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DRAFT HOUSING STOCK TRANSFER GUIDELINES

INTRODUCTION

1. This document provides advice and guidance on the process of housing stock transfer. It is aimed mainly at local authorities who are considering stock transfer, but may also be of use to other stakeholders in the process. The guidelines apply to all types of transfers of tenanted housing, whether whole or partial stock, or smaller disposals.

2. The Assembly is required to consent to all full transfers and will need to be satisfied that any proposed transfer:

- has the support of tenants;
- is compatible with the authority's strategic aims;
- represents value for money; and
- ensures tenants will benefit from well managed social housing at affordable rents.

3. A model which is potentially capable of meeting these requirements and which may appeal to many authorities contemplating stock transfer is "Community Ownership" as defined below.

'Community Ownership' – ownership of former council housing by a new 'not for profit' landlord, regulated by the Assembly. This independent housing organisation would be under the joint control of local authority representatives and tenant representatives, as well as including business skills and experience on the Board. The purposes of the landlord board would be to provide improved living conditions for tenants and a continuing service to the community.

PART 1

SECTION 1 - INITIAL ANALYSIS

Key Points

- Authorities considering a transfer should discuss their proposals with the Assembly as early as possible;
- Transfers will only be permitted to a body which is a Registered Social Landlord;
- Transfer cannot take place without the consent of the tenants;
- Price of transferred stock is based on Tenanted Market Value;
- The rent of transferring tenants must not increase at a faster rate than if they had remained tenants of the local authority, and must not exceed the benchmark level set for Registered Social Landlords;
- Transferred properties should be brought up to target standards set out in these guidelines;
- Authorities should detail public expenditure costs as part of their appraisal;
- Authorities will need to consider the effects a transfer will have on its other services, and in the case of a whole stock transfer, the effect on their corporate structure;
- Authorities should obtain the views of funders at an early stage.

Key Assembly Policies on Transfer

1.1 The need for early discussion with the Assembly is stressed particularly where authorities' proposals involve complex or unusual features or there is likely to be overhanging debt. This will enable early identification and resolution of potential problems.

Transfer landlord to be Registered Social Landlord

1.2 The Assembly will only permit a transfer to a body which is registered with the Assembly as a Registered Social Landlord. This ensures that the performance of the transfer landlord will be monitored and regulated as necessary to protect the interests of tenants and the wider community.

1.3 Proposals for transfer should fit within an authority's overall housing strategy and meet the identified needs for investment and service provision. They should provide:

- clear evidence that an assessment of likely housing demand has been carried out;
- an indication of how the transfer proposals form part of the authority's strategy for tackling social and economic problems;
- information on the extent to which transfer will contribute to the area's regeneration;
- details of any partnerships with the private sector.

In the case of partial transfers, the Assembly will expect the authority to demonstrate that it has a clear policy and programme for the effective management of the stock it retains.

1.4 Authorities should carry out an initial assessment of the likely financial effects of a transfer together with the broader impact on their tenants, the community and their wider services. The views of tenants and other stakeholders should be taken on board at an early stage. The initial assessment should cover an appraisal of the available options, such as continuing with authority ownership of the stock.

Consent of tenants

1.5 Authorities should have the means in place, through Best Value and tenant participation compact processes, to involve tenants in establishing whether stock transfer is an appropriate option to pursue. Transfer is a voluntary process and the Assembly cannot give its consent to transfer if the majority of tenants are opposed to it. Advice is given on the requirements for tenant consultation in Part 2, section 8 of the guidelines.

Public expenditure costs

1.6 Almost all transfers will have public expenditure costs which will fall to be met from the Assembly's budget. The Assembly will take these into account in deciding whether to consent to transfer. It is important therefore that authorities evaluate these costs as part of their option appraisal to ensure overall value for money.

1.7 The Assembly recognises that despite the public expenditure costs of stock transfer, it can be a valuable means of bringing much needed investment to improve living conditions.

Price

1.8 The baseline price is derived from the tenanted market value (TMV) with the expectation that the rents will remain affordable and take account of catch-up and future repairs. The TMV price should be used as a baseline against which alternative approaches can be measured. A balance needs to be struck between the

maximisation of capital receipts by the local authority, and the need for the acquiring RSL to pay a price that ensures that they have a business plan that is sustainable and fundable. Part 3 of the guidelines describes the valuation methodology in detail, including the appropriate discount rate which is currently 7%.

Rent Policy

1.9 An understanding of the rental assumptions to be used is key, since valuations are effectively a capitalisation of the rental stream. The Assembly's policy is that rents of transferring tenants should not increase at a rate faster than that which would have applied if they had remained tenants of the local authority and, in any event, should not exceed the rent benchmarks set by the Assembly for Registered Social Landlords (RSLs). The working assumption is that these rent benchmarks will increase by the rate of increase of the Retail Price Index (RPI) each year for the foreseeable future. Further details of the assumptions to be used are given in Part 3 section 2.

Size of transfer

1.10 Each stock transfer proposal will be judged by the Assembly on the basis of financial viability and value for money. The quantity of stock to be transferred to any one landlord will be entirely a matter for the local authority and its tenants. Partial transfers are acceptable where part of an overall strategy, provided the authority is not left with the poorest and/or most difficult stock which would be expensive to manage and maintain and unlikely to be able to attract private finance.

Bringing transferred stock up to standard

1.11 The Assembly sees the achievement of decent housing standards for tenants as the prime purpose of housing stock transfer. Accordingly, the Assembly will require the transfer landlord to bring the stock up to the target standard set out in Part 2, section 10 of these guidelines within ten years of transfer.

Key Issues for Local Authorities

Partial Transfers

1.12 Authorities undertaking a partial transfer will need to consider the impact of such a transfer on the remaining stock. Applications for partial transfers should demonstrate that in selecting properties for transfer account has been taken of public expenditure costs; value for money; the current management of the stock; geographical boundaries; sensitivity to the distinct needs of local communities; long term sustainability; and how the transfer fits with the authority's wider housing strategy. The authority should also explain how it proposes to manage the remaining stock and provide details of any future transfer proposals. In addition, the potential Housing Revenue Account (HRA) consequences are of particular significance and concern for partial transfers, and need to be assessed carefully.

1.13 Where authorities are exploring transferring some of their poorer housing stock, this should be part of cost effective packages likely to attract funders. Such

packages of estates and dwellings of various types, ages and conditions should be financially viable, and have potential to reduce burdens on tax payers.

Effect on the HRA

1.14 Authorities will also need to be clear about the effect of a transfer on their Housing Revenue Account and HRA subsidy entitlement, particularly in the case of partial housing transfers. A transfer could well affect the authority's spending plans for its remaining stock, the rents it charges to its remaining tenants, and its future HRA subsidy entitlement. It is, therefore, essential that authorities make an early assessment of these factors as part of the development of a transfer strategy.

1.15 A partial housing transfer can result in a net cost to the HRA, which might have to be borne by the authority's remaining tenants through higher rents unless savings can be found. HRA expenditure rarely falls in unison with the fall in rent income after a large housing transfer. This is usually because the rent income (net of Management and Maintenance (M&M) costs) from an estate transferred from council ownership will differ from the average for the authority. In addition, there may be residual costs which will remain despite the authority losing a proportion of its housing stock.

1.16 Authorities carrying out whole stock transfers should ensure that they do transfer all their stock to avoid having to maintain an HRA containing a small number of properties. Otherwise, there will be a disproportionate administrative cost for the authority as all the normal subsidy processes will continue to apply. Authorities carrying out a whole stock transfer should, therefore, aim to seek consent from the Assembly to close their HRA at the earliest opportunity after transfer, unless there remains an overhanging debt.

Effect on the council's other services

1.17 The decision on whether to undertake a whole or partial housing stock transfer should be a corporate one involving all the relevant interests of the Council. Authorities will need to consider the effect of the transfer on their other services and, in the case of a whole stock transfer, the effect this might have on their corporate structure.

The acquiring landlord

1.18 Authorities will need to consider, in conjunction with the Assembly, whether the stock should be transferred to an existing RSL; a new subsidiary of an existing RSL; or a completely new landlord. This will depend on the size and nature of the stock to be transferred and the capacity of current RSLs. Authorities should, however, bear in mind that it can be easier to implement, and fund, smaller transfers to large, existing, and well capitalised RSLs. Moreover, such RSLs are more likely to offer cost effective services in the long run. However small scale transfers to newly established landlords may be acceptable, subject to an assessment of viability.

1.19 Local authorities may wish to hold a competition to select one or more RSLs, or consortia of RSLs and others, to which to transfer the stock. Introducing an element of competition into the decision process can increase the size of the capital

receipt, and result in improved terms for tenants. It is essential to clear the brief for any competition with the Assembly. In deciding on the landlord, authorities should avoid structures that involve complex legal arrangements e.g. where a consortium of RSLs takes on joint ownership of the stock in an area.

1.20 The Assembly expects tenants to be fully involved in the landlord selection process and for the body to be identified pre-ballot.

Avoiding conflicts of interest

1.21 All authorities undertaking a transfer must ensure that throughout the process an appropriate degree of independence is established between the disposing authority and the prospective acquiring landlord in order to avoid conflicts of interest. The Assembly accepts that some officers and councillors will inevitably have a dual role working for both the disposing authority and acquiring landlord during the early stages of a transfer and the run-up to the ballot. It is important the authority should at the start of the transfer process identify possible conflicts of interest and adopt structures and protocols aimed at eliminating or minimising these. Authorities should:

- avoid Councillors who are serving on the governing body of the acquiring landlord, shadow or otherwise, also participating in the decision making process of the council in relation to the transfer;
- recognise that many officers may transfer to the new landlord. Guidance should be issued to officers on how to deal with potential conflict of interest; and
- be particularly careful about conflicts of interest post ballot, when negotiations about the price and terms of sale will take place.

The authority should also ensure that its arrangements for dealing with potential conflicts of interests are reviewed and updated regularly, and that any subsequent changes are known to all those involved in the transfer.

1.22 Councillors who are also members of the acquiring landlord's governing body should also be made aware of the Assembly's Regulatory Requirements for Registered Social Landlords as they relate to the avoidance of conflicts of interest.

1.23 Authorities should consider establishing a steering group to oversee the transfer involving the full range of council interests. The steering group could be chaired by the officer who will lead the negotiations on behalf on the authority post ballot. This will help provide continuity of information and expertise, and help ensure the council gets the best deal from the transfer.

1.24 During negotiations with the acquiring landlords authorities must also ensure that they have in place arrangements for handling confidential information during negotiations on the valuation of the stock and the terms of the contract.

1.25 The same principles apply to the employment of consultants to advise and assist the transfer process. Arrangements will need to be put in place to ensure

there is a clear separation of interests and that no conflict can arise, such as the use of the same consultants by both the acquiring landlord and disposing authority.

Views of funders

1.26 Authorities should obtain the views of funders at an early stage. They will have views on the fundability of transfer proposals and whether they are likely to meet their funding criteria. This is of particular relevance where the proposal might be of a more complex and unusual nature. An authority will want to be reasonably confident that a scheme will ultimately be capable of obtaining funding before devoting a lot of effort to it.

Preparatory thinking about information needs

1.27 Information about the condition of the stock will need to be gathered for the transfer process. It is important that local authorities consider the amount and type of information required for various stages and how it can be obtained. The precise amount of information required will depend on the stage but a full stock condition survey will be required before a transfer deal can be initiated.

Profile of Stock

1.28 The proposed new landlord and funders need a clear description of the stock to be transferred, tenants and current management issues. It is important that adequate descriptive information, illustrated by photographs, is given. The information required is set out in the table below.

