

WELSH HEALTH CIRCULAR



Llywodraeth Cymru
Welsh Government

Issue Date: 22 June 2015

STATUS: COMPLIANCE

CATEGORY: ESTATES

Title:
ARRANGEMENTS FOR CONSENT TO ACQUIRE OR DISPOSE OF A LEASE IN PROPERTY
(WHERE NOT COVERED BY ANY BUSINESS CASE APPROVAL PROCESS)

Date of Expiry / Review
N/A

For Action by:
Local Health Boards and NHS Trust

Action required by:
With immediate effect

Sender: Valerie Whiting, Deputy Director of Capital, Estates & Facilities

DHSS Welsh Government Contact(s) :
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Department of Health & Social Services, Welsh Government
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Enclosure(s): ADL Forms, 1, 2 & 3



Distribution List Attached

Dear Colleague,

Summary

- 1 This circular is issued to NHS bodies to clarify the approval process linked to the acquisition or disposal of lease, where approval does not form part of a business case process, including requirements for primary care following the revocation of WHC (2007) 064.
- 2 This circular does not replace the requirements for NHS Bodies to seek consent to enter into associated contracts as part of any All Wales Capital Programme projects.

Background

- 3 In order to determine the appropriate process to be followed for any lease entered into by the NHS, consideration has been given to Paragraph 13 of Schedule 2 to the NHS (Wales) Act 2006 which states;

“13(1) Subject to sub paragraph (3) a Local Health Board may do anything which appears to it to be necessary or expedient for the purposes of or in connection with the exercise of its functions.

(2) In particular it may –

- (a) acquire or dispose of property;
- (b) enter into contracts;
- (c) accept gifts of property (including property to be held on trust, either for the general or any specific purpose of the Local Health or for any purpose relating to the health services).

(3) a Local Health Board may not do anything mentioned in sub-paragraph (2) without the consent of the Welsh Ministers (which may be given in general terms covering one or more descriptions of the case).

4. In order to understand where a lease sits under sub-paragraph (2), Section 206 of the Act provides that “property” for the purpose of the Act includes “rights”. A lease being a property right therefore sits under paragraph 13(2) (a) – Acquire or dispose of property. As such, a NHS body proposing to acquire or dispose of a lease must obtain the consent of the Welsh Ministers.
5. The provision also allows the Welsh Ministers to give consent, if it thinks fit, which may be given in general terms covering one or more descriptions of a case.

New Monitoring Arrangements

6. The Minister has agreed that where LHBs require consent to enter a lease or dispose of (including surrenders/assignments) of a lease in property, a similar

process to that which applies to contracts is to be introduced. The general consent will be based on the following arrangements:

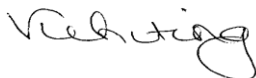
- (1) for leases with a cumulative rental value of up to £500,000 each Local Health Board and Trust will be required to submit a return to the Minister on a 6 monthly basis summarising relevant transactions on **form ADL 1** (first return will be required on 30th January 2016 and 6 monthly thereafter);
 - (2) for leases with a cumulative rental value of between £500,000 to £1 million (for each Local Health Board) and any contract in excess of £500,000 (for Trusts) a contract summary form should be provided as per **form ADL 2** for Ministerial review before the lease is agreed. Whilst it is not necessary to obtain specific Welsh Ministers consent to enter the lease agreement, adequate information should be provided to enable the Minister to review the particulars. A briefing note will need to be prepared for the Minister at least two weeks before the lease being agreed (or as soon as possible after heads of terms reported) so that particulars can be noted; and
 - (3) for leases with a cumulative rental value exceeding £1 million, each LHB will require specific consent from the Minister. An application for consent is to be submitted as soon as possible after agreement of heads of terms as per **form ADL 3**. For Trusts notification will be required as per the process set out in (2) above.
7. For the purposes of the above, the cumulative rental value referenced above ignores any break provisions and the figures are exclusive of VAT.
8. In order to ensure timely processing of paperwork and approvals in accordance with the above, all forms need to be returned to Zara Morris, zara.morris@wales.gsi.gov.uk at the Capital, Estates & Facilities team at least 10 working days prior to the targeted completion date.

Scope

8. This WHC applies to any leasehold arrangement where approval is not covered under the business case process. Please ensure the forms attached to this document are submitted with the required information.

Action

9. Chief Executives of all Local Health Boards and Trusts should ensure that the requirements of this document are introduced with immediate effect.
10. Enquires regarding the application process or monitoring arrangements should be directed in the first instance to Richard Barr, Capital, Estates & Facilities, Department of Health & Social Services richard.barr@wales.gsi.gov.uk telephone: 029 20 823987.



