevant time should also be

described clearly in the contract. If necessary, specialist advice should be obtained. In some cases, especially where a property might not easily be sold (for example if planning permission is not certain) a contract may be formed in which the purchaser undertakes to deliver preliminary actions in return for a discount against the eventual sale at market value.

In all cases, options should be accompanied by a clear description of the property (including its physical attributes), the length of the option period, and the price at which the option may be exercised (or discounted). Responsibilities for costs should be assigned. The purchaser would normally be required to make an initial payment to the vendor (a deposit) to reflect the fact that an exclusive opportunity has been granted for a period of time.

It should be remembered that in granting an option the vendor loses control of planning and disposal processes for as long as the option exists. Since the Crown does not generally lack resources to clarify the planning position or other critical circumstances, options can be avoided, for example by arranging for planning permission to be obtained prior to disposing of property.

Former Owners - Crichel Down Rules

Land that was originally acquired compulsorily by government, or acquired under threat of compulsion, or under a statutory blight provision, might need to be offered back to the former owners of their successor under the Crichel Down Rules ⁴⁵.

Decision makers considering a disposal should determine whether the land was originally acquired under a compulsory purchase scheme or under the threat of compulsion. ('Threat' means only that the body acquiring the land had the powers to make a compulsory purchase order if it had wished: no explicit notice is required; for the majority of government bodies, most land would have been acquired by or under the threat of compulsion; threat of compulsion can be assumed in the case of a voluntary sale if power to acquire compulsorily existed at the time and unless there had been public or private offers for sale immediately before the negotiations.)

The Crichel Down Rules apply to land acquired under statutory blight provisions, where the value of land was adversely affected by planned compulsory acquisition by a public authority and a statutory notice was issued by the owner obliging the authority to purchase at full market value, resulting in a deemed compulsory acquisition of the land.

In general, government organisations wishing to dispose of surplus land to which the Crichel Down Rules apply should give the former owners or their successors first opportunity to repurchase provided that the property has not been materially changed since acquisition (for example a change from agricultural land to housing). Research should be undertaken to establish the history of the site and the facts of the case. Senior Responsible Owners should be aware that decisions made in respect of Crichel Down Rules may be subjected to Judicial Review.

Tenants

Surplus property earmarked for potential disposal may contain tenants or sub-tenants benefiting from security of tenure, in all or part of the property. If vacant possession is required, disposals of tenanted property should ideally be timed to coincide with a landlord's lease-break option or the end of the lease. However, if disposal with vacant possession is preferred, but not likely to occur without intervention, then it may be necessary to negotiate with the tenant for a surrender of a lease. As tenants have rights to

⁴⁵ Crichel Down Rules: <https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance>

security of tenure under the Landlord and Tenant Act 1954 (unless specifically contracted out in the lease) this can be a lengthy process, and costly. Property and legal advice should be obtained at an early stage.

If vacant possession cannot be obtained, or if tenant(s) occupy a large proportion of the property, it may be necessary - and sometimes preferable - to sell the property with a sitting tenant. The presence of an established tenant generating rental income can make a property more desirable to potential purchasers.

It is important to seek advice in order to identify:

- how disposal value is affected by the tenancy situation (valuation advice).
- whether vacant possession is required and how this can be achieved (legal advice).

In cases where a government organisation is the tenant, and is holding a lease from a commercial landlord, it may sometimes be preferable to surrender a lease rather than try to dispose of it to a third party. Advice should be sought from a property expert on the relative costs and benefits, to determine the preferred outcome⁴⁶.

Lease Breaks

Where a government organisation identifies property as surplus that is held as a leasehold, the lease should be reviewed to establish whether there are break clauses that allow, or may require, surrender. If a break clause can be exercised correctly, careful consideration should be given to it, and to the implications of vacating the property at the break.

Particular care should be taken when break options are intended to be exercised that 'conditions precedent' in the lease have been satisfied. Failure to comply may invalidate the service of a break notice. No 'de-minimis' threshold is applied to conditions precedent, and the smallest evidence of non-compliance may render a break notice legally invalid.

Unless contractually excluded, operating a break-clause will trigger reinstatement or dilapidation liabilities, and these should be taken into account when considering the options.