Profile of the stock	
Location/type of stock	where estate(s) are located within authority; numbers and type of dwellings; brief history of what has happened to the stock in the past which will affect its condition
Stock condition	description of major problems with dwellings and how they have arisen (e.g. design faults, lack of maintenance, vandalism, numbers of dwellings affected) and proposed solutions
Tenants	numbers of households/people; age of population; socio-economic indicators
Housing Management	numbers on benefit; transfer requests; difficult to let; relets; voids; arrears; RTB; demand for dwellings - match between demand and dwellings available; vandalism and security
Regeneration activity	description of major regeneration activity to date and current action

1.29 A fuller explanation of the type of information likely to be required on stock condition and the ways in which local authorities should approach its collection is given in Part 2, section 10.

PART 2

SECTION 1 - TIMETABLE AND APPLICATION PROCEDURE FOR TRANSFERS

Key Points

- ➡ Transfers generally take around 2 years to complete;
- ➡ Each Autumn, authorities considering a transfer of properties will be invited by the Assembly to apply for provisional approval;
- ➡ Number of factors taken into account in deciding whether to grant provisional approval, which include:
 - estimated PSBR costs;
 - views of tenants;
 - nature of acquiring landlord, and extent to which it would be main social landlord in area;
 - terms of disposal;
 - extent to which stock investment is brought forward, and the need and urgency for such investment;
 - extent to which transfer will contribute to the Assembly's other housing and regeneration objectives.

The Timing of the Transfer Process

1.1 Authorities will need to develop an outline timetable for the transfer as part of their initial assessment in order to estimate the financial year the transfer will take place. At this stage this need be no more than an assessment of the timing of the key milestones such as the tenants ballot and transfer itself.

1.2 It usually takes an authority around 2 years from the initial decision to complete a transfer (see flowchart at the end of this section). Preparation and discussion with the Assembly will therefore need to be under way before an application is made for provisional approval.

1.3 Provisional approval is intended to provide a mechanism for regulating the number and cost of transfers at an early stage, so that authorities do not spend time and money working up proposals which are unlikely to succeed for any number of reasons. Because transfers are likely to have costs for the Assembly and others, there needs to be some means of keeping those costs within agreed limits.

1.4 Each Autumn, the Assembly will invite local authorities wishing to transfer some or all of their stock to apply for provisional approval. Provisional approval does not confer the Assembly's consent to the disposal. The local authority will still need to submit a formal application for consent to the disposal under section 32 and/or section 43 of the Housing Act 1985.

1.5 If an authority fails to achieve the original timetable agreed with the Assembly, there is no automatic right for the provisional approval to be extended.

Criteria for Provisional Approval

1.6 In deciding whether an authority should be allowed to progress with its transfer proposals, the Assembly will consider the following:

- * the estimated Exchequer and public expenditure costs;
- * whether the majority of secure tenants affected by the proposed disposal are likely to oppose it;
- * whether there is a long term demand for the stock once it has been transferred;
- * the nature of the acquiring landlord, including, where necessary, the likelihood of it achieving registered social landlord status from the Assembly, if it is not so registered; whether it is sufficiently independent of the local authority for its borrowing not to be classified as public expenditure; and the composition of its governing body. The authority will need to justify its choice of landlord in its application;
- * the extent to which the proposed purchaser would become the predominant or substantial owner of the social housing in the area or region;
- * the terms of the disposal;
- * the extent to which investment in the stock is brought forward and the extent and urgency of the need for that investment; and
- * the extent to which transfer will contribute to achieving the Assembly's other housing and community renewal objectives.

In addition the Assembly may consider any other matters which seem to be relevant.

FLOW CHART SETTING OUT THE MAIN STAGES OF THE TRANSFER PROCESS

(LA=local authority; NafW=Assembly; RSL=Registered Social Landlord)

The Assembly will invite applications for provisional approval every year. It is expected that LAs will have done at least 6 months preparation before applying.

TASK MONTH	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
.LA resolution																								
Appoint LA consultants																								
First estimate of valuation																								
Select purchaser																								
Informal tenant consultation																								
Consult NafW																								
Preliminary fundability plan																								
Secondment of staff (where appropriate)																								
Establish RSL board																								
Appoint tenant adviser																								
Appoint RSL consultant																								
Consult potential funders																								

August 2000

Apply for s.25 consent																									
Stock condition survey																									
Detailed provisional valuation																									
Stage 1 notification																									
Stage 2 notification																									
Ballot																									
Detailed formulation of LA/RSL agreement																									
Full separation between RSL and LA																									
Register with NAFW																									
Recruitment of staff by RSL																									
Detailed discussion with funders																									
Final valuation																									
Finalization of conveyance documents																									
Obtain consents from NAFW																									
Transfer																									

PART 2

SECTION 2 - TENANT CONSULTATION

Key Points

- Transfer cannot take place unless a majority of tenants are in favour. Tenants should, therefore, be involved in all stages of the transfer process.
- Consultation material must be shown to the Assembly before it is issued.
- An independent Tenants' Advisor should be appointed to provide independent advice to tenants on all the issues surrounding a transfer.
- Consultation with tenants is usually in two stages: informal and formal.
- Authorities are legally required to have a formal consultation, but should only proceed to this stage with the agreement of the Assembly. Before proceeding to the formal consultation stage the local authority should be able to demonstrate that its proposals are based on a sound business plan.
- Views of long leaseholders are to be taken into account, but they need not be balloted. It is recommended that where long leaseholders or owner occupiers are materially affected by the transfer proposals a separate ballot would be a good way of testing support for the proposals.
- The Assembly will develop a 'Tenants Stock Transfer Charter'.

2.1 Consulting tenants on a transfer proposal is a fundamental part of the transfer process. The Assembly cannot consent to transfer if it appears to it that the majority of the tenants are opposed to the transfer. Tenants therefore play an important role in the transfer process and should be involved at all stages. Tenants should be involved in the whole process, beginning with identification of problems and priorities, and the appraisal of options for achieving identified objectives. Authorities will have the means in place to involve tenants in assessing whether stock transfer is a viable proposal, through the Best Value and Tenant Compact mechanisms. The Assembly attaches great importance to the manner in which local authorities consult their tenants about potential transfers and considers that an independent ballot is the best means of demonstrating the degree of support for the transfer. Authorities are therefore required to hold a ballot for all transfers.

2.2 In carrying out the consultation exercise, local authorities should adhere to the Code of Recommended Practice on Local Authority Publicity given in Welsh Office (WO) Circular 30/88. This allows the local authority to explain and justify its proposals and ensures that local authority publicity concentrates on facts or explanation or both. It does not, however, oblige the local authority to publish the

views or opinions of those opposed to transfer or to fund the publication of such views or opinions.

2.3 The methods and techniques used to consult tenants are not prescribed and will need to be tailored to the individual circumstances of the transfer. These will vary depending on the size of the transfer, whether whole stock or partial, and the geographical spread of the tenants. The consultation procedure might include a mixture of formal events such as public meetings or exhibitions, tenants' forum meetings or visits to individual tenants. However, authorities should be proactive in ensuring that consultation takes place with all its tenants as individuals, and also with all representative tenant organisations. Every effort should be made to ensure that this is an open and accountable process. Consultation should be based upon a constructive dialogue with tenants, who should be provided with sufficient information to enable them to take an informed view. The exercise should be meaningful, with authorities taking full account of the expressed views of tenants, and providing feedback on outcomes.

2.4 Authorities are required to give the Assembly an opportunity to see and comment on consultation material before it is issued, in particular the formal consultation document and Newsletters. This will enable the Assembly to let the authority know if there is anything which is unacceptable or if there are concerns about the overall adequacy or comprehensiveness of the consultation material. Drafts of consultation material should be submitted at least six weeks before the planned issue date.

2.5 The Assembly will issue after separate consultation a 'Tenant Stock Transfer Charter', which will set out in plain language the rights and safeguards available to tenants under the stock transfer process.

Independent Advice for Tenants

2.6 It is important that tenants are able to obtain independent advice on the transfer. Authorities must appoint independent consultants to act as a Tenants' Advisor prior to development of the detailed stock transfer proposals. The Assembly requires authorities to use a consistent set of criteria against which independent tenant advisors should be judged in making appointments. These cover accountability; impartiality; independence; transparency; quality; and redress. [Criteria currently being worked up in detail in consultation with relevant interests, will be fully set out in the definitive issue of these Stock Transfer Guidelines.] Local authorities should involve their tenants in the selection and appointment of the Independent Tenants' Advisors. Where tenants' groups already exist the local authority may wish to involve those groups or to establish a Tenants' Panel for this purpose.

2.7 The role of the Tenants' Advisor is to provide independent and impartial advice to tenants on the whole range of issues surrounding a transfer. It is therefore important to have a clear working brief, agreed with tenant representatives, for the Tenants' Advisor setting out responsibilities throughout the transfer process. The

Tenants' Advisor should be independent from, and not seen as representing, the views of the local authority, acquiring landlord, or tenant groups.

2.8 At the beginning of the transfer process the Tenants' Advisor's role might involve general advice on the transfer process, arrangements for post transfer tenant consultation and participation, and the nature of the new landlord or the role of the Assembly. It is recommended that the Tenants' Advisor carries out an early test of tenant opinion to assess the degree of understanding and support for an authority's proposals. Closer to the ballot, when details of the transfer have been developed, their role might involve giving advice on specific topics such as the sale price used for transfers where the tenants may want a simple explanation of the tenanted market value, the rents they will pay post transfer, or continuation of their Right to Buy. The Tenants' Advisor can also play a useful role in advising authorities and their consultants on the preparation of news sheets and other information for tenants in a user-friendly and plain language format.

2.9 Where property managed by a tenant management organisation (TMO) is included in a transfer or where tenants have begun their statutory Right to Manage process, Tenants' Advisors could also play a role in helping them prepare for negotiations with the new landlord on the possibility of maintaining the existing TMO or supporting the development of a new TMO, following transfer. Further guidance on Right to Manage is given at Part 2 section 8.

2.10 Tenants' Advisors should work with tenant representatives but should also offer advice to all tenants. They should normally issue information directly to tenants both before and after the initial proposal stage and will usually be expected to submit formal representations to the authority in response to the initial proposal and to the Assembly in response to the final proposal notice.

2.11 Tenants' consultative groups can provide a forum for the exchange of ideas between the local authority, landlord and tenants. The constitution, remit and funding of such groups should be agreed at the outset, and should take account of good practice standards published by the Welsh Tenants' Federation (WTF), Tenant Participation and Advisory Service (TPAS) Cymru and the Chartered Institute of Housing (CloH). In particular, any arrangements for publicising the views or opinions of consultative groups should be carefully considered and the provisions of the Code of Recommended Practice on Local Authority Publicity should be adhered to in any publicity issued, (see paragraph 2.2 above). Authorities are strongly recommended to set up working groups with tenants' involvement from an early stage, as a means of ensuring tenant involvement, co-ordination, and information sharing. Clear procedures/protocols should be established to ensure a proper dialogue is established between tenants groups, the local authority and the acquiring landlord.

2.12 Consultation material should be offered to tenants in both English and Welsh. For many tenants, English or Welsh may not be their first language and authorities should therefore consider the need to produce their consultation material, especially the formal consultation document, in a number of languages to ensure that all tenants are fully able to understand the implications of the transfer. The range of languages will of course be dependent on the linguistic profile of the tenants

involved. Consultation material should be adapted to ensure that people with visual impairment and other disabilities, and those with literacy problems, are able to engage in the consultation process in a full and meaningful way.

Who Should be Consulted and Balloted?

