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Introduction

Scottish Water's rights to acquire and dispose of property assets is outlined in the Water Industry (Scotland) Act 2002¹; with the purpose of improving Scotland's water and drainage infrastructure.

Acquisitions

Under Section 46 of the Water Industry (Scotland) Act 2002 Scottish Water can, for the purpose of any of its functions or for the purpose of the provision, by some person other than itself, of a supply of water to the public, or a system, to which the public is to have access, of drains, sewers or sewage treatment works, acquire by agreement any land (other than water rights) wherever situated.

Scottish Water may also be authorised by the Scottish Ministers to purchase compulsorily under Section 47 of the Water Industry (Scotland) Act 2002.

Disposals

Under Section 48 of the Water Industry (Scotland) Act 2002 Scottish Water may dispose of land held by it in any manner, to whomsoever and for whatever purpose it wishes. But Scottish Water may not, except with the consent of the Scottish Ministers, dispose of land or property for a consideration less than it could reasonably be expected to be obtained on the open market.

Purpose

The purpose of the Property Acquisition, Disposal and Leases Policy is to ensure the interests of Scottish Water are represented in all property acquisition, disposal and lease transactions and that any associated risks are fully understood by the business and our external stakeholders.

Objectives

The scope of this policy includes all acquisition, disposal, lease, wayleave & servitude transactions involving land and buildings in connection with Scottish Water's functions. This policy does not cover the acquisition, disposal and lease of assets such as IT, vehicles, moveable plant and other similar goods.

Policy Principles

General policy principles are outlined here; with specific principles related to Acquisitions, Disposals and Leases outlined in Sections 1-3 respectively.

In developing the policy we have sought to develop principles to meet our three criteria of being **clear**, **coherent** and **credible**, and which:

- a) Provide a **credible** approach with regards to the management of Scottish Water acquisitions, disposals and leases
- b) Are **coherent** with, and conform to, Scottish Water requirements under the Scottish Public Finance Manual and Scottish Government's Governance Directions
- c) Ensure transactions are based on value for money and propriety is maintained
- d) Ensure that in dealings with third parties, Scottish Water preserves the highest standards of honesty, integrity, impartiality and objectivity
- e) Provide **clear** guidance as to why Scottish Water may require acquisitions, disposals or leases to provide the service to our customers under the Water Industry (Scotland) Act 2002
- f) Provides **clear** guidance on the requirements of Scottish Water to comply with obligations under the Land Reform (Scotland) Act 2003² and the Community Empowerment (Scotland) Act 2015³

Contact

If you have any questions regarding this policy please get in touch with our Land and Property Development Manager: Archie MacGregor Archie.MacGregor@scottishwater.co.uk

¹ <http://www.watercommission.co.uk/UserFiles/Documents/Water%20Industry%20Act%202002.pdf>

² <http://www.outdooraccess-scotland.com/The-Act-and-the-Code/legal>

³ <http://www.legislation.gov.uk/asp/2015/6/contents/enacted>

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Section 1: Acquisitions

In some instances it may be possible for Scottish Water to secure the land/property rights it needs by serving the relevant Statutory Notice, without the need to acquire land or property.

Where this is not possible, the following principles apply to Scottish Water acquisitions:

- a) Acquisitions include land and property
- b) Where Scottish Water require land or property to allow the implementation of solutions, the preference is for purchase of that land or property by a Statutory Conveyance, not a lease
- c) Acquisition transactions will be entered into in accordance with Scottish Water's statutory powers whenever possible
- d) If this is not possible, then justifications for the departure from these powers will be provided in the Heads of Terms report for the proposed acquisition
- e) Where possible acquisitions will be completed through negotiation
- f) In some cases allowance may have to be made for the possibility that the acquisition of property will require the exercise of Compulsory Purchase powers on an unwilling seller⁴. The appropriateness of applying CPO procedures will be assessed on a case by case basis
- g) Scottish Water will complete formal title search(s) on any area(s) of land they wish to acquire in order to confirm accurately legal ownership of the land in question
- h) Scottish Water should consider confirmation of current use of the land/property and other technical information for site suitability when identifying land it wishes to acquire
- i) As part of the acquisition process Scottish Water may offer to undertake certain accommodation works (e.g., fencing, road improvements, drainage) on adjoining property in the ownership of the vendor. The value of such accommodation works must be made known in the first instance in the overall land acquisition package. This will be negotiated through agreement with Scottish Water and the vendor.
- j) Any correspondence on the proposed land acquisition terms between Scottish Water and the vendor will observe the Requirements of Writing (Scotland) Act 1995⁵ to ensure that such correspondence is not legally binding
- k) Any request to purchase (or lease) additional property for accommodation must not only comply with Scottish Public Finance Manual guidelines but advice should also be sought from the Scottish Government's Property Controls team on the availability of any options within the public estate.
- l) The Heads of Terms report for an acquisition will be passed to Scottish Water Legal Services for the missives of sale and conveyancing to be completed
- m) The legal conveyancing documentation relating to the acquisition will be signed off by the Scottish Water Board/ Directors/Corporate Secretary/legally qualified delegate in accordance with the Scottish Water Designated Level of Authority (DLA) scheme procedure

⁴ Completing a contested Compulsory Purchase Order (CPO) could take in excess of two years

⁵ <http://www.legislation.gov.uk/ukpga/1995/7>

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Section 2: Disposals

The following principles apply to Scottish Water disposals:

- a) Scottish Water holdings of land and buildings are limited to the minimum needed to meet present and planned future requirements
- b) In line with Scottish Government practice, Scottish Water does not retain assets for speculative purposes but may retain assets for future strategic purposes and commercial opportunities
- c) Property holdings of Scottish Water are kept under constant review and surplus assets identified

The disposal of Scottish Water surplus property should take place within three years. The disposal of Scottish Water surplus residential property should take place within six months

- d) The Scottish Public Finance Manual states that the key principle in the disposal of surplus assets is Value for Money and selling organisations should either:
 - i. Obtain the best possible price on the open market, or
 - ii. Dispose of an asset at less than Market Value to deliver wider public benefits consistent with the principles of Best Value, or
 - iii. Transfer under the Guidelines for the Transfer of Property within the Scottish Public Sector

When evaluating options for the treatment of surplus assets, consideration of the acquisition of assets by community bodies should be included, where appropriate. This consideration should be consistent with the principles of Best Value, where wider public benefits may be achieved. Otherwise assets are to be disposed of at Market Value (as defined and used in the Royal Institution of Chartered Surveyors Valuation Professional Standards) but reflecting any special value and the effect of any voluntary conditions imposed by the seller

- e) The duty of Best Value in Public Services is as follows:
 - To make arrangements to secure continuous improvement in performance whilst maintaining an appropriate balance between quality and cost; and in making those arrangements and securing that balance,
 - To have regard to economy, efficiency, effectiveness, the equal opportunities requirements, and the achievement of sustainable development
- f) In accordance with Section 48 of the Water Industry (Scotland) Act 2002 when an asset is proposed to be sold at less than Market Value by Scottish Water it must be approved in advance by the Scottish Government Ministers
- g) Disposals of Property by Scottish Water will normally be by open marketing methods to ensure full value is obtained. Exceptions are:
 - i. Sales to other Public Sector departments, agencies, or sponsored bodies
 - ii. Sales/Asset Transfers to Community bodies that are deemed to have a statutory right under the Community Right to Buy regulations arising from the Land Reform (Scotland) Act 2003 and Community Empowerment (Scotland) Act 2015
 - iii. Sales to sitting tenants where they have statutory rights under Right to Buy legislation pertaining to Agricultural Holdings
 - iv. Rights of pre-emption in favour of other parties or the Crichton Down rules apply⁶
 - v. Negotiated sales when there is marriage value or purchaser has particular rights that restrict the open market value.