Notices to operate a lease break must be served as required by the terms of the lease and also by statute, for example the Landlord and Tenant Act 1954 (Part II) (not applicable to Scotland). Notices must be served in the specified format and within specified time periods. Failure to adhere to these requirements can result in being unable to exercise the break.

A number of benefits to the lessee may be achievable by exercising a lease break, particularly where the rent payable is above market value. Break clauses may also provide opportunities to renegotiate existing lease terms, such as rental levels, as a landlord may prefer a rent reduction to a potential void period.

It may also be possible to negotiate a lease exit outside the lease break options and create a new lease on new terms (a 're-gear'). Professional advice will usually be necessary to achieve success.

Change of Landlord

When a new landlord acquires the superior interest in a property in which a government organisation is tenant, potential opportunities are created which should be evaluated. The new landlord may agree to a

⁴⁶ Disposal project managers dealing with properties in Scotland should note that the provisions of the Landlord and Tenant Act 1954 (Part II) providing security of tenure to commercial tenants do not apply in Scotland.

surrender of a leasehold interest, or possibly to the creation of a longer lease that would make a disposal of it easier for the tenant. Much will depend on understanding why the new landlord has acquired the property. Typically, it will be as an investment. Potential implications of such changes of landlord should be appraised with market intelligence.

Vacant Property

Owners remain responsible for the stewardship of property whilst vacant, until disposal. If it is freehold property there may be a remaining liability for a Capital Charge. If a leasehold property, then covenants under the lease probably remain, including payment of rent and service charges. In addition, there are the normal costs of ownership, such as Business Rates and insurance.

However, as many costs can be mitigated there may still be a measurable advantage in vacating a property. Savings arise from not incurring expenditure on energy and cleaning costs. Life cycle replacements and maintenance may not be necessary. The likelihood of a successful disposal might be improved by actions that are not possible whilst remaining in occupation, such as minor refurbishment or reinstatement.

Risk evaluation should be undertaken alongside assessment of the total costs and benefits of property remaining vacant. If there is a sufficient period of time, consideration should be given to 'meanwhile' uses in preference to 'mothballing'. The temporary use of property assets, for which some costs must be incurred anyway, can deliver positive benefits to the local businesses community or voluntary sector.

It is important to ensure that adequate security is put in place for vacant property in order to minimise the risk of trespass or squatters which could reduce value and delay disposal.

Mitigating Costs

There are a number of outgoings that can be reduced during vacancy, or avoided completely:

Utility Costs

Utilities such as water, gas electricity or broadband can be disconnected, removing associated running costs. There is likely to be a charge for disconnection as well as for reconnection, if that is necessary for a successful disposal. Electricity or broadband supply may need to be retained if alarm systems are in operation.

Rent

Rent cannot normally be reduced or avoided. The landlord has a right to receive the rent, whether the tenant is in occupation or not.

Business Rates

Government pays Business Rates on non-residential properties, except for those that are exempt. Exemptions include agricultural land and buildings (including fish farms), buildings used for training or welfare or disabled people, and buildings registered for public religious worship or church halls.

If property is vacant an application can be made to the local authority for 'Empty Rates' to be applied. The relevant local authority should be advised at the earliest opportunity that a property is vacant. Business rates are not paid on empty buildings for 3 months, after which most businesses must pay full business rates. [Advice](#) is given on GOV.UK

Properties that can currently be granted extended empty property relief include:

- Industrial premises (e.g. warehouses) – for a further 3 months
- Listed Buildings - until they are reoccupied
- Buildings with a rateable value under £2,600, until reoccupied
- Properties owned by charities if the next use will be mostly for charitable purposes
- Amateur sports club buildings if the next use will be mostly as a sports club.

Leases occasionally include clauses which indemnify landlords against losing the right to rates relief because the tenant has already benefited from the relief.

Rating is a specialist topic. Government organisations should take advice from competent rating advisers to ascertain what relief from Business Rates is available, if any.

Insurance (if applicable)

Although the Crown normally self-insures, some leases contain a specific insurance requirement on which it might be possible to reduce premiums if the property is vacant. Conditions may require that the property is adequately secured against illegal entry and potential vandalism.

Managing Public Money⁴⁷ Annex 4.4 (Insurance) provides further advice.