2.13 The statutory procedures are concerned solely with secure tenants or those with an introductory tenancy and should include tenants against whom there is a suspended possession order (unless that tenant is not complying with the order and the authority has taken steps to have a date set for possession). Any ballot would only involve secure tenants of the disposing authority, and authorities should also consult other stakeholders likely to be affected, including leaseholders, local businesses, public services and other neighbouring residents.

2.14 An authority should therefore consider carefully the number of long leaseholders, the extent to which they would be affected by the transfer and their views on the proposal. Proposals should therefore be explained to long leaseholders. Authorities are not expected to include long leaseholders in the formal ballot of secure tenants. However, authorities may wish to conduct a separate ballot of leaseholders and owner occupiers where they would be materially affected by the transfer proposals.

2.15 An authority will be expected to seek the views of other groups affected by the transfer proposals, for example occupiers of leased premises and hostels, and should make clear how these views will be taken into account in the transfer process. The Assembly also expects the consultation procedure to involve early discussions with any existing TMO, and before the ballot, for the transfer proposal to set out clearly how the TMO might operate after transfer. Tenants whose property is managed by a TMO should not be balloted separately from other tenants. All secure tenants should have the right to vote individually rather than as representatives or members of a specific organisation, including a TMO.

2.16 An authority will need also to take account of specific organisational and management arrangements which apply to parts of the stock, e.g. in supported housing and to consult with the appropriate agencies.

2.17 Before consent can be given to a transfer the local authority is required to consult all existing secure tenants, and those with an introductory tenancy, whose homes would be transferred. In practice, the consultation process must start with a period of non-statutory informal consultation for local authorities to introduce and explain their proposals to tenants. This is followed by a period of formal consultation during which the authority has to make an offer to tenants on the terms of the transfer. The informal and formal consultation arrangements are described below. There are likely to be occasions when someone takes up a new tenancy during the consultation process. Provided that they have taken up their tenancy before the final stage notice has been issued, then authorities should include them in the ballot. Occupiers of local authority stock within the area, but not subject to transfer proposals, should be informed of the likely consequences of the transfer for them, and their views should be sought.

Methods of Consultation

2.18 Local authorities should present their proposals to tenants in the context of objective and balanced information on the available options and their implications for tenants. The range of consultation methods used will need to take account of the scale of the proposed transfer and the needs of those concerned. Pamphlets, leaflets, videos, posters, press advertisements, newsletters, meetings, door-knocking, exhibition caravans and telephone hot-lines have all been used in the informal consultation process. Research shows that written material is most important in helping tenants to make up their minds. Newsletters have been particularly valuable in explaining the transfer proposals step by step and enabling the local authority to give straightforward answers to the questions asked by most tenants.

2.19 Authorities should have arrangements in place to provide prompt and informed responses to queries from individual tenants or representative groups. All tenants should be given information on where to address their enquiries. **The Assembly would expect Tenants' Advisors to make available a free telephone advice service throughout the process up to the ballot, where this is justified by the scale of the transfer.**

2.20 In many transfers, the production of a short well produced video explaining the benefits of transfers for tenants enables the authority to provide information in a format that is easily accessible. The consultation process should take account of the particular needs and circumstances of tenants in supported housing projects, and reflect good practice guidance published in this area by the Assembly, WFHA, TPAS (Cymru) and the Chartered Institute of Housing.

Informal Consultation

2.21 The authority should maintain informal consultations with tenants from option appraisal stage onwards. Once it has identified the potential transfer landlord, the authority will be in a position to carry out more detailed informal consultation with tenants using newsletters, leaflets, meetings, etc.

2.22 The aim of consultation is to give tenants the necessary information to make a well informed and genuine choice. It is important that information should reach all tenants, be reinforced at regular intervals and be presented in clear and easily understood language. Consultation material should be measured and balanced. It should not over simplify at the expense of accuracy and should set out clearly the case for and against transfer. The information should explain accurately the consequences of staying with the authority and of transferring. The authority can explain why it is in favour of transfer but tenants must be given sufficient accurate information to enable them to decide whether they agree with the authority's views on stock transfer. Individual opinions should be clearly attributed. The basis for any comparisons, for example between local authority and registered social landlord rents, should be explained.

2.23 As part of the consultation process, the local authority or proposed new landlord/manager may make promises on such matters as the future level of rents and services, or repairs and improvements. Such promises should be unambiguous and made in the secure knowledge that they can be met. Promises made at the informal consultation stage must normally be carried forward to the formal consultation. If they are not, any changes must be clearly indicated and explained.

2.24 It is helpful to brief key personnel on the authority's staff, including housing managers, carers and wardens, who come into day to day contact with tenants as they can be helpful in explaining proposals and reassuring tenants. Such staff should not, however, seek to persuade tenants to vote one way or another. It is likely that a number of housing staff will be seconded to the new organisation and as such could appear to have a vested interest for or against the transfer. To avoid these conflicts of interest, authorities should consider developing a Code of Conduct.

Formal Consultation

2.25 Approval must be obtained from the Assembly in order to commence formal consultation. The aim of the formal consultation process is to seek tenants' views on the details of the terms of the proposed transfer. It should not start until the authority has made a detailed provisional calculation of the valuation of the property and has a clear understanding of the nature of the services to be provided by the acquiring landlord. This will help to ensure that information given to tenants and promises made regarding future policies on rents and repairs, and levels of service, are well-founded. The requirements for formal consultation are set out in Schedule 3A to the Housing Act 1985 (as amended by section 6 of and Schedule 1 to the Housing and Planning Act 1986). The process falls into two stages.

- **Stage 1 notice** (para 3(2) of Schedule 3A of the 1985 Act – further amended by the Housing Act 1996 (Consequential Amendments) Order 1997 (SI 1997/74)): the local authority is required to serve a notice on its secure tenants and those with an introductory tenancy setting out the following details:

- ♦ details of the proposal, including the identity of the prospective new landlord(s);
- ♦ the likely consequences of the disposal for the tenant; and
- ♦ the effect of the provisions of Schedule 3A and the provisions inserted by section 8 of the 1986 Act (the preserved right to buy).

The notice must invite representations within a reasonable period. The Assembly requires a period of at least 28 days between the service of the notice and the close of consultation. The local authority is required to consider any representations made within that period and may wish to revise their proposals accordingly.

- **Stage 2 notice** (para 3(3) of Schedule 3A of the 1985 Act): the authority is required to serve a further written notice on tenants:
 - ◆ describing any significant changes in the proposal;
 - ◆ saying that objections may be made to the Assembly within 28 days or a specified longer period; and
 - ◆ drawing attention to the fact that the Assembly cannot give consent to a transfer if it appears that the majority of tenants are opposed to the transfer.

Issues to be Covered in the Stage 1 Notice

2.26 The formal consultation document should set out clearly the terms of the proposed transfer including tenants' rights under the assured tenancy regime. It should compare those rights with the rights of secure tenants. The document should explain specifically, and in detail, any changes to tenants' statutory and contractual rights which will apply following transfer. Any promises made at the informal consultation stage should be incorporated into the formal consultation material.

2.27 The issues which are expected to be covered in the consultation material are listed below:

- a. The reasons for proposing transfer of stock;
- b. The nature of the transfer e.g. a freehold sale to a new registered social landlord;
- c. The statutory consultation requirements;
- d. The mandate required by the authority from the tenants to proceed with transfer and in the case of split transfers a clear indication of what the authority intends to do if one ballot goes in favour of transfer and the other goes against;
- e. Details of the prospective purchaser(s) including its objectives and status as a registered social landlord, the composition of its governing body (naming members), its staffing, and its track record if appropriate;
- f. The method used to value the housing as a going concern as social rented housing including a brief explanation of tenanted market value;
- g. An outline of the proposed funding arrangements of the prospective purchaser, including information to demonstrate capital and revenue viability;
- h. Initial rent levels. If a rent guarantee is proposed it should be fully explained and agreed with the Assembly;

- i. Future rents, including how they will be determined for transferring or new tenants, when increases will be implemented and how tenants will be able to challenge these increases. It should be made clear how rents are likely to rise for transferring tenants once any rent guarantee has expired, and for new tenants;
- j. The transfer landlord's policy on rent arrears;
- k. Proposals for service and other charges, including those applicable to leaseholders;
- l. Proposals for routine repairs and maintenance including service performance targets;
- m. The purchaser's capital expenditure programme including catch-up repairs and improvements;
- n. The organisational structure of the transfer landlord, including arrangements for staffing, decentralisation and how tenants may access services;
- o. Environmental maintenance, security and other services including information on who would be responsible for the provision of environmental maintenance services such as mowing lawns and provision of specialist services such as care lines for the elderly and disabled. This should also indicate proposals for adoption of roads, drains and other communal areas. The proposed management arrangements for sheltered housing and supported housing projects. Performance targets should be included where appropriate;
- p. Proposed management arrangements including any key performance targets and indicators, the location of offices, methods available for the payment of rent, and arrangements for any existing or developing tenant management organisation;
- q. Terms of assured tenancies including exactly what rights tenants will have under the new assured tenancy regime as compared to secure tenancies, their contractual rights and any changes which will arise from their new tenancy agreement. In particular, the preserved Right to Buy and the Right to Acquire should be fully explained;
- r. The new landlord's allocations policy both for waiting list applicants and transfers. The new landlord should indicate its policy on tenant transfers within the stock and on its involvement with tenant mobility or transfer schemes over a wider area;

- s. Tenant participation in the new landlord's organisation including a statement of policy and procedures on tenant representation, consultation and participation;
- t. Details of existing local authority and new landlord's tenant compacts. A clear explanation should be provided where it is not feasible or sensible to continue with the existing compact;
- u. A copy of the proposed tenancy agreement.

The Ballot

2.28 The Assembly requires a ballot to be held for all transfers of tenanted stock, and will expect all ballot questions to be expressed impartially and in plain language. In general, authorities should conduct the ballot of tenants immediately after the service of the Stage 2 notice. The period specified for the making of objections can run concurrently with the period for voting in the ballot. The Assembly will consider a simple majority of those voting in favour sufficient to indicate tenant support for a transfer. However, an authority may wish to impose a more stringent test. Stage 1 and Stage 2 notices (see para 2.25 above) should state the mandate required by the authority from tenants to proceed with its proposals and this should bind the authority's future action. The ballot paper should be delivered to each tenant under separate cover from any of the authority's or the purchaser's consultation material.

2.29 During the ballot period, local authorities should generally refrain from issuing any further material about the proposed transfer to tenants. However, there may be instances where the authority considers it reasonable to clarify certain aspects of the proposed transfer. For example, where a tenants' organisation makes inaccurate claims about the nature of the transfer process, or its effect on tenants, a local authority may wish to issue a statement which addresses each of the points made. They should not, however, raise any new issue.

PART 2

SECTION 3 - ACQUIRING LANDLORD

Key Points

- ➡ Where stock is to be transferred to a new landlord, consent to transfer will not be given until the landlord has been registered with the Assembly as a Registered Social Landlord;
- ➡ The 'Community Ownership' model gives local authority and tenant representatives joint control of the new landlord;
- ➡ Landlords must be sufficiently independent from a local authority to ensure their borrowing is not classified as public expenditure;
- ➡ The Assembly must be informed of any contracts which the authority proposes to enter into with the new landlord;
- ➡ The Assembly will expect new landlord bodies to serve a defined local area – normally not exceeding the area of one local authority.

3.1 The Housing Act 1996 established the framework for Registered Social Landlords. The Assembly's policy is to give consent to transfers only to registered existing or newly created landlords.

3.2 The Assembly will want to be satisfied that the authority has considered all possible options for the new landlord taking account of the advice in Part 1, paragraphs 1.12 – 1.17 on the effect of transfer size on the cost, viability, availability of expertise at Board and officer level, and fundability.