⁶ The rules are set out in Scottish Planning Series: planning Circular 5 2011: Disposal of Surplus Government Land- The Crichton Down Rules <http://www.gov.scot/Publications/2011/10/12142906/0>

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vi. Non-marketable properties

- h) All proposed disposals of surplus property by Scottish Water, with the exception of sites extending to less than 0.1 hectares where the procedure is optional, must be notified to the Scottish Government's Property Division prior to the property being advertised on the open market using what is known as "The Trawl" or "internal advertising" procedures. The notification form must be submitted at least one month before the property is advertised on the open market.
- i) The Land Reform (Scotland) Act 2003 allows rural communities with a population of less than 10,000 to apply to register an interest in land and the opportunity to buy that land when it comes up for sale. As amended by the Community Empowerment (Scotland) Act 2015 this right has been extended to all communities, urban and rural, across the whole of Scotland for both land and buildings. Scottish Water recognises its obligations under this Act.
- j) The Community Empowerment (Scotland) Act 2015 has also introduced the right for community bodies to request Asset Transfers, i.e. potential ownership, lease, or use, of land and buildings within the current ownership of the public sector. The Scottish Government has issued formal guidance for public bodies to deal with Asset Transfer Requests – 'Asset Transfer Guidance for Authorities'⁷ The Act provides for such transfers potentially being undertaken for a consideration less than the Market Value where wider community benefits can be demonstrated and any decision is consistent with the principles of Best Value. Any proposed transfer falling into this category will require to follow Scottish Water and Scottish Government approval processes
- k) If a Community Right to Buy application relates to land owned by Scottish Water and is approved by the Scottish Government then Scottish Water is required to follow the Community Right to Buy procedures contained in the Land Reform (Scotland) Act as amended by the Community Empowerment (Scotland) Act 2015 when it proceeds with a disposal of the land. This will entail giving the community the first option of buying the land off-market at a valuation set by an independent valuer
- l) Disposals will be approved by the Scottish Water DLA scheme procedure

Section 3: Leases, Servitudes and Wayleaves

Scottish Water will always pursue outright land purchase as first preference in land negotiations, particularly for an operational asset site. However, in some circumstances this is not possible and a lease may be negotiated.

This policy covers property lease, servitude and wayleave transactions when:

- a) Scottish Water is, or will be, the landlord (landlord leases) or
- b) Scottish Water is, or will be, the tenant (tenant leases)
- c) Scottish Water is approached by individuals, companies, public sector organisations and others seeking to negotiate and acquire wayleave and servitude rights over land and property belonging to Scottish Water for the purposes of laying pipes, cables, overhead lines or others for services or for vehicle or pedestrian access
- d) Scottish Water seeks to negotiate and acquire wayleaves or servitudes for the laying of pipes (other than for Water or Sewage under its Statutory powers), cables, overhead lines or others for services or for vehicle or pedestrian access over land belonging to other parties and such acquisitions are outwith a more general acquisition of land/property

⁷ <https://www.gov.scot/publications/asset-transfer-under-community-empowerment-scotland-act-2015-guidance-relevant-9781786527493/>.

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In these cases, the following principles apply:

- i. Lease transactions should be entered into on the basis of an open competitive market whenever possible
- ii. If this is not possible then it is essential to justify the departure from these powers in terms of the drivers, influences, costs, commercial considerations and risks of any project
- iii. Prior to any Heads of Terms, any correspondence between Scottish Water and the landlord/tenant will observe the Requirements of Writing (Scotland) Act 1995 to ensure that such correspondence is not legally binding
- iv. If tenants or others fail to make rent or other payments within acceptable time-scales Scottish Water reserve the right to take appropriate action to promote payments or to terminate the lease
- v. The Heads of Terms lease will be passed to Legal Services for the transaction to be completed
- vi. The documentation relating to the lease will be signed off in accordance with the Scottish Water DLA scheme procedure
- vii. The Scottish Government introduced the Land and Buildings Transaction Tax (LBTT) in April 2015. LBTT is administered by Revenue Scotland and requires initial notification of transactions and returns to be provided every 3 years for leasehold properties. The tenant is responsible for LBTT notification and where Scottish Water holds a lease to which the legislation applies it will comply with the requirements for initial and three yearly returns.

To be approved by the Finance Director