Works in Lieu of Payment

Within a programme of disposals, some replacement facilities may be required (or other works such as new buildings, highways, landscaping etc.) as a part of an overall improvement scheme. It may be possible to require a purchaser to provide these works as part of the consideration for acquiring the property. Any proposed works in lieu of payment should be thoroughly examined at the option appraisal stage to ensure the maximum value for money for the taxpayer. Works required should be clearly specified in any marketing package in order that there is fair competition between bidders in relation to procurement of these works. Works in lieu of payment may also be considered as part of a disposals / rationalisation scheme.

Leasehold Disposal

Leasehold is a form of ownership derived from a legal interest in property for a limited period, with rent generally being payable.

Disposal of Long Leasehold

In many respects, a long leasehold interest can be sold as if it were a freehold interest, for its capital value. The most likely value depends on whether the rent passing under the lease is significantly lower than the Market Rent for the premises, with the differential likely to continue for the term of the lease.

Assignment to a third party typically requires landlord's consent and the lease may impose conditions affecting the scope for a disposal, and consequently its value.

As with all leasehold interests, a disposal in the form of an assignment to a third party may not absolve the government of all liability, due to privity of contract (see notes below on assignment).

Surrender

⁴⁷ Managing Public Money: <https://www.gov.uk/government/publications/managing-public-money>

If leasehold property is identified as surplus but there is no contract break in the near future, it may be possible to negotiate a surrender of the lease. This will be more attractive to a landlord in a strong market where it is easy to re-let at a higher rent. However, if the market is weaker, a surrender premium might be required. This cost should be set out in a final settlement contract along with any dilapidations liabilities. (Dilapidations may add a significant cost to the surrender of a lease.)

In some situations, the value to the landlord of a freehold interest with vacant possession might exceed the value of rental income. In such circumstances it may be possible to obtain a premium from the landlord (or from the freeholder) in return for a surrender of the lease, or at least an agreement to exit without penalty. Conversely, there may be a requirement for a 'reverse premium' in order to terminate the lease prior to its natural expiry - but this may still offer an advantage if less than the cost of continued occupation. Professional valuation advice should be sought.

If a surrender is not viable, yet the property is surplus, consideration should be given to how best to minimise costs. Common methods include:

- a lease agreement with another government organisation, and transfer
- subletting on the best terms achievable

Landlord's agreement is usually required for assignment or subletting.

In certain circumstances it may be possible to combine lease restructuring with the interests of the landlord, securing a surrender and grant of a new lease to an occupier that better matches the objectives of all parties. This type of negotiation can assist landlords to maintain income or to facilitate redevelopment.

Where there is any difficulty in making a single capital payment for surrender, it may be attractive to all parties for an outgoing occupier to make a series of annual payments instead. Professional advice should be sought on how to negotiate the correct level of payment and establish the liabilities for dilapidations.

If a number of leaseholds become surplus simultaneously and might be difficult to dispose of, consideration should be given to a portfolio disposal, including outsourcing to a specialist. Risk might be transferred in exchange for a capital payment.

Merger of Interests

A merger of interests can occur either by a leaseholder acquiring the superior interest (freehold, head lease etc.) or by a freeholder or superior leaseholder acquiring the subordinate interest. Although not technically a disposal, a merger of interests can directly or indirectly enhance disposal value.

Acquiring the freehold can give flexibility to dispose or sublet part of the property, change its use, effect an internal transfer or undertake improvement works (prior to either disposal or letting). It may also be used as part of a strategy to release a government organisation from an onerous situation or enhance the value of the property interest to be sold.

Alternatively, a landlord might agree to a joint disposal programme in which both interests are marketed and disposed of at the same time. When considering the future of leasehold property identified as surplus, it is important to consider all such options.

Assignment

[Revert to Front](#)

Assignment (referred to as 'assignation' in Scotland) is the transfer of the whole leasehold interest to another party. It is, therefore, a method of releasing the property. It may also be a method of passing on the responsibility for covenants set out in the lease.

Market conditions should be considered:

- If assignment is to occur under strong market conditions where the passing rent is below the market rent, and there is a significant time remaining until the next rent review, a premium can be charged to a new tenant (assignee) for the benefit of the lease.
- Conversely, if the market is not strong and the current rent is higher than the market level, or the terms of the lease are particularly onerous, it may be necessary to offer an inducement to any incoming assignee by way of a 'reverse premium'.

