

Welsh Assembly Government

Housing Transfer

Guidelines

2009

CONTENTS

	Page
Introduction	1
Stage 1 Obtaining Provisional Approval	2
Section 1	2
Checklist	2
Impact assessment	2
Applying for provisional approval	3
Provisional approval information requirements	4
Section 2	8
General information	8
Social and economic regeneration	9
Valuation of stock	10
Rental Assumptions	10
Effect on the HRA	10
Choice of landlord	11
Views of funders	11
Stock condition	11
Conflicts of interest	12
Staff resources	13
Confidential information	13
Use of advisers	13
Tenant advice and involvement	14
The strategic housing function	14
Programme of works	14
Section 3	15
Valuation methodology	15
Valuation	15
Rent policy	15
Rent guarantees	16
Rent assumptions in the valuation	16
The treatment of major works and demolitions in valuations	17
Other assumptions used in the valuations	17
Section 4	19
Capital Finance and treatment of Transfer costs	19
Capital Finance	19
Welsh Assembly Government financial support	19
How such financial support is calculated	20
How the Assembly Government provides the financial	21

support	
Overhanging debt	21
The treatment of costs	22
Overhanging debt	23
Pension deficits	23
Transfer costs	23
Local authority costs	24
- Costs which are a charge to the HRA	24
- Costs which may be defrayed by a capital receipt	24
- Costs to be charged to the Council Fund	25
- Costs of abortive transfers	25
New landlord costs	25
VAT and corporation tax issues	26
- VAT efficiency considerations	26
- Reduction of VAT costs	27
Section 5	29
Partial stock transfer	29
- Rationale for choice of option	29
- Tenant consultation	29
- Stock composition	29
- Effect on the HRA	30
- Viability issues	30
- The transferee landlord	30
- Overhanging debt	31
- Receipts from PRTB	31
- Corporation implications and impact	32
- Regeneration	32
Stage 2	
The pre ballot process	33
Section 1	33
Checklist	33
Liaison with the Welsh Assembly Government	33
Appointment of advisers	33
Pre ballot project plan	34
Tenant consultation	34
Choice of Landlord	34
Registration	34
Formation of the shadow board	34
Establish legal entity	35
- Community mutual model	35
Group structure	36
Board composition and tenant representation	36
Secondment of staff	37
Investment programme development	37

	Physical adaptations	37
	Detailed provisional valuation and business plan	37
	Consideration of environmental issues	37
	Consideration of warranties	38
	Consideration of data sharing arrangements	38
	Determining the requirement for Dowry Gap Funding	38
	Determining the level of overhanging debt	38
	Preparation of the Offer Document	38
	Preparation of pre ballot costs	38
	Section 2	39
	Tenant consultation	39
	Informal consultation	41
	Methods and techniques for consulting tenants	43
	- Showhomes	44
	- DVD	45
	- People with support needs	45
	- The Council tenants and leaseholders stock transfer charter	46
	- Tenants guidance and training manual	46
	- What tenants want	46
	- Tenant empowerment grants (TEGs)	47
	Formal consultation – the “offer document”	47
	- Stage 1 Notice	47
	- The Offer document	48
	- Stage 2 Notice	50
	Section 3	52
	Tenancy agreement and rights to home purchase	52
	Preserved right to buy (PRTB)	52
	Right to acquire (RTA)	53
	Proposed suspension of the RTB, PRTB and RTA	53
Stage 3	Section 1	54
	Ballot	54
	Checklist	54
	Tenants eligible to vote	55
	The ballot result	56
	Negative ballot result	56
	Positive ballot result	56
Stage 4	Section 1	
	Post ballot process	57
	Checklist	57
	Post ballot project plan	57
	Separation of the local authority and proposed new landlord	57

Appointment of advisers	58
Separation of the strategic housing function and landlord function	58
Statutory duties of local authorities	58
Pre and post ballot costs	59
- section 25 consent	59
Allocations and nominations	60
Nominations to tenancies in a transfer landlord's stock	60
Energy performance certificates (EPCs)	60
Selection of staff	60
Appointment of new staff	61
Appointment of chief executive and senior management team	61
Application for charitable status	61
Confirmation of VAT arrangements	61
Confirmation of bank account details	61
Contracts with local authorities	62
Overhanging debt calculation	62
The transfer business plan and final valuation	62
Section 2	63
Agreement with Lenders	63
The funding prospectus	63
Section 3	65
The economic appraisal	65
Assessing the outcome of the economic appraisal	65
Principal financial effects of transfer on public expenditure and appraisal of partial transfers	66
Appraisal of partial transfer	66
Section 4	68
Tenant participation	68
Tenant management organisations	69
Feasibility and development	69
Section 5	71
Registration	71
Registration of the proposed landlord as an RSL	71
Welsh Assembly Government Registration policies and procedures	71
Section 6	73
The transfer agreement	73
The transfer contract	73
Warranties	74
Covenants	74