Val Whiting
Deputy Director, Capital, Estates & Facilities
Department of Health and Social Services

Encs

Distribution List

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For Welsh Government Use Only	
Return Number:	
Time Period:	
Reported:	

LHB and Trust 6 monthly Return Notification Form

Contracts for the acquisition or disposal of a lease in property up to a value of £500,000

Local Health Board/Trust:			
Contact Name:		Position Held:	
Address:			
Contact Tel No:		E-mail:	
Date of Return:			

[illegible]

For Welsh Government Use Only	
Date Received:	
Reference Number:	
Acknowledgment sent	

LHB Notification to the Welsh Ministers in respect of the acquisition and disposal of a lease in property between £500,000 < £1 million

Trust Notification to the Welsh Ministers in respect of the acquisition and disposal of a lease in property > £500,000 (includes leases > £1 million)

Local Health Board/ Trust:			
Contact Name:		Position Held:	
Address:			
Contact Telephone No:		E-mail:	
Lease Title & Reference:			
Purpose of and Rational for the Lease: <i>(please provide sufficient detail here to explain the purpose for the transaction and rational)</i>			
Description:			
Name(s) of the Contractor(s) (Parties to the lease):			
Total Value of the Lease: (Consideration) cumulative value over term of the lease (separately show VAT)			
Annual Value of the Lease: (separately show VAT)			
Duration of the Lease, including any break options, review dates etc:			
Confirmation of Funding Stream:			
Date of proposed Legal completion:			
Identified Risks:			

Any Other Relevant Information:	
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Documents Included in this Application (please tick all that you are including; there are blank spaces left for you to list any other documents you are including with this application):

* Board Papers ¹		Heads of Terms ^{2&3} :		Documented Quote:	

* These documents must be provided for all notifications

- 1. Board or equivalent papers from appropriate corporate governance group responsible for the endorsement of the contract, confirming they endorse the proposed contract. This could include contract adjudication minutes and approval process.
- 2. For contracts relating to the acquisition and disposal of land
- 3. For contracts relating to the acquisition and disposal of land

I certify that the information given above is accurate; I also certify that all relevant documentation relating to this notification to the Welsh Ministers of intent to enter into a contract is enclosed with this application; I understand that failure to include adequate information and/or relevant documentation may lead to further requests for information and could therefore delay the process or result in the notification being returned to the LHB/Trust and not considered further until the relevant information is provided. I also certify that I am content that correct procedure for letting contracts has been followed within the LHB/Trust; that all necessary expert advice has been obtained; and that due diligence has been demonstrated.

Name: _____

Position Held: _____

Signature: _____

Date: _____

For Welsh Government Use Only	
Date Received:	
Reference Number:	
Acknowledgement sent:	
Date complete information received:	

LHB Application Form to Gain Consent from the Welsh Ministers to Acquire or Dispose of a Lease in Property over £1 million

Local Health Board:			
Contact Name:		Position Held:	
Address:			
Contact Telephone No:		E-mail:	
Lease Title & Reference:			
Purpose and Rational for the Lease: <i>(please provide sufficient detail here to explain the purpose for the transaction and rational)</i>			
Description:			
Name(s) of the Contractor(s) (Parties to the lease):			
Rational for the Transaction:			
Total Value of the Lease (Consideration) cumulative value over the term of the lease (separately show VAT):			
Annual Value of Lease (separately show VAT):			
Duration of the Lease, including any break options, review dates etc:			
Confirmation of Funding Stream:			
Date of proposed Legal completion:			
Identified Risks:			

Any Other Relevant Information	
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Documents Included in this Application (please tick all that you are including; there are blank spaces left for you to list any other documents you are including with this application):

* Board Papers ¹ :		Heads of Terms ^{2&3}		Documented Quote:	

* These documents must be provided for all applications for consent

1. Board or equivalent papers from appropriate corporate governance group responsible for the endorsement of the contract, confirming they endorse the proposed contract. This could include contract adjudication minutes and approval process.

2. For contracts relating to the acquisition and disposal of land

3. For contracts relating to the acquisition and disposal of land

I certify that the information given above is accurate; I also certify that all relevant documentation relating to this application for consent from the Welsh Ministers to enter into a contract is enclosed with this application; I understand that failure to include adequate information and/or relevant documentation will result in the application being returned to the Local Health Board and not considered further until the relevant information is provided. I also certify that I am content that correct procedure for letting contracts has been followed within the Local Health Board; that all necessary expert advice has been obtained; and that due diligence has been demonstrated.

Name:

Position Held:

Signature:

Date:

NB: LHBs will be formally notified when consent has been given, and they should not “assume consent” if a response has not been received from the Welsh Government