3.3 Where it is proposed to establish a new landlord or to transfer the stock to a new subsidiary of an existing RSL, consent to the transfer will not be given until the new landlord has achieved registration with the Assembly. The criteria for registration are set out in separate guidance. They include a requirement for the new landlord's constitution to specify its area of operation. This should normally be part or all of the area of a single local authority. The Assembly will only permit the area of operation to expand into the area of a neighbouring authority if the authority concerned specifically supports this.

3.4 The acquiring landlord will need to be able to demonstrate to the Assembly it is independent and free standing. The Assembly will consider the composition of the governing body, in particular the number of persons associated with the disposing local authority, and the relationship with the authority, in particular through any continuing provision of services. The authority's membership or share holding in an

acquiring registered social landlord, whether direct or indirect, must be a minority interest.

Composition and Structure of the Governing Body

3.5 The Community Ownership model places the new independent housing organisation under the joint control of the local authority and the tenants. The composition of the governing body should be such that it has the full range of business skills and financial acumen to be capable of managing a large organisation which will have significant debt at the outset.

3.6 The Assembly will normally expect tenant representatives to comprise at least one-third of a transfer landlord's governing board. In no circumstances may local authority members, officers or other nominees exceed one-third of the membership, since borrowing by the transfer landlord would otherwise be classified as public expenditure.

3.7 The Assembly will permit tenants to form a majority on the governing board of the RSL, provided that it can be clearly demonstrated that the governing body is suitably skilled and experienced.

3.8 In some instances the acquiring landlord may form part of a group structure of other newly formed housing transfer landlords, of existing RSLs, or a mixture of both.

3.9 Advice and guidance should be sought from the Assembly's Housing Performance and Finance Division where a transfer involves the establishment of a group structure or the stock is to be transferred to a member of an existing group.

Contracts with Local Authorities

3.10 Under the Housing Act 1996, local authorities are able to provide services to registered social landlords by virtue of the Housing Act (Consequential Provisions) Order 1996 which applies the provisions of the Local Authorities (Goods and Services) Act 1970. The Assembly should be notified of any contractual arrangements that the local authority proposes to enter into with the acquiring landlord.

3.11 The Assembly will wish to be satisfied, as part of the registration process, that such services represent value for money, for the new landlord, and will not normally agree an initial contract period in excess of three years. Thereafter local authorities may bid competitively to provide services. Commercial rates should be charged for all services provided and the Local Authorities (Goods and Services) Act 1970 should be complied with at all times.

3.12 The Assembly's consent will be required where the landlord proposes to let contracts to any one organisation, the value of which, in aggregate, exceeds 49% of its operating costs. The Assembly will apply a number of tests to ensure that the contracts do not fetter the independence of the landlord.

Staffing

3.13 Selection of staff by an acquiring landlord should be at its own discretion. For a local authority sponsored landlord, the authority may identify key senior staff to act for the new body pending the making of permanent appointments. Other staff may be seconded, although with no guarantee of permanent employment. Where it appears that the sale of the stock amounts to the transfer of an undertaking, the local authority and the receiving landlord may need to consider the application of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE). It is recommended that appropriate advice is sought at an early stage.

PART 2

SECTION 4 - TENANCY AGREEMENT

Key Points

- Transferring tenants must be offered a tenancy agreement which:
 - Delivers an assured tenancy in accordance with the Housing Act 1988;
 - Is compatible with the Assembly's Regulatory Requirements;
 - Fulfils undertakings made during the consultation period.
- After transfer, existing tenants will have a statutory Preserved Right to Buy.
- Stock is also subject to the Right to Acquire.

4.1 The acquiring landlord is required to covenant with the authority to offer transferring tenants a new tenancy agreement. A draft tenancy agreement should be sent to tenants as part of the formal consultation material. The agreement must be submitted as part of an application for consent under section 32 and/or 43 of the 1985 Act.

4.2 The agreement should deliver an assured tenancy which is in accordance with the Housing Act 1988; be compatible with the Assembly's Regulatory Requirements; and fulfil relevant undertakings which were offered to tenants during the consultation period. It will normally be expected that the non-statutory terms of the authority's existing tenancy agreement will remain the same or similar in the new tenancy agreement or provide improvements to tenants' rights, unless changes have been explained to tenants during consultation. Tenancy agreements should be drafted to current best practice standards, taking account of models produced by the Welsh Federation of Housing Associations (WFHA).

Preserved Right to Buy

4.3 When a local authority transfers housing to a registered social landlord, the tenants who transfer will have the statutory Preserved Right to Buy (PRTB). This means that they still have the Right to Buy, with certain modifications, even though they have become assured tenants. The purchase price of a property bought under the Right to Buy is based on its market value, less a discount related to the number of years the purchaser has been a public sector tenant. Under the PRTB, this discount will continue to accrue after transfer to the new landlord. The discount under the ordinary Right to Buy cannot, however, reduce the price below the costs incurred in the last ten years in building, buying or improving the property. Likewise under the PRTB the discount cannot reduce the price below the cost incurred by the

landlord in buying and improving the property but there is no time limit on when those costs are incurred. This rule is generally referred to as the PRTB cost floor.

4.4 The Assembly is considering consultation on possible changes to the PRTB cost floor. If changes to the PRTB cost floor are to be made, it is likely that they will not be brought into force until mid 2001 at the earliest.

4.5 A tenant buying under the Right to Buy undertakes to pay back a proportion of the discount if the property is sold within 3 years. Under the PRTB the landlord may require such an undertaking, but is not obliged to do so. The PRTB does not include a right to purchase under the Rent to Mortgage Scheme or on shared ownership terms. There is also no right to service charge loans or discretionary aid from the Assembly where legal proceedings are necessary to exercise the Right to Buy.

4.6 The Preserved Right to Buy Regulations are set out in 'The Housing (Preservation of Right to Buy) Regulations 1993' and 'The Leasehold Reform, Housing and Urban Development Act 1993 (Commencement and Transitional Provisions No 1) Order 1993'.

4.7 A member of a tenant's family who has acquired an assured tenancy under a will or intestacy of a deceased tenant will generally 'inherit' the PRTB. The statutory PRTB was extended to spouses under paragraph 26 of Schedule 18 to the Housing Act 1996. The contractual PRTB is required only in the case of a family member who was residing with the deceased tenant during the last year of their life.

Right to Acquire

4.8 The Housing Act 1996 (sections 16, 17, 20 and 24 to 25) introduced the Right to Acquire scheme. The Housing Act 1996 confers a statutory Right to Acquire on tenants of housing stock transferred to a registered social landlord with certain exceptions, such as homes for the elderly and supported housing. Tenants with a statutory PRTB will retain this right, and will be able to buy under either the PRTB or the Right to Acquire, but not to combine the two. The Statutory Purchase Grant Regulations may be found in Statutory Instrument 1997 No 619 "The Housing (Right to Acquire) Regulations 1997".

PART 2

SECTION 5 - TRANSFER CONTRACT

Key points

- ➡ Sale of the housing stock and relationship between authority and RSL is governed by the Transfer Contract;
- ➡ Contract should be a complete record of all agreements entered into by authority and RSL;
- ➡ Authority may be asked to provide warranties covering certain matters affecting the transferred stock;
- ➡ New landlord should covenant with the authority to keep any promises made to tenants during consultation period.

5.1 The actual sale of housing and the future relationship between the authority and purchaser is governed by the "Transfer Contract". This contract has to be submitted to the Assembly in support of the authority's application for consent under section 32 and/or 43 of the Housing Act 1985.

5.2 The transfer contract should be a complete record of all agreements to be entered into between the authority and the purchaser on transfer of the stock and should contain:

- the transfer agreement and warranties which determines the terms of the sale of the housing stock (see paragraphs 5.3 to 5.5 below);
- nomination rights and procedures for allocations from the housing register;
- contracts with the local authority which determine the ongoing relationship between the local authority and the purchaser;
- covenants by the purchaser regarding its future undertakings and obligations (see paras.5.6 to 5.7 below);
- an agreed disputes procedure; and
- draft conveyancing documents.

5.3 The transfer agreement should give the average price per dwelling and the gross transfer price, and set up costs. Properties under construction may be included in the transfer by means of a covenant to sell. Special provision may also be needed to deal with any land identified as having development potential, or if any

of the housing stock is on land which the authority will have to clear in order to execute a redevelopment plan. The agreement should provide for the adequate payment and assignment of rent arrears and the transfer of furniture and equipment. The contract should also cover any other properties such as shops and free standing garages that are part of the transfer package.

5.4 The transfer contract may also contain the terms of any geographical restriction on the operation of the landlord agreed as part of the transfer package.

Warranties

5.5 Warranties will be required to be provided by the transferring authority to both the acquiring landlord and the lender(s) funding the transfer. The acquiring landlord will also be required to provide warranties for the lender(s). Authorities are recommended to enter into early discussions on warranties through consultation with their advisers, as offers of funding may ultimately be dependant on their provision. Warranties can be complex and potentially contentious, but are nevertheless an essential part of the stock transfer process. They save time and resources for all parties by limiting pre-transfer investigations through the apportionment of post-transfer responsibilities in the event that they become an issue. Typically warranties may be required for such areas as:

- Asset title;
- Transferring staff;
- Major defects; and
- Environmental issues etc.

The Housing Corporation/DETR publication, "Dealing with Uncertainty, – The role of warranties in stock transfers," (published November 1999), is a useful reference.

Covenants

Covenants given by the purchaser

5.6 The purchaser should covenant with the authority to abide by any promises made to transferring tenants during the consultations conducted in accordance with Schedule 3A of the Housing Act 1985 and offer to each transferring tenant a new Tenancy Agreement (see Part 2, section 4). Covenants by the purchaser in favour of the authority which affect the rights and welfare of the tenants should be secured by a declaration of trust by the authority in favour of the transferring tenants.

Covenants in split or partial transfers

5.7 Where split or partial transfers take place, the registered social landlords and the local authority may wish to covenant with each other to allow tenants rights of transfer.

Application of purchase money

5.8 The Assembly considers that any covenant to apply the proceeds of the transfer to the purchaser by means of a grant may constitute an unlawful fetter of the authority's discretion. The parties may, however, record their intention with regard to the proceeds of sale on the understanding that it does not constitute a binding commitment.

PART 2

SECTION 6 – ALLOCATIONS AND NOMINATIONS

Key Points

- ➡ After transfer, authorities remain responsible for maintaining a housing register and an allocation scheme. They also retain responsibilities under the homelessness legislation.
- ➡ These duties may be retained in-house or contracted out.
- ➡ The Assembly will require transfer landlords to make at least 50% of their new tenancies available to local authority nominees.
- ➡ Transfer authorities may wish to negotiate a higher level of nominations as part of the transfer process.
- ➡ Authorities should clearly identify the need for social housing in their areas and ensure that there is access to sufficient social housing to meet the need.

Statutory Duties of Local Authorities

6.1 Before granting consent for a transfer the Assembly will need to be satisfied that the local authority and the acquiring landlord are able to meet their statutory obligations. Authorities and their acquiring landlords need to consider carefully the extent of any allocation and nomination rights agreed as part of the transfer process.

6.2 Part VI of the Housing Act 1996 places the following duties on local housing authorities:

- each authority must establish a register (the housing register) of people who qualify to be considered for long term accommodation (secure and assured tenancies);
- each authority must adopt an allocation scheme framed so as to reflect the priorities and principles set out in the 1996 Act itself, or in regulations made by the Assembly; and
- with limited exceptions, each authority must allocate all secure tenancies in its own housing stock, and all its nominations to tenancies in other social landlords' housing only to qualifying persons, in accordance with a published allocations scheme.

