

GUIDANCE FOR SCOTTISH LOCAL AUTHORITIES: DISPOSAL OR LEASING OF HOUSING REVENUE ACCOUNT (HRA) ASSETS AND THE TRANSFER OF ASSETS BETWEEN THE HRA AND GENERAL FUND (GF)

Introduction

1. This Guidance sets out the process for local authorities to follow when applying for Ministerial consent to dispose of, lease or transfer an asset from/to their Housing Revenue Account (HRA).

Summary of the process

2. There is a maximum of 6 stages in the process of applying for Ministerial consent are outlined below:

Table 1: Key stages when applying for Ministerial Consent

Stage Number	Brief description of stages
1. Submission of application form	Initial application for consent from the local authority together with an electronic map link and valuation sent to hraconsents@scotland.gsi.gov.uk
2. Acknowledgment by Scottish Government	Scottish Government will immediately acknowledge receipt of consent applications.
3. Clarification request from Scottish Government to local authority (if required)*	Scottish Government will request any clarification of information already supplied, or for information not supplied, in the application form.
4. Clarification response from local authority to Scottish Government (if required)*	The local authority replies to any clarification request from Scottish Government. Applications will proceed to the next stage when additional information is provided.
5. Scottish Government consideration of consent application	Scottish Government reviews completed application form by considering all the information supplied at stage 1 and stage 4.
6. Consent decision by email or letter	Local authority will normally be advised that consent is either granted or refused within 20 working days unless the case is, or becomes, complex or the local authority response at stage 4 does not allow this timescale to be met.

* Stages 3 and 4 may not actually be required if there are no issues to clarify so have been shaded – see paragraphs 7 and 8 below.

3. Some explanation of each stage is provided below:

Stage 1: Submit the consent application form

4. Council officials initiate the request for consent on behalf of the Council or on behalf of the person(s) wishing to purchase or lease a particular HRA asset, using the application form.
5. The application form enables councils to provide information relating to a wide range of disposal/lease/transfer applications in a consistent format. The form covers basic information such as a concise description of the asset, its location, former and proposed uses, so that Scottish Government officials are readily able to understand the nature of the consent being requested. The form also includes instructions to indicate specifically the legislation under which the application is being sought. In addition, a valuation report in respect of the asset stating its market value must be attached. This report must be prepared by a suitably qualified and experienced valuer who meets the requirements of International Valuation Standards. The application should also include details of the accounting treatment of the disposal, acquisition, lease or transfer. Applications must be sent to the HRA consents mailbox (hraconsents@scotland.gsi.gov.uk). Applications sent to other Scottish Government mailboxes may result in delays in considering applications. Some notes explaining how to complete an application are given in Annex 1.

Stage 2: Scottish Government acknowledgement

6. The Scottish Government will acknowledge receipt of the application when it reaches the HRA consents mailbox. The auto-response return email will contain a link to a blank copy of the application form.¹

Stage 3: Scottish Government request for clarification of the application form

7. If the application form is incomplete or requires clarification, a Scottish Government official will contact the relevant council official for clarification. We will normally do this within a short space of time. If **no** clarification is required then a particular case will move to **stage 5**.

Stage 4: Local authority response to clarification request

8. The Council should respond to the request for clarification with an amended version of the application form and supplementary information, as necessary. The aim is to keep all correspondence and information on the application form and is expected that supplementary information will be kept to a minimum. Councils should respond to the clarification request as soon as possible so as to minimise delays in their application.

Stage 5: Full consideration of consent application

9. When all relevant information has been supplied, the Scottish Government will consider the case in full. In very simple cases where there is no ambiguity

¹ Local authorities should note that email addresses using the “gsx” suffix may not always receive an auto-reply.

about the background and purpose of the disposal/transfer and the valuation of the asset is a straightforward market valuation, the Scottish Government aim to complete this process with minimum delay. More complex cases will generally take more time, and Scottish Government officials may need to contact council officials for further discussions if required. As a minimum, applications will be considered against a number of criteria (rationale, legal basis, appropriate compensation to the HRA, valuation, financial impact on the HRA, accounting treatment, transparency and consultation with tenants) identified in the application form. These are outlined below:

10. The **rationale for the disposal** must be clearly laid out. Obviously, the timing of any disposal will be an issue of judgment for each council. Scottish Government expects local authorities, as responsible asset managers, to consult their valuation experts on current and future market trends.
11. The application must be made on the correct **legal basis**. It is for Council officials to ascertain this from their own legal advisers. The Scottish Government cannot provide legal advice to Council officials although it will provide a list of the relevant legislation that may apply to individual cases to aid the application process. It is the Councils' responsibility to apply for consent under the appropriate legislation, and this must be clearly indicated in the application form.
12. To protect council tenants' interests and the integrity of the HRA ring-fence, the HRA must, unless there are very strong reasons to the contrary, be **fully and appropriately compensated** for any assets sold, acquired, leased or transferred to or from it. In order for this to happen, the default position should be that the asset is transacted at its **market value** as in any normal business transaction. The reason for this approach is that the HRA (and therefore tenants) should not be asked to bear the financial burden of receiving a below market price unless there is an overwhelmingly strong case for doing so, and one on which tenants themselves have been consulted on e.g. the sale of the asset will provide appropriate benefits for council tenants.
13. Should the local authority propose to dispose of an asset (or transfer it to the General Fund) at below market value, the local authority will be required to explain and justify the proposed transfer price. This justification must show clearly how the Council arrived at the proposed transfer price and whether this is the result of one, or a number of factors. In other words, any decision to dispose of or transfer the asset at other than market value must be clearly explained in the application, and the stages leading to setting the transfer price below market value must be clearly recorded.
14. The Council must provide a clear statement of the **financial impact** of the disposal/acquisition/transfer on the HRA. This should include detail of the appropriate **accounting treatment** regarding the disposal, lease or transfer. The general principle to be followed is that if the council tenants do not benefit from the transaction then they should not be asked to bear the financial burden of selling an asset at below market price or receiving an asset at above the market price. Additionally, if a wider group of council taxpayers are the beneficiaries of a disposal/lease/transfer, then the General Fund should bear the cost of acquiring the asset rather than the HRA. There is therefore

an expectation that the sale or lease of an HRA asset will result in the HRA being credited with the market value, with the General Fund meeting the cost of any adjustments in price.

15. It follows that the HRA should also pay the market value for assets it acquires which are transferred from elsewhere within local government. As part of the assessment, Scottish Government will look for consistency of approach for the treatment of assets leaving the HRA and those entering it through intra-account transfers.
16. Transparency is the central principle of this Guidance and an important principle underlying the Scottish Government's Social Housing Charter <http://housingcharter.scotland.gov.uk/>. In order to improve the transparency of transactions, where a council proposes to dispose of assets at anything other than the market value, they should consult in advance with a previously nominated Regional Tenant Organisation representative or local tenants' committee. The application form asks about the degree and nature of input from individual tenants and/or tenant bodies regarding the disposal of assets and, in particular, when they are sold or transferred at values other than at market value. It also asks for details of the local authority's plans for making information relating to market value transaction available to the public.

Stage 6: Notification of the outcome of an application

17. Following the consideration at **stage 5**, the Scottish Government will either issue a consent letter or a letter withholding consent explaining clearly the reason behind either decision. Depending on the nature of the disposal, the consent letter may apply additional conditions which Scottish Ministers feel are appropriate safeguards. The Scottish Government will keep a record of all correspondence on the case from stage 1 through to stage 6 for audit purposes. Scottish Government recommends that local authorities should also retain copies of all correspondence for their audit purposes. The Scottish Government will also maintain a database on which information relating to applications will be recorded.

Timescales

18. The Scottish Government will always try to bring cases to a conclusion as quickly as possible but must do so with due diligence. Local authority officials should allow sufficient time to allow for consultations with the relevant Scottish Government officials and/or Ministers before a consent decision is made. Target timescales are, as laid out in table 1 above, that local authorities will normally be advised that consent is either granted or refused within 20 working days unless the case is, or becomes, complex.

Scottish Government

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ANNEX 1 - NOTES FOR COMPLETION OF HOUSING REVENUE ACCOUNT (HRA) CONSENT APPLICATION FORM

1. This note should be read in conjunction with the application form to be used when applying for consent to dispose of HRA assets or transfer assets to and from the General Fund and the HRA.

2. The application form is 13 pages long but the effort required to fill it in will be minimised in the following ways:

- a) The use of tick boxes and drop down menus requiring no text input
- b) The possibility of saving many of the details on the form electronically (address, contact details etc) which will then require “once-only” input. The form for subsequent cases can then simply be re-used by simply replacing the file name with the latest disposal case name
- c) After the initial use of the form, subsequent applications should get easier as the format becomes familiar to those filling it in and those reading it
- d) Exchanges between local authorities and Scottish Government should become easier as queries on specific question numbers can be more easily understood than general queries
- e) Most of the information being requested is already provided by local authorities in their applications. The new material being sought is most often dealt with by tick boxes, drop down menus or short descriptors
- f) In cases such as the disposal of garden ground, only the shaded boxes need be completed. The intention is not to make simple applications take as much time to prepare as complicated ones. We recognise that most transactions are relatively simple.

3. The general idea behind the form is to keep the description short and succinct thus avoiding the need for the attachment of additional material. It should provide a complete, yet concise, record of the circumstances of the disposal.

4. During the introduction of the form, Scottish Government staff may be able to provide local authority staff with limited assistance with filling out initial applications should this prove difficult for any reason.

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