	Section 7	75
	Obtaining consent to transfer	75
	Consents required	75
	Criteria for granting consent	76
	Signing of the transfer agreement	78
Stage 5	Section 1	79
	Post transfer	79
	Checklist	79
	Payment of overhanging debt	79
	The transfer agreement	79
	Dowry gap funding payment	79
	Monitoring	80
	Transfer set up costs	80
	Post transfer registration policies	80
	Section 2	81
	Closure of HRA	81
	Disposal of property from the HRA	81
	Section 74(3)(d) Direction	82
	To close the HRA	83
	Appendices	85
	1. Key Abbreviations	86
	2. Key definitions and glossary of terms	87
	3. Provisional approval application pro forma	91
	4. Independent tenant advisor	92
	5. Calculation of overhanging debt calculation	95
	6. Example of types of set up costs	97
	7. Welsh Assembly Registration policies and procedures	99
	8. Useful publications	102
	9. Contact details	103

INTRODUCTION

In January 2002 the Welsh Assembly Government (the “Assembly Government”) published the Housing Transfer Guidelines. These guidelines provided advice on the process to be followed once a local authority has resolved to ballot its tenants on a proposal to transfer its housing stock to a Registered Social Landlord (RSL). Since 2002 local authorities in Bridgend, Rhondda Cynon Taff, Monmouthshire, Torfaen, Conwy, Newport and Merthyr Tydfil have transferred their housing stock to RSLs and other transfers are expected. Several supplements have been issued since 2002 to update the guidelines and to reflect changes in housing policy.

These current guidelines (2009) have been updated to incorporate the supplements and to provide a more structured approach to the process.

These revised guidelines should now be followed by any local authority in Wales which has resolved to ballot its tenants on stock transfer proposals as the means to achieve and maintain the Welsh Housing Quality Standard (WHQS).

Using this Guidance

Once the option appraisal has been completed and the local authority has resolved to ballot tenants on its stock transfer proposals there are 5 formal stages in the stock transfer process that every local authority will need to complete (the latter stages in consultation with, and the agreement of, the RSL transferee landlord). These are identified as:

Stage 1 - Obtaining provisional approval from the Assembly Government to proceed with transfer proposals.

Stage 2 - Pre ballot process

Stage 3 - The ballot

Stage 4 - Post ballot process leading up to transfer

Stage 5 - Post transfer process

Local authorities who have a negative ballot result will only need to follow the first three stages of this guidance.

The way each local authority approaches the stock transfer process will differ according to local circumstances and priorities, however, there is a checklist at the start of each stage in this guidance identifying the main activities the Assembly Government expects a local authority to have undertaken.

There are various appendices attached at the end of the guidance with useful information to help local authorities throughout the process including a list of key abbreviations, key definitions and a glossary of terms.

STAGE 1

SECTION 1

Obtaining Provisional Approval

1.1.1 The checklist below identifies the main activities the Assembly Government expects a local authority to have undertaken prior to applying to the Assembly Government for provisional approval to proceed to transfer.

Checklist
Stock condition survey
Option appraisal
Impact assessment
Relevant consultation with tenants and other stakeholders
Initial discussions with the Assembly Government
Local authority resolution in favour of balloting tenants on transfer proposals
Preparation of provisional approval information
Submit provisional approval application

1.1.2 At this stage the local authority should have undertaken a stock condition survey and an option appraisal. The stock condition survey should have been carried out in accordance with the advice contained in the Welsh Housing Quality Standard revised guidance 2008. A copy of this guidance is available on the Assembly Government's website at www.new.wales.gov.uk or can be obtained from the Housing Directorate.

1.1.3 The results of the stock condition survey should have been used in the consideration and development of the identified options i.e. the option appraisal. The option appraisal must have been undertaken in conjunction with tenants and others likely to be affected e.g. Members, leaseholders and local authority staff. The Assembly Government will expect to see evidence of the involvement of these parties as part of the information required by the Assembly Government in considering the local authority's application for provisional approval to proceed with stock transfer proposals.