6.3 Both these functions, and responsibilities under the homelessness legislation (Part VII of the Housing Act 1996), will remain with authorities after transfer, although

authorities have considerable flexibility in deciding how to discharge them. The Local Authorities (Contracting Out of Allocations of Housing and Homelessness Functions) Order 1996 (SI 1996 No 3205) made under the Deregulation and Contracting Out Act 1994, enables an authority to contract out the operation of its housing allocations, and many of its functions under the homelessness legislation. Authorities that contract out such functions should bear in mind that under section 72 of the 1994 Act the final responsibility for any act done in exercise of a transferred function by a contractor will rest with the authority. Additionally, Part VI of the 1996 Act allows authorities to choose how they keep their housing register. In particular, section 162(2) allows an authority to keep its housing register as part of a common register with other RSLs provided the entries comprising the housing register are distinguishable.

Local Authorities – Nominations to Tenancies in a Transfer Landlord's Stock

6.4 The 1996 Act requires registered social landlords to co-operate with local authorities in offering accommodation to people with priority on the authority's housing register and in offering assistance to homeless persons. The Assembly Regulatory Requirements for Registered Social Landlords, require transfer landlords to normally make available at least 50% of their tenancies to nominees of local authorities but the transfer authority may well wish to negotiate a higher level of nominations at the time of transfer. Authorities contemplating transferring stock should have a clear strategy which defines the need for social housing in their areas and secures sufficient nominations to enable them to address that need.

PART 2**SECTION 7 - REGISTRATION PROCEDURE AND FUTURE PERFORMANCE**Key Points

- Assembly will only agree to transfers to landlords registered with the Assembly as Registered Social Landlords;
- RSLs permanently subject to monitoring and regulation;
- Assembly to review draft documentation;
- Registration only granted if Assembly satisfied that formal registration criteria are met;
- A review visit by the Assembly will take place one year after registration.

Registration with the Assembly

7.1 The Assembly will only agree to transfers to landlords registered with the Assembly (not the Housing Corporation) as Registered Social Landlords. The purpose of this is to ensure that the transfer landlord will remain permanently subject to monitoring and regulation in the interests of tenants and the wider community. A timetable will be agreed between the Assembly and the authority to facilitate the registration and transfer process. An Assembly lead officer will be appointed to liaise with the authority throughout the registration process.

7.2 Where the stock is to be transferred directly into an existing RSL, the Assembly will need to consider the management and financial capacity of the landlord to take on the additional stock. Early discussions with the Assembly therefore remain vital in this as in all other cases.

7.3 The Assembly will need to see draft documentation such as the new landlord's governing instruments, the business plan and policies as soon as possible.

7.4 The Assembly will only grant registration once it is satisfied that the new body meets its formal registration criteria.

PART 2

SECTION 8 - TENANT PARTICIPATION

Key Points

- Transfer landlords must comply with the Relationship to Tenants chapter of the Assembly's Regulatory Requirements.
- Tenant consultation and participation, including tenant involvement in management, must feature strongly in future management arrangements for transferred properties.
- Tenants should be consulted and fully involved in decisions about future plans or management of their homes.
- Transfer contract can include a contractual 'right to manage'.
- Where a Tenant Management Organisation (TMO) already exists or is in the process of being set up, the acquiring landlord would be expected to allow the TMO to continue after transfer, wherever possible.
- The Assembly will consider the provision of funding to tenants in the following circumstances:
 - to enable tenants to examine the scope for becoming involved in the management of their estates;
 - to enable tenants that have begun the Right to Manage process to continue post transfer provided that the new landlord is prepared to support the TMO;
 - to help existing TMOs that want to continue management post transfer.

Tenant Involvement and Consultation

8.1 Transfer landlords will be expected to comply with the requirements contained in the 'Relationship to Tenants' chapter of the Assembly's Regulatory Requirements for RSLs. These include requirements for acquiring landlords to provide information to tenants, consult them, and offer them opportunities to influence and participate in the provision of housing services and the management of the organisation. These arrangements should provide for tenants to be represented on the governing body of the new landlord, and give tenants the opportunity to develop the level and type of involvement they wish, including the chance to take full management responsibility, working in partnership with their landlord.

8.2 Tenant consultation and participation, including tenant involvement in management should be a strong feature in the future management arrangements for the transferred properties. Effective tenant participation at all levels of the organisation should be facilitated as this helps to prevent tenant board members from becoming isolated from the people they represent, and ensures that there is a regular supply of potential new tenant board members. Transfer landlords are expected to provide opportunities for tenants to have a real say in the management of their homes. Acquiring landlords will be expected to include tenant representation on its governing body. The mechanisms for tenant participation below board level are also important. An appropriate structure should be developed which allows changes in the desired level of involvement by tenants.

8.3 Tenants should be consulted and fully involved in decisions about future plans for the management of their homes. The Assembly expects the acquiring landlord to draw up a policy to achieve effective accountability to its residents, covering the provision of information, participation and complaints. It should also have structures and practices in place to enable full consultation with tenants on an individual basis and through representative tenants' organisations or other consultative structures. Tenants should also be given opportunities to have influence and control over their housing services, including tenant management, although these arrangements are best left to be determined locally, according to the needs and priorities in the area and the wishes and abilities of the tenants. The acquiring landlord will need to take account of its obligation to adopt a Tenants' Compact in developing these arrangements. Authorities will want to consider whether the Tenants' Advisor should help develop suitable arrangements for post-transfer tenant consultation and participation.

8.4 The Assembly expects local authorities and Registered Social Landlords to have tenant compacts in place by April 2001. Local authorities considering a stock transfer must ensure that transferring tenants continue to enjoy at least the same levels of rights they enjoy under the local authority tenant compact. Where it is not feasible or sensible to continue with the existing tenant compact, the reasons for this should be sound and transparent and the new landlord must justify any decision not to continue the existing level of rights set out in the tenant compact

8.5 Since 1 April 1994, council tenants' organisations which are able to meet a range of prescribed criteria, have been able to exercise a 'Right to Manage' through setting up tenant management organisations (TMOs). Although this right does not continue after transfer, the transfer contract can include a contractual 'right to manage'.

Tenant Managed Organisations

Existing TMOs

8.6 Where a TMO is already in existence, the Assembly would expect the acquiring landlord to allow the TMO to continue after transfer, wherever possible. The existing management agreement with the council will need to be terminated and replaced with a new contract on the same terms with the acquiring landlord. Where

it is not feasible or sensible to continue with the existing management arrangements, the reasons for this should be sound and transparent and the new landlord must justify any decision not to continue the existing TMO.

Feasibility and development

8.7 Where a Right to Manage (RTM) notice has been accepted by the local authority prior to the transfer ballot, the new landlord is strongly encouraged to continue supporting the TMO through its feasibility stages, and be prepared to sign an agreement with the TMO when it completes its development. Where tenants have already begun the Right to Manage process the Assembly would consider funding the completion of the RTM feasibility study, and where appropriate, to pay section 16 grant towards the TMO development, even after transfer, subject to the new landlord's support. Grant would be paid on the same basis as if the tenants had stayed with the authority (i.e. 75% contribution towards development costs with a 25% contribution from the acquiring landlord). However, the Assembly would be less minded to support a TMO if the RTM notice was served following the announcement of a successful stock transfer ballot.

Opportunities for Tenants to set up a TMO following transfer

8.8 The Assembly requires RSLs to provide positive opportunities for tenants to participate in or influence the management of their housing and related services; and to influence the management of the RSL. The development of a tenant management organisation is one way of meeting the requirement. Present legislation precludes tenants of RSLs being given the right to establish a TMO. However, transferring landlords may wish to offer tenants these rights by means of a contract.

Further information on the circumstances in which funding may be approved is available from Assembly officials.

Funding Consultation

8.9 In working up transfer proposals authorities will incur expenditure which can conveniently be broken down into pre-ballot, consultation costs and post-ballot costs. In summary, in the Assembly's opinion, only the costs incurred by an authority in discharging their statutory duty to consult under Section 106A of and Schedule 3A to the Housing Act 1985 should be debited to the HRA as expenditure on the management of the authority's housing stock. This would include the cost of conducting a ballot. Administrative costs incidental to a qualifying disposal may be defrayed from the capital receipt (section 42(2)(e) of the 1989 Act). Any other costs should be met from the Council Fund.

Training for participants

8.10 Local Authorities will need to ensure that everyone involved in the consultation process is able to understand the issues that they are considering. It is likely that Council Members, officers and tenants will need relevant training and access to information on comparable experiences elsewhere. It is particularly important that

tenants' representatives have training in this area. This can be achieved through established Tenant Participation Compact mechanisms.

PART 2**SECTION 9 - OBTAINING CONSENT TO TRANSFER**Key points

- Formal application to transfer should be made at least six weeks before date when consent is required;
- When deciding whether to grant consent, the Assembly will apply the criteria listed at paragraph 9.2.

9.1 Authorities and their advisors should discuss with the Assembly the date on which they would like consent to be granted to help ensure completion of the process in line with the timetable. Formal applications for consent should be made at least six weeks before the date when consent is required.

Criteria for Consent to Transfer

9.2 The criteria the Assembly applies when deciding whether to grant consent to a transfer are as follows:

- that the council's consultation exercise has been adequate;
- that the majority of secure tenants affected by the proposed disposal are not opposed to it;
- that the acquiring landlord is registered with the Assembly;
- that the acquiring landlord is independent of the council;
- that there is a long term demand for the properties to be transferred;
- that the estimated Exchequer and public expenditure costs represent value for money;
- that the terms of the disposal are acceptable; and
- that the local authority is able to fulfil its statutory obligations under the Housing Act 1996 as amended by "*The Allocation of Housing (Reasonable and additional preference) Regulations 1997*" (SI 1997/1902) and has adequate nomination and allocation rights.

In addition the Assembly may consider any other matters which seem relevant.

Information Requirements

9.3 Before granting consent, the Assembly will require the following information. In practice, this information may have been provided during the transfer process:

- Council minutes resolving to pursue a transfer;
- Sales contract between local authority and purchaser, including:
 - contractual arrangements for use of LA services by purchaser;
 - allocations and nominations;
- Copy of registrations of purchaser with, where appropriate, the Registrar of Friendly Societies, the Registrar of Companies or the Charities Commission;
- Details of purchaser's governing body, membership, shareholders or members and any links and contracts with the local authority;
- Valuation of the stock together with the assumptions used and supporting material, which should include an up to date stock condition survey, and details of the proposed works to the property. This information should be provided on disk and hard copy;
- An Assembly PSBR financial model;
- Details of the funders, the total facilities and repayment terms - copies of the funding agreement should be provided;
- Certificate from authority that tenant consultation has been carried out in accordance with schedule 3A of the Housing Act 1985;
- Tenant consultation documents, including notices served, briefing used at meetings, a list of commitments made during consultation and whether they have been fulfilled, ballot papers;
- Result of ballot;
- Details of representations made by any other parties who have an interest in the transfer e.g. long leaseholders;
- Copy of the proposed tenancy agreement;
- Local authority external and housing debt at transfer;
- Confirmation of any set up costs for the new landlord approved under section 25 of the Local Government Act 1988.

9.4 The Assembly appreciates that some of the documentation on the above list, such as the transfer contract and the funding agreement, will not be finalised until the

end of the transfer process, near to the date when consent is expected to be granted. Nevertheless, the Assembly needs adequate time to consider these documents before consent can be given and it is therefore sensible for drafts of the transfer contract and funding agreement to be provided as they are being drawn up. In any event, the Assembly expects to receive one copy of the final bound version of both the transfer contract for itself, one copy to append to the consent plus as many copies as are required to be authenticated by other parties before the consent is issued. It is the Assembly's practice not to give consent to a transfer until the final version of the transfer contract has been received and agreed.