Scope for finding a special purchaser should be considered, particularly if the property is accommodation in a multi-let property. A special purchaser may exist amongst the other occupiers, in that the possibility of obtaining additional accommodation in the same property might induce a potential assignee to pay a higher premium than would otherwise have been obtained.

Assignment usually requires the consent of the landlord. Checks should establish whether:

- Consent is required.
- The lease restricts assignment.
- The lease sets down procedures for obtaining consent for assignment, particularly if this involves a long lead-time.

Premiums paid to an incoming tenant in return for a lease assignment may be treated as taxable supply and be rated for VAT. Tax implications should be fully considered.

For leases completed before 1st January 1996, under the doctrine of 'Privity of Contract', an assignor remains liable for breaches of covenant by its assignee at any time during the remaining term of the lease. Therefore, if the government assigns such a lease, it may be liable if either its assignee or a subsequent tenant defaults on rent payment or other covenant. The liability could arise at any time before lease expiry, which may be many years after the date of assignment⁴⁸.

On 1st January 1996 the Landlord and Tenant (Covenants) Act 1995 came into effect. This removed from leases the effects of privity of contract and provided that when an assignment takes place all the responsibilities and liabilities for the covenants and terms of the lease pass to the assignee unless they were completed out of a contractual obligation entered into before this date.

Landlords may ask an assigning lessee to create an Authorised Guarantee Agreement (AGA). An AGA is a form of guarantee by an outgoing tenant that the assignee will comply with all covenants and obligations under the lease. This contractually binds the current tenant should the new tenant default. Strength of covenant is important when considering whether to assign a lease, particularly one granted before 1st January 1996, and it is vital to thoroughly investigate the financial standing of any assignee and their ability to meet lease demands, throughout the term.

Landlord and Tenant legislation provides that a landlord should not unreasonably refuse consent for an assignment unless the lease states in absolute terms that the tenant may not assign. Legal advisers should be consulted if there is any uncertainty about the scope for assignment.

⁴⁸ Scottish leases did not carry with them privity of contract in the same way that leases in England and Wales did before 1996, however some carried clauses that made tenants jointly and severally liable with their successors and future assignees for the performance of their leasehold obligations. Care should be taken when reviewing leases from this period, as such clauses introduce the principles of privity of contract into Scottish leases.

An obligation that may affect the scope for assignment is that of paying for dilapidations. If the lease provides for interim dilapidations in the event of an assignment, the extent of them will need to be considered. It may be possible to negotiate with the landlord to enable the liability to pass to the assignee, or the requirement will need to be satisfied.

Intra-governmental transfer of leases

Transfer of leases between government organisations can usually occur, with landlord consent. Consultation across the government property function can occur to establish whether there are interested parties for internal transfer. A valuation can establish the market value and determine whether it is necessary to apply a premium or reverse premium, for the purpose of internal government accounting. However Senior Responsible Owners should note that the Crown is indivisible and a formal assignment should not be necessary except for some organisations such as Non-Departmental Public Bodies. Legal advice may be obtained from the Government Legal Department. (The Property Law Hub is available at propertylawhub@governmentlegal.gov.uk).

Disposal project managers should seek legal advice on transfers between central government departments and Non-Departmental Public Bodies or other arm's length bodies, in view of the differing legal status of some government organisations. The Public Bodies Reform team in Cabinet Office, Office of Government Property and the Government Property Law Hub are able to advise.

Subletting

Subletting is the creation of a lesser leasehold interest to another tenant (the subtenant) in which the superior interest becomes its landlord. This is not a method of disposal recommended by the Treasury, except in special circumstances. Following the grant of the sub-lease, the government remains liable for all covenants under the head-lease while at the same time having to collect rent and manage the sub-letting. Subletting should therefore only be considered as part of a disposal strategy or estate rationalisation programme, rather than a normal method to reduce space or limit exposure to liabilities.

Subletting should generally only be considered as a short-term measure. An example would be where a lease has a short unexpired term and a Department is unable to assign its interest. If the subletting is a temporary measure, security of tenure should be retained. Legal advisers should address issues of dilapidations, environmental regulations and security of tenure.