Impact assessment

1.1.4 It is essential that tenants are properly informed about the implications for meeting the Welsh Housing Quality Standard including the long term effect of a negative ballot result. Therefore, following the option appraisal process, the local authority must carry out an impact assessment on the implications of a 'No' vote, e.g. the loss of the social and economic regeneration opportunities (WHQS plus), the effect on current and future local authority staff and services, and any cuts in local offices etc. It is important that tenants and all stakeholders in the process are clear about the implications of a 'yes' vote and a 'no' vote. This should inform all

consultation material particularly the “Offer Document” which is issued to tenants by the local authority setting out the terms of the transfer.

1.1.5 Once a local authority has resolved to ballot tenants on stock transfer proposals it must notify the Assembly Government in writing as soon as possible.

Applying for provisional approval

1.1.6 Stock Transfers will have significant financial implications for both the Assembly Government and local authorities and, therefore, local authorities will be required to apply for provisional approval from the Assembly Government before proceeding with stock transfer ballot proposals.

1.1.7 Local authorities are, however, encouraged to commence discussions with Assembly Government staff prior to applying for provisional approval to discuss the preparation of the detailed information that will be required before proceeding with stock transfer proposals.

1.1.8 The Assembly Government provides financial support in terms of pre and post ballot costs, however, the financial support period **does not** start until the authority has received provisional approval from the Assembly Government to proceed with stock transfer proposals.

1.1.9 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 tenants along with Council Members and officers will need relevant training and access to information on comparable experiences elsewhere. It is particularly important that tenant representatives have training in this area. This can be achieved through the established tenant participation strategy mechanisms.

1.1.10 The Assembly Government will need to be satisfied when granting provisional approval, that local authorities are committed to the decision to proceed with transfer proposals; have reached this decision in an open and transparent manner; have fully engaged with their tenants; provided their tenants with the facts; and have plans in place to continue the consultation process in the same fashion to enable tenants to make an informed decision in a subsequent ballot.

1.1.11 A local authority will still need to submit a formal application for disposal under sections 32 - 34 and 43 of the Housing Act 1985 prior to transfer and subject to obtaining a positive ballot result. Provisional approval does not confer the Assembly Government's consent to the disposal. Further details on obtaining consent to the disposal can be found in Stage 4 Section 7 of this guidance.

1.1.12 It can take around 2 years from the initial decision to complete a transfer. Local authorities are advised to avoid transfers during February and March due to the closeness to the financial year end. If a local authority fails to achieve the original timetable agreed with the Assembly Government, there is no automatic right for the provisional approval to be extended, but it would normally do so.

1.1.13 Applications for provisional approval can be made at any time of the year but approval must be obtained from the Assembly Government **before the intensive informal tenant consultation period proceeds.**

1.1.14 In deciding whether a local authority should be granted provisional approval to proceed with its transfer proposals, the Assembly Government requires the local authority to submit the detailed information listed in paragraph 1.1.17.

1.1.15 This requirement is to ensure that the local authority does not spend unnecessary time and money on proposals that are under developed. The Assembly will consider whether all relevant procedures have been undertaken and the local authority is proceeding in good faith.

1.1.16 In addition the Assembly Government may consider any other matters it considers relevant and request additional information. Once a local authority has received provisional approval from the Assembly Government to proceed with transfer proposals the local authority will be invited to meet with relevant Assembly Government officials to discuss the next stage in the process- the pre ballot stage.

Provisional Approval Information Requirements

1.1.17 The information described below should be provided to the Assembly Government as soon as possible following the local authority's decision to proceed with transfer proposals and should be attached to an application pro forma which can be found at Appendix 3:

- Description of proposed disposal - the nature of the transfer (e.g. whole or, partial), the type of housing, the number and location of properties, which are proposed to be transferred.
- Rationale for disposal:
 - why the local authority proposes to carry out the disposal;
 - which other options have been considered; and
 - how the disposal fits in with local authority's overall housing and community strategy (see i2i guidance -Surviving Transfer).
- A business plan setting out clearly the assumptions for such items as rents and capital costs of bringing stock up to the target standard.
- The long term sustainability of the stock as social housing once it has been transferred needs to be clearly demonstrated, for example:
 - economic profile, demographics, housing need, historical voids profile.
- The corporate impact of the transfer and the financial implications, for example:

- changes in Housing Revenue Account Subsidy;
- overhanging debt (where relevant);
- expected receipt (where relevant);
- where there is a partial transfer, the impact on the retained stock;

- details of the effect on the Council's General Fund, Direct Service Organisation (DSO), council tax payers, corporate services etc; and
- an impact assessment on the consequences of a 'No' Vote now and in the future.