Consents Required

9.5 The principal consents required for a transfer to take place are under sections 32 and/or 43 of the Housing Act 1985. Section 32 enables an authority to dispose of land held for the purpose of Part 2 of the Housing Act 1985 and section 43 enables an authority to dispose of housing not acquired or appropriated for the purposes of Part 2 of the same Act.

Section 133 of the Housing Act 1988

9.6 The subsequent disposal of transferred property (excluding a charge of the property and any of the other disposals which are exempted by section 81(1) of the 1988 Act) will be subject to the consent of the Assembly under section 133 of the Housing Act 1988. Some funders have been given general consents to sell vacant properties under their power of sale if they become mortgagee in possession. The Assembly is ready, in normal circumstances, to give similar general consents to other funders. The conditions of the consent are:

- that the dwelling is vacant when the sale is completed;
- that the sale is at the best price that can reasonably be obtained; and
- that the sale is in exercise of the power of sale contained in the original mortgage or charge on the dwelling.

Section 9 of the Housing Act 1996 and section 171(D) of the Housing Act 1985

9.7 Disposal of housing owned by RSLs (including disposal by way of security for a loan) requires the consent of the Assembly under section 9 of the Housing Act 1996. In addition, the granting of a charge on any transferred housing which is subject to the preserved right to buy requires a consent under section 171D of the Housing Act 1985.

Section 25 of the Local Government Act 1988

9.8 At the same time as an authority applies for consent to transfer they will also need to provide a final assessment of the amount for which they require consent under section 25 of the Local Government Act 1988 which enables them to provide a

gratuitous benefit or financial assistance to the purchaser. Details of the expenditure that is allowable is given in Part 2, section 11 of this guidance.

PART 2

SECTION 10 - STOCK CONDITION SURVEYS AND INFORMATION NEEDS

Key Points

- Lenders and the acquiring landlord will need a clear description of the stock being transferred, its tenants, the problems facing the stock, the proposed solutions, and the rationale on which they are based. Descriptions of stock should be supplemented by photographs;
- Authorities will need to have undertaken a stock condition survey before they can secure a transfer deal;
- Authorities should be mindful of the importance of an impartial survey;
- Authorities should clearly understand the outputs required before assembling or commissioning consultants to collect any information;
- Transfer landlord must undertake to bring transferred stock up to the Assembly's target standard within ten years of transfer;
- The stock survey should identify when works will need to be carried out and calculate the likely cost. It is particularly important to estimate the cost of more expensive works accurately as this will have a major effect on any assessment of the feasibility of transfer;
- The presentation of information on stock condition surveys should be transparent with all assumptions recorded.

Overview

10.1 It is the Assembly's view that every tenant should have a decent home, and that the overriding purpose of stock transfer is to enable homes to be brought up to an acceptable standard more quickly than would be possible if they remained in local authority ownership. Accordingly, the Assembly will only consent to transfer where the transfer landlord undertakes to bring the transferred stock up to the Assembly's target standard within ten years of transfer, and can demonstrate realistic plans for doing so.

10.2 The Assembly's target standard for transferred stock consists of two parts:

- (i) Bringing all individual dwellings up to a standard which the Assembly already sets for existing RSLs. This is published as "Development Quality Requirements for Existing and Rehabilitated Dwellings". This standard ensures that all dwellings are in a good state of repair, and gives tenants a home which is warm, dry and provides a reasonable standard of comfort and

amenity. At the same time, the standard is flexible where full compliance with individual elements might not be practicable at reasonable cost;

- (ii) Works to improve the layout and environment of particular estates, where these are agreed to be necessary to give an acceptable quality of life and give the estate a viable future.

10.3 The following sections describe in more detail the type of information that will be required and the way in which it should be collected and presented. Its main focus is on stock condition information as this is the most complex to assemble. Because of the complexities of this process and the importance which is inevitably placed on the outcome, authorities are strongly recommended to appoint professional surveyors to undertake the stock condition survey. The preparation of the brief to independent consultants to carry out the stock condition survey is vital and should cover the requirements set out in this section. It is important to ensure that those who undertake the survey are familiar with the stock transfer process, as the outcomes will potentially be modelled into the valuation. Appropriate professional indemnities should be obtained as consultants' reports may ultimately be used by the acquiring landlord and/or future funder.

Classification of work

10.4 The work which needs to be undertaken for the stock condition survey is divided into two broad groups, which will subsequently provide relevant information for valuation purposes:

- (i) the levels of repair and improvement necessary to bring all the tenanted stock up to the target standard;
- (ii) environmental works and estate improvements necessary for improving the overall living quality for residents in line with the creation of sustainable communities.

The costs associated with these classes of work need to be produced exclusive of on-costs and VAT (where this is practical). On-costs including VAT will be applied as a percentage rate to the appropriate works costs (see para 10.14 below) in the financial model.

Repair and maintenance costs

10.5 These must take into account the work needed to bring the dwelling up to the target standard and to maintain it in that state for the next 30 years. This work covers all maintenance, repairs and any major replacements, overhauls and improvements. It needs to be classified into the following five components:

- * catch-up repairs and improvements necessary to achieve the target standard;
- * future major repairs/planned maintenance;

- * contingent repairs;
- * cyclical maintenance; and
- * response and void repairs.

Catch-up repairs and improvements

10.6 These are the works necessary to be undertaken to each property to reach the target standard as required by the Assembly. Within this category exceptional extensive works should be separately identified. These are major works which are required to remedy particular significant defects and fall outside the definition of routine repairs and maintenance. They are usually works needed to provide the most effective technical solutions and will reduce future repair and maintenance costs. An example would be overcladding of a block to prevent water penetration which was causing damp.

Future major repairs/planned maintenance

10.7 These cover replacements/major overhauls up to year 30 once the catch-up repairs and improvements are completed, the assumption being that the stock should be maintained in the condition achieved following refurbishment. This will be work normally undertaken as components reach the end of their expected life. Information on future major work should be specified by the year in which it is judged to be required and based on an agreed methodology. In undertaking major work, replacement components should be the same or an equivalent standard.

10.8 Some future major repairs may arise in years 1-5 as elements come to the end of their economic life. These works cannot be classified as backlog catch up repairs as they were not outstanding at the time of transfer and should be recorded as future major work, but in years 1-5.

Contingent major repairs

10.9 Contingent major repairs are works which could be reasonably anticipated but for which there is no direct evidence of a problem in the properties concerned. For example, an authority may anticipate that dwellings might be affected by wall tie failure as dwellings of a similar type and age have been affected elsewhere, but no evidence of the problem in the dwellings to be transferred has yet emerged. Costs associated with this type of work should be classed as a contingency and will need to be fully justified. The Assembly would not expect to see an automatic addition for a sum to cover contingent sums for unspecified works. Contingent sums may also cover items which, in the context of a survey, it has not been practical to assess.

Cyclical maintenance

10.10 This covers cyclical work on an annual or longer term cycle. It includes activities such as servicing central heating or repainting. The extent of future maintenance can be determined by best practice and should take into account the

impact of the nature of future major repairs and any improvements which are planned. For example, if wooden windows are to be replaced by UPVC the need for repainting can be excluded from the future cyclical maintenance costs. It should be assumed that routine maintenance has been carried out in the past and that no backlog needs to be dealt with. Any existing backlog should be identified as catch-up repairs. If local authority records are used to establish the costs of cyclical works, account should be taken of the extent to which these current costs reflect any backlog of maintenance or are insufficient to prevent significant deterioration.

Response and void repairs

10.11 The need to undertake this type of work can be derived from records of response repairs undertaken in the past. The extent to which they are a function of the current condition of the stock and generated by a build up of catch-up repairs, or are a function of current misuse, needs to be identified. Future need for such repairs may be reduced once backlogs have been dealt with or management practices changed.

Estate Works and Improvements

10.12 In assessing the condition of stock which might be transferred, not only the dwellings themselves, but also the related assets of the estates on which they are located need to be considered. Communal buildings, landscaping on the estate, garaging, parking areas and other infrastructure must all be covered if they are to be included in the transfer. It will be necessary to reflect improvements which will benefit the communities and enhance the quality of life for residents. All routine repairs and maintenance to the estate features should be included under this heading, together with works which increase the standard of the facilities provided on the estate either by providing something which did not exist (e.g. additional parking facilities) or upgrading an existing facility.

Demolition and Redevelopment

10.13 Where the cost of bringing an estate or group of dwellings up to the target standard approaches the cost of new-build, demolition and redevelopment should be considered. Any proposal for redevelopment should take careful account of likely patterns of future demand.

On-costs

10.14 These cover fees and all overhead costs including VAT on works costs that should be identified and presented as a separate cost with the percentage at which they are applied made clear. However, if it is the practice of the authority to use “all-in” costs which includes VAT and/or fees, this should be stated and an implied percentage should be given in the supporting text. Within each of the categories, separate costs should be calculated for individual building elements so that it is possible to check what is influencing the costs.

Obtaining Information

10.15 Estimates of the cost of carrying out necessary works can vary widely depending on the methodology used to gather data and the assumptions made. The key factors which result in wide variations in cost figures need to be understood. Where professional consultants are employed to undertake the stock condition survey, the authority should ensure that all relevant information on its stock is made available to inform the survey. Any assumptions, which underpin the data, should be set out in any report on the condition of the stock.

10.16 In reporting on the condition of the stock it is helpful, if possible, to identify response repair and cyclical maintenance costs for related assets separately from those associated with the dwellings.

10.17 Measuring the need for catch-up repairs and future major works to these related assets is more difficult as their assessment does not readily lend itself to a sample survey. A starting point is an inventory of what is provided on the estates to enable the scale of the related assets to be assessed. If this is not available it can be estimated by selecting small areas of the estates to be transferred and quantifying the related assets in relation to the number of dwellings in the selected area. Multiplying these ratios by the total number of dwellings to be transferred will provide an estimate of the total related assets.

10.18 A similar approach can be adopted to assessing their condition by inspecting this asset in defined sub-areas of the estates and using these results to extrapolate to all the related assets. If the costs associated with the related assets produced from broad estimates have a significant impact on the valuation then a more detailed assessment would be appropriate but if the effect is very small then broad estimates are sufficient.

How to Measure

10.19 In collecting information for the stock condition survey, a decision is needed on what can be achieved by direct observation; what can be satisfactorily estimated from existing records and available knowledge of building performance; and what may need to be assumed because no information can readily be obtained. The balance will be for the authority to decide, but in presenting the information it should be made clear how it has been collected. Where information is being assembled for a feasibility study more emphasis will be placed on collecting information from existing records and limiting new information collected.

10.20 Where no information is available it may be necessary to include a contingency sum. This could cover works which reasonably might be expected because they have arisen in similar circumstances in other dwellings. For example, from latent defects in construction or design; uninsured risks; the unknown presence of asbestos; defects in elements which cannot be inspected such as underground drainage. Therefore, assumptions about the likely need for such future works will have to be based on past experience of similar stocks. Any assumptions made must be documented fully.

Timing of works

10.21 A key feature of the assessment of what work is required is also a judgement about when it is needed. Immediate needs must be identified (normally spread over five years). Once the immediate catch-up works are completed, it is necessary to consider what will need to be done in future either as replacement or major overhaul. The timing of this work is important as it will have a major effect on future costs. Surveyors' judgements should be used when elements need to be replaced for the first time. It is important to use surveyors' judgements in estimating the period before first replacement, since in many cases elements of a building perform better or worse than suggested by standard lifecycles which may be affected by factors such as environmental and local conditions. Standard lifecycles will be used where components are nearly new.