Key considerations for the preparation of a sub-lease will include:

- rent level and whether a premium will be obtainable
- use, conditions and restrictions
- whether the subletting rent can be below the rent passing under the superior lease
- rent review pattern
- financial status of the proposed sub-lessee
- break clauses
- repairing and insuring covenants
- responsibility for repair and upkeep of common areas
- alienation and subletting permissions and restrictions
- exclusion from protection under Part II of the Landlord and Tenant Act 1954
- permissions for alterations or improvements by the sub-lessee
- whether any improvements will be disregarded at rent review
- whether any improvements or reinstatement must take place when the sub-lease ends
- whether some or all of dilapidations liability can be transferred to the sub-lessee
- whether a new sub-lessee's use of the premises will affect other users of the property

Property Status

When determining whether to make a disposal, government organisations should take advice from selling agents to identify the effect of a property's status and how it can be made available for sale:

- with the benefit of vacant possession
- under occupation by a single tenant
- under occupation by two or more tenants
- under part-occupation by a single tenant.

Advisors should ascertain the most appropriate disposal route for the relevant status, together with associated costs and lead times.

A property's status will have an impact on the value attainable by a sale in the open market. For example, in certain markets a freehold property for sale with the benefit of vacant possession may attain a higher disposal price than one that is let. However, a property let to a single 'high quality' tenant is more likely to attract interest and a higher price as an investment.

Consideration should be given to whether the property's status ought to be changed prior to disposal. It may be possible to vacate the property or that different interests can be combined in order to increase a property's attractiveness to the market. Where the property is let, it may be possible to restructure the leases to improve a property's marketability.

In some instances, it may be preferable to negotiate with a tenant for surrender of lease(s). The time and cost involved should be assessed as tenants may have rights to security of tenure under the Landlord and Tenant Act 1954 (unless the lease is specifically contracted out). Break clauses in the lease should be checked to see whether they enable vacant possession prior to disposal.

Sale and Leaseback

In cases where a property is held on a freehold basis and a government organisation wishes to retain it, either in whole or in part, there may be a case for disposing of the freehold interest and taking a leaseback. This can serve a number of purposes, such as:

- releasing capital in return for annual revenue expenditure
- maximising the benefit from a buoyant market
- reducing the space occupied
- by taking a leaseback on only part of the premises

Any sale and leaseback proposal should be discussed with the Office of Government Property. It will be subject to spending control, the National Property Control. A clear business case should provide justification for the Senior Responsible Owner to give approval to proceed. It should show how sale-and-leaseback represents best value for money. The proposal should appear in the SAMP, Pipeline and spending plans.

In some circumstances a purchaser may be prepared to pay more for a property if there is a guarantee of a government tenant taking immediate occupation, even if that is only for a short or medium term (3 – 10 years). This type of sale-and-leaseback might fit well with the government property strategy - for example to vacate the property and move to a new location in the same timescale. Such a disposal may be advantageous and should be evaluated.

Annex 5

Relevant Legislation

The [Levelling Up and Regeneration Act](#) completed its passage through Parliament in 2023. It is described as ‘An Act to make provision for the setting of levelling-up missions and reporting on progress in delivering them; about local democracy; about town and country planning; about Community Infrastructure Levy; about the imposition of Infrastructure Levy; about environmental outcome reports for certain consents and plans; about nutrient pollution standards; about regeneration; about the compulsory purchase of land; about information and records relating to land, the environment or heritage; about the registration of short-term rental properties; for the provision for pavement licences to be permanent; about governance of the Royal Institution of Chartered Surveyors; about the charging of fees in connection with marine licences; for a body to replace the Health and Safety Executive as the building safety regulator; about the transfer of land for Academy schools; about the review of maps of open country and registered common land; about the regulation of childminding; about qualifying leases under the Building Safety Act 2022; about road user charging schemes in London; about National Parks, areas of outstanding natural beauty and the Broads; and for connected purposes.’

The [Environment Act 2021](#) is described as ‘An Act to make provision about targets, plans and policies for improving the natural environment; for statements and reports about environmental protection; for the Office for Environmental Protection; about waste and resource efficiency; about air quality; for the recall of products that fail to meet environmental standards; about water; about nature and biodiversity; for conservation covenants; about the regulation of chemicals; and for connected purposes.’

Annex 6

Non-market disposal valuation techniques

To be added later. (See 4.1.5.)