10.22 Some building elements will need to be replaced more than once in any 30 year period. To determine this, appropriate lifecycles must be established for building elements. Setting appropriate lifecycles is critical since they can have a significant impact on future forecasts of costs.

10.23 Component Life Cycle Predictions have been established by the Assembly for financial forecasting purposes. These, together with separate guidance on undertaking stock condition surveys, are currently used by RSLs in Wales and are available from the Assembly. Where surveyors chose to use alternative lifecycles, the Assembly may wish to satisfy itself that they are reasonable.

Presentation of Information

10.24 Presentation of information on stock surveys should be transparent, with all assumptions recorded and any adjustments which have been made to the initial information made clear. In order for the Assembly to consider transfer proposals it needs information about the stock and the works proposed to be clearly presented with sufficient detail to enable the proposal to be understood. The information which is expected to be provided is as follows:

Inputs:

- Sources of information;
- Average unit costs for each building element;
- Lifetimes used for each building element;
- Standard of work to be achieved stating:
 - a) whether catch-up repairs assume that repairs are undertaken or whether replacements predominate;
 - b) where there are departures from replacements on like for like basis;
- The justification for improvements;
- Explanation of any contingency sums included;
- Statement of whether costs include preliminaries and whether costs are abated; and
- How timing of future works has been determined;

Outputs:

Separate cost streams presented as:

- a) annual costs;
- b) costs over each of 5 year period with a total cost for 30 years;
- c) average annual cost per dwelling;
- d) adjustments to be made to cost streams before they are included in the valuations; and
- e) number of dwellings covered by the assessment for each of the following types of works or costs:
 - catch-up repairs;
 - future major works (with these costs for related assets to be separately listed);
 - response and void repairs;
 - cyclical maintenance;
 - estate works and improvements;
 - exceptional extensive works;
 - contingencies and repairs;
 - on costs;
 - VAT.

PART 2

SECTION 11 - CAPITAL FINANCE AND TREATMENT OF TRANSFER COSTS

Key Points

- ➡ Authorities will need to consider whether the transfer will result in a capital receipt, and, if so, how much it will be;
- ➡ The first call on any receipt is to repay HRA debt;
- ➡ Assembly to assist authorities with overhanging debt;
- ➡ Only costs relating to consultation, including the transfer ballot, can be charged to the HRA;
- ➡ Administrative costs including legal, survey, valuation, and consultants fees, and staff costs incurred in connection with valuing the stock or preparing the transfer contract may be defrayed from the capital receipt;
- ➡ Any other costs should be met from the Council Fund;
- ➡ Authorities may, with the Assembly's consent, make a loan to the acquiring landlord to help with pre-transfer and transaction costs.

Capital Finance

11.1 The sum received in respect of the disposal is the authority's capital receipt. One of the considerations in the initial analysis of a stock transfer proposal is whether the transfer will result in a capital receipt and, if so, the size of the receipt. For some authorities the amount of capital receipt they receive will not be sufficient to cover the attributable HRA debt. The remaining debt is referred to as "overhanging debt".

11.2 In accordance with section 59 of the Local Government and Housing Act 1989, the Assembly proposes that local authorities will be expected to set aside a sufficient proportion of their receipt from the sale of stock to a new landlord to repay their HRA debt in its entirety (including any breakage costs), and 100% set aside where there is overhanging debt. Subsequent capital receipts derived from a disposal under a Right to Buy clawback agreement must also be set aside. The rate of set aside will be subject to the same rules as apply to the main receipt.

11.3 Section 59(9) of the Local Government and Housing Act 1989 provides that the administrative costs of and incidental to the disposal shall be deducted from the receipt before calculating set aside, providing they are defrayed from the receipt.

Levy holiday

11.4 In order not to discourage local authorities from adopting a solution which they might view as being in the best interests of their tenants and the wider community, the Assembly plans to suspend the stock transfer levy in respect of transfers approved before 31 March 2004.

Overhanging Debt

11.5 Where a local authority anticipates that it will have overhanging HRA debt following a transfer, it should contact the Assembly at the earliest opportunity. The Assembly is in principle prepared to assist authorities with overhanging debt, either by a one-off grant to clear the debt, or by continuing to pay HRA subsidy.

The residual receipt

11.6 The Local Government and Housing Act 1989 places no restrictions on the rate at which an authority's usable receipts are spent. The usable part of the receipt may be used at any time to meet any expenditure for capital purposes or it can be set aside voluntarily as additional provision for credit liabilities (PCL). Authorities are asked to state to what use they intend to put the receipt.

The Treatment of Costs

11.7 The costs which are incurred in undertaking a transfer can be conveniently described as follows:

Local Authority costs

- Pre-ballot costs, including consultants' fees, legal fees and additional staff costs, the cost of the stock condition survey and the valuation, the costs of informal tenant consultation prior to statutory consultation and of providing tenants with independent advice about the transfer.
- Statutory consultation costs, incurred in carrying out the consultation required under section 106A of the Housing Act 1985, including the cost of issuing the formal consultation document (and any summary which might be issued with it) and the statutory 'further notice' to tenants and of conducting the tenant ballot. It would not include newsletters serving a wider purpose.
- Post-ballot costs, including the costs of arranging and implementing transfer, ongoing consultants' fees, legal fees and staff costs.

Registered social landlord costs

- For new landlords set up specifically to receive the Council's stock, these include pre-transfer costs such as the initial costs of renting of office accommodation, staff salaries and the acquisition of computer equipment. All associations employ lead consultants, legal advisers and funding advisers and

meet the costs of the transaction itself including stamp duty, funders' arrangement fees, legal fees and registration fees.

- For existing landlords these normally include costs associated with the transaction only.

Costs which are a charge to the HRA

11.8 Welsh Office Circular 33/95 explains that costs borne by the HRA will be those in connection with the management of houses within that account. Expenditure incurred in carrying out the statutory consultation required under section 106A of the Housing Act 1985, including the cost of any ballot, is considered by the Assembly to be in connection with the management of houses held within the HRA and therefore must be charged to that account. Other costs of transfer, such as pre-ballot and post-ballot costs are, in the Assembly's view, not incurred in connection with the management of houses held within the HRA and therefore must be met from elsewhere, as described below.

Costs which may be defrayed by a capital receipt

11.9 Section 42(2) of the Local Government and Housing Act 1989 (the 1989 Act) lists certain kinds of expenditure which a local authority is not obliged to charge to a revenue account. This includes expenditure which consists of the application of the capital receipt derived from a qualifying disposal (i.e. a disposal within section 59(9) (a) or (b)) in defraying "the administrative costs of and incidental to" any such disposal. The "administrative costs of and incidental to" a qualifying disposal include legal fees, surveyors' fees, valuation fees and costs, consultants' fees (not incurred as part of the consultation exercise and whether incurred pre or post ballot) and staff costs providing they were incurred in connection with the surveying and valuing of property and drafting, completing and executing the transfer contract. Such costs need not be met from revenue; they may be defrayed out of the capital receipts.

11.10 Where this expenditure is defrayed out of the capital receipt derived from the housing transfer, the amount of the capital receipt is treated as reduced by the amount defrayed for the purposes of determining the amount required to be set aside as provision for credit liabilities.

Costs to be charged to the Council Fund

11.11 Any costs of housing transfers must be charged to any revenue account within the Council Fund other than the HRA if they may not be charged to the HRA or capital by virtue of sections 42(2)(e) and 59(9). Authorities may also choose to meet the "administrative costs of and incidental to" a housing transfer (as discussed at paragraph 11.8 above) from any such revenue account.

Costs of abortive transfers

11.12 Abortive transfers do not generate a capital receipt from which any of the costs may be defrayed. Therefore costs must be borne by the HRA or the Council

Fund, depending on whether or not they are incurred in connection with the management of houses. In these circumstances the Assembly is, in principle, prepared to assist with up to 50% of an authority's reasonable pre-ballot costs

New landlord costs

11.13 Local authorities may apply to the Assembly under section 25 of the Local Government Act 1988 to enable a local authority to make a loan to a Registered Social Landlord to meet pre-transfer and transaction costs. Whether the making of the loan is capital expenditure for the local authority and whether repayment of the loan generates a capital receipt will depend upon the purpose for which that loan is given. Loans for the following purposes are, in the Assembly's view, examples of expenditure to be treated as capital:

- the acquisition of computer equipment; and
- the acquisition of office accommodation.

An authority could fund such expenditure from revenue or usable capital receipts; or, on the strength of a credit approval, it could borrow the finance or draw upon its provision for credit liabilities.

11.14 Loans for the following purposes are not, in the Assembly's view, to be treated as capital expenditure:

- staff recruitment and salaries;
- research and consultancy costs;
- legal fees;
- land registry and other fees;
- training; and
- publicity, stationery, telephones, photocopying etc.

No set aside will be required from the repayment of such loans.

11.15 Where a transfer is aborted and amounts borrowed by the prospective Registered Social Landlord are unspent then they should be repaid to the local authority. Where none remains unspent then the local authority must write off the loan.

PART 3

SECTION 1 - THE VALUATION AND PSBR APPRAISAL METHODOLOGY

Key Points

- ➡ Local authority must provide a PSBR analysis of the proposed transfer;
- ➡ PSBR appraisal alone will not necessarily determine whether a transfer can or should go ahead;
- ➡ A PSBR appraisal does not reveal whether a particular transfer would be attractive to private sector funders.

1.1 This Part of the guidelines provides advice and guidance on the main financial considerations that need to be taken in account when considering a stock transfer.

1.2 Authorities should familiarise themselves with this part of the guidance to understand in outline the purpose and nature of the valuation and PSBR appraisal and to decide what needs to be done or commissioned. Authorities generally may want to commission advisers to undertake the actual valuation and/or PSBR appraisal, but the authority will need to be involved in providing data for the appraisal and in agreeing key assumptions. Split transfers may have to be treated as partials if there is a significant lapse of time between the first transfer and the remainder. Schemes in which housing stock transfer is only one component need to be assessed with particular care.

Timing of Valuation and PSBR Appraisal

1.3 Authorities wishing to undertake a housing transfer, whether whole stock or partial, are required to support their application with an appraisal of the financial implications for the public sector. Authorities and their advisors are invited to discuss the results with Assembly officials before application if they wish.

1.4 Authorities are advised to undertake financial appraisal of the public expenditure effects of a transfer as early as possible. However it should be borne in mind that there is a balance to be struck between doing an appraisal too early, when the shape of a proposal may still be vague or there may be too many options, and doing it too late, when expectations raised by many months of work may be dashed should a scheme turn out to be poor value for money. As the first step, authorities should establish a provisional tenanted market value for any stock which may be transferred. This will help to inform their own decision-making and guide negotiations with tenants, funders, purchasers and other partners.

Assessing the Outcome of the PSBR Appraisal

1.5. The PSBR appraisal alone will not necessarily determine whether a transfer or a scheme involving transfer can or should go ahead. Public expenditure costs may need to be weighed against the housing and other outputs likely to be achieved and against the costs of achieving the same outputs in other ways.

1.6. Authorities also need to remember that public expenditure appraisal does not reveal whether a particular transfer proposal will be attractive to private sector funders. They will need to seek advice directly from funders on this.

PART 3

SECTION 2 - VALUATION METHODOLOGY

Key Points

- The basis of valuation is the Tenanted Market Value (TMV). The TMV shows the present value of rents less the cost of catch-up repairs, future repairs, management and maintenance, and improvements necessary to achieve the target standard;
- Rent includes Housing Benefit eligible service charges;
- The rent of transferring tenants must not increase at a rate faster than that which would have applied if they had remained tenants of the local authority. The level of local authority increases will continue to apply up until such time as those rents reach the RSL benchmark level;
- If the current local authority rent structure results in the transferred body exceeding the RSL benchmark levels then there must be some downward adjustments in the rents of one or more unit types to ensure compliance with the benchmark system.

2.1 Transfers are valued on the basis of the Tenanted Market Value (TMV). A TMV must be prepared for all transfers in the way specified in these guidelines to enable the Assembly to compare transfers on a like-for-like basis. The Assembly requires local authorities to submit these valuations on disk and hard copy as part of their proposals. Any significant changes to the assumptions used in the valuations should be agreed with the Assembly in advance of seeking consent to a transfer. A valuation must be resubmitted as soon as possible after the negotiations have been completed between the local authority and the acquiring landlord. Where the transfer involves the registration of a new landlord by the Assembly, the valuation has to be agreed before registration can take place. It is therefore vitally important that the valuations are submitted to the Assembly well in advance of the date of the Assembly's registration meeting.

Valuation

2.2 Social housing stock is valued as a going concern. The valuation methodology adopts a standard approach referred to as the Existing Use Valuation – Social Housing (EUV-SH). It makes the fundamental assumption that the housing stock will remain in the social housing rented sector. The term Tenanted Market Value (TMV) is often used to describe this method of valuation. The TMV forms a baseline evaluation and is derived from the present value of rents less the present maintenance. This is presented through a discounted cash flow model to produce a value for the stock (the net present value). In addition to the housing stock itself,

there may be other aspects to the transfer which will need to be recognised in the valuation e.g. commercial premises, land for future development etc. Whilst it is important that the authority ensures that it is obtaining the best price for its stock, it should remain mindful of the primary objectives, and ensure that it does not jeopardise the financial viability of the transfer proposal.

Rent Policy and Rent Assumptions in the Valuation

2.3 Authorities and the acquiring landlord are required to provide details of the proposed rents. Setting the right rent levels is one of the most important parts of the transfer process, and is fundamental to the valuations. The level of rents, any rent guarantees, and rental growth are important to tenants, the disposing authority and the acquiring landlord. The Assembly is concerned to ensure that the rent assumptions used in valuations are in line with the Assembly's rent policy and that the actual level of rents paid by tenants remains affordable and sub-market.

2.4 The Assembly takes account of both the starting level of rents for transferring and re-let rents and the rate of increase over a 30 year period. For the purposes of the valuation, the rents for both transferring and equivalent re-let rents should be set as follows:

Transferring tenants rents

The rent of transferring tenants must not increase at a rate faster than that which would have applied if they had remained tenants of the local authority. The level of local authority increases will continue to apply up until such time as those rents reach the RSL benchmark level.

If the current local authority rent structure results in the transferred body exceeding the RSL benchmark levels then there must be some downward adjustments in the rents of one or more unit types to ensure compliance with the benchmark system.

Re-let rents

Re-let rents should be set at the equivalent rent for a similar registered social landlord property, taking account of its size, condition, location and facilities. Where local authority rents are already at the same level as registered social landlord equivalent rents, the starting re-let rent can be the same as the transferring rent.

Rent Guarantees

2.5 The Assembly would not normally agree to a rent guarantee for more than five years. RSLs will be required to publish details of their rent policies and their average rents and service charges.

The Treatment of Major Works and Demolitions in Valuations

2.6 The presumption is that a local authority proposing a housing transfer involving some demolition is willing to donate the land on which demolition will take place as a contribution to replacement housing. If so, the value of this free land to the landlord needs to be taken into account as a cost in assessing the PSBR effects of the scheme. The value of free land should also appear in the business plan as a benefit. In terms of the valuations, the valuation of the property to be demolished is the present value of the property's net rents until it is demolished.

Other Assumptions used in the Valuation

2.7 As well as assumptions on the level of income generated from rents and expenditure on works derived from the stock condition survey, the valuations use a number of other income and expenditure estimates. The basis for these estimates should be supplied as part the valuation.

Re-let rate

This is the proportion of the transferred stock which is re-let to new tenants each year. Recent local authority experience may provide a starting point. Existing tenants moving within the stock should be excluded as they will retain the rent regime applicable to former council tenants.

Void and bad debt rate

The recent local authority record will be a useful starting benchmark. However, acquiring landlords will be expected to manage the stock more efficiently in the future, and a reduced void/bad debt rate may therefore be appropriate (and would be expected if the rate was relatively high at present).

Management expenditure

In determining the appropriate level for future management costs, a local authority and the acquiring landlord should take into account:

- recent local authority spending;
- an assessment of the scope for efficiency savings;
- realistic costs of managing the properties;
- typical RSL costs (derived from published performance indicators); and
- provision for VAT.

2.8 Income and expenditure from garages and shops, any service charge income and other assets charged for individually to tenants or other users should be included.

Complex Transfers

2.9 Some transfers are part of schemes which also include the development of new housing and/or the redevelopment, or demolition and replacement of existing

stock. Such complex transfers often require additional public expenditure and authorities considering carrying out such a transfers should seek advice on these aspects from the Assembly at an early stage.

PART 3

SECTION 3 - PRINCIPAL FINANCIAL EFFECTS OF TRANSFER ON PUBLIC EXPENDITURE AND APPRAISAL OF PARTIAL TRANSFER

Key Points

- The Assembly requires a full financial appraisal of public expenditure effects;
- Where there is a whole stock transfer, an authority will generally be expected to close its HRA;
- The financial analysis is more complex for partial than for whole stock transfers;
- In a partial transfer, an authority must consider the impact on its retained stock.

3.1 Housing transfers can have significant financial effects on the public sector. The precise impact varies according to an authority's circumstances, including the receipt expected from the sale, any additional Housing Benefit costs due to transfer, and the amount of debt in the Housing Revenue Account. As part of the process of assessing transfer proposals, or complex schemes involving a significant element of transfer, the Assembly requires a full financial appraisal of public expenditure effects.

3.2 The financial effects of transfer on public expenditure are assessed essentially in terms of the public sector borrowing requirement (PSBR) and involve the taking into account of a wide range of factors. The analysis compares the PSBR cost of retaining the stock under Local Authority control, with the PSBR cost post-transfer and of the transfer itself.

3.3 A housing stock transfer means that the PSBR costs or benefits of retaining that stock in the public sector are saved or lost. The PSBR costs or benefits of retaining stock in the public sector are debt service charges on that stock less the net rents, i.e. rents less management and maintenance. In a surplus authority, debt service charges less net rents equal the authority's contribution to rent rebates, which is a PSBR gain pre-transfer. Debt service charges less net rents in a deficit authority equal housing element subsidy, a PSBR cost pre-transfer.

3.4 The principal factors in the PSBR analysis include:

Transfer receipt. The transfer receipt from the sale net of expenses counts as a PSBR saving;

Changes in local authority expenditure: Changes arising from the disposal include the effect of the loss of rental income, changes in the amount of housing capital expenditure, and the creation of any usable receipts. Any surplus receipts generated are scored as a PSBR cost;

Changes in the Housing Element Subsidy: There is a PSBR saving from a deficit authority transferring all its stock, as the Government no longer has to fund the deficit on the housing element of its HRA account. Any net change in housing element subsidy in a partial transfer scores as a PSBR cost or benefit.

3.5 An authority which transfers all of its stock will generally be expected to close its Housing Revenue Account (HRA) and will therefore no longer receive HRA subsidy. An exception may be made where there is overhanging debt.

3.6 For whole stock transfers, where the HRA debt is less than 75% of the transfer receipt, the Assembly proposes to amend the Local Authority Capital Finance Regulations, so that a local authority should be permitted to apply the whole of the excess to any proper capital purpose at its discretion. The useable receipt is a PSBR cost.

Appraisal of Partial Transfers

3.7 A partial stock transfer is where an authority transfers only a proportion of its stock to the private sector. This may be a single estate representing only a small proportion of the authority's total stock, or it may be as much as 50 per cent (or more) of the stock of an authority.

3.8 Although the principles are the same, the analysis of the financial impact of a partial transfer is more complex than that for a whole stock transfer. This is because authorities which undertake partial transfers will retain an HRA for the stock that remains in its ownership. Assessment of the financial effects of partial transfers therefore requires explicit modelling of the HRA subsidy calculation both in the absence of transfer, and for the residual stock post transfer. The overall effect of transfer on HRA subsidy is calculated by comparing the HRA subsidy calculation pre- and post-transfer.

3.9 In the case of partial transfer, it is important that a local authority considers the effects of the proposed transfer on its HRA and HRA subsidy entitlement. There may be either a net cost to an authority's HRA, which would have to be borne by the tenants who remain with the authority, or a net gain. The effect of the transfer is unlikely to be entirely neutral. In a whole stock transfer, it is sufficient to look at the rent allowances post transfer, the transfer receipt, savings in local authority capital spending, and payments of VAT, and compare this to total HRA subsidy paid in the absence of transfer. However, in a partial transfer, it is also necessary to take into account the impact of reduced housing stock, debt and capital spending on the HRA for the retained stock.

3.10 Any transfer receipt for the transferred stock in a partial transfer is calculated in precisely the same way as for a whole stock transfer. The TMV therefore is the net present value over 30 years of the excess of gross rents over management, maintenance and repair and non cost-reflective improvement expenditure. The discount rate currently in general use by the Assembly is 7 per cent, but this may be varied at the discretion of the Assembly. The net transfer receipt is the transfer receipt after expenses.

3.11 The set aside from the net transfer receipt of a partial transfer is 75%, thus giving transfer authorities, where there is a partial transfer, a 25% usable receipt.

Housing Element Subsidy

3.12 The housing element of the HRA subsidy calculation may rise or fall as a result of a partial transfer. The redemption of HRA debt due to the set aside proportion of the transfer receipt will reduce debt interest payments in the HRA subsidy calculation. Similarly, any reduction in local authority capital spending consequent on transfer will feed through into lower debt interest payments in the HRA subsidy calculation. Set against savings from lower debt and local authority capital spending is the loss of notional net rental income (gross notional rental income minus notional M&M) on the transferred stock.

3.13 In some partial transfers, the unit (per dwelling) net receipt from sale may be less than unit HRA debt. In these circumstances, the housing element per unit on the retained stock will increase as average debt per dwelling increases, notwithstanding the overall savings in debt interest and housing element subsidy which do take place.

GLOSSARY OF TERMS

CIOH	Chartered Institute of Housing
DETR	Department of the Environment Transport and the Regions
DSS	Department of Social Security
HRA	Housing Revenue Account
HRAS	Housing Revenue Account Subsidy
HSOP	Housing Strategy and Operational Plan
LSVT	Large Scale Voluntary Transfer
MPA	Minority Protection Agreement
PFI	Private Finance Initiative
PRTB	Preserved Right to Buy
PSBR	Public Sector Borrowing Requirement
PWLB	Public Works Loans Board
RPI	Retail Price Index
RSG	Revenue Support Grant
RSL	Registered Social Landlord
RTB	Right to Buy
RTM	Right to Manage
SCA	Supplementary Credit Approval
SPV	Special Purpose Vehicle
TC	Tai Cymru
TMO	Tenant Managed Organisation
TPAS	Tenant Participation and Advisory Service
VCT	Voluntary Competitive Tendering
WFHA	Welsh Federation of Housing Associations
WLGA	Welsh Local Government Association
WO	Welsh Office
WTF	Welsh Tenants' Federation