- Valuation - an explanation of the valuation of the stock to be transferred should be attached. Refer to Stage 1 Section 3 for further guidance.

- The need for investment in the stock and the extent that it will be brought forward as a result of transfer.

- Stock condition information in respect of the stock proposed to be transferred, drawn from the local authority's stock condition survey including:
 - the author, date and scope of the survey;
 - a record of the basic property attributes, including dwelling age, location, client group, build form and construction type;
 - a repairs assessment i.e. the establishment of the nature and extent of defects within the stock to be transferred (including any properties which may be deemed to be defective for funding purposes);
 - current condition of the main elements and components together with estimated costs and year of replacement; and
 - the amount and phasing of the investment.

- Support for the proposals:
 - a summary of the relevant resolutions concerning transfer which have been passed by the local authority;
 - a summary of tenants' (individually and/or through representative organisations) views on the proposed transfer; and
 - details of how consultation has been carried out to date and future plans.

- Tenant participation - the extent to which transfer will deliver a better service for tenants and the potential for greater participation in the management of their homes.

- The nature of the acquiring landlord, which must be a Registered Social Landlord (RSL). The local authority will need to justify its choice of landlord in its application. In considering whether the proposed landlord will be able to satisfy the registration criteria (as an RSL) particular attention will be given to:
 - legal status;
 - structure;
 - proposed composition of the Board; and
 - any proposed constitutional or contractual links between the local authority and purchaser(s) after disposal.
- The extent to which the acquiring landlord would become the predominant or substantial owner of the social housing in the local authority area or particular geographical areas within the local authority.
- The terms of the disposal:
 - proposed allocations/ nominations policy;
 - whether freehold/leasehold;
 - proposed covenants and warranties to be included in the disposal;
 - proposed rent policy and structure – in respect of both transferring tenants and incoming tenants post-transfer, details of any proposed rent guarantee; and
 - proposed use of capital receipt (where relevant).
- The draft timetable and draft project plan up to the ballot and an indication of the expected transfer date in the event of a positive ballot result.
- Partial transfers (if applicable). A local authority should not be left with the poorest and/or more difficult stock which would be expensive to manage and maintain, and be unlikely to attract private finance. Details of the following will be required:
 - the way in which it is proposed to manage the transferred stock;
 - a clear strategy for the management of the remaining stock;
 - whether the proposed geographical boundaries have a rationality and cohesiveness;
 - the sensitivity to distinct needs of local communities; and
 - the HRA consequences fully clarified.

Refer to stage 1 section 5 for further guidance on partial transfers;

- Details of the local authority's proposals on the separation of the strategic housing function and the landlord function; and

- Details of how the local authority proposes to manage the process up to ballot including staff details, funding and reporting lines etc.

1.1.18 In addition, the Assembly Government may consider any other relevant matters and local authorities should be aware of the general information provided in Stage 1 Section 2.

STAGE 1

SECTION 2

General Information

1.2.1 The Assembly Government will only consent to transfer where the transfer landlord undertakes to bring the transferred stock up to the Assembly Government's Welsh Housing Quality Standard (WHQS) within a timetable acceptable to Welsh Ministers; maintain this standard; and can demonstrate realistic plans for doing so. Revised guidance on the WHQS was published in 2008 and can be found on the Assembly Government's website at: www.new.wales.gov.uk or can be obtained from the Housing Directorate.

1.2.2 Transfer is a voluntary process and the Assembly Government cannot give its consent to transfer if the majority of tenants voting in a ballot are opposed to it. Refer to Stage 2 Section 2 for advice on the requirements for tenant consultation. The Assembly Government expects tenants to be fully involved in the landlord selection process and for the proposed transferee landlord to be identified pre-ballot.

1.2.3 It is also essential to brief local authority staff from an early stage. The better the staff understand the proposals, the more they will be able to contribute and the easier it will be to provide reassurance. All staff affected by proposals should be involved, including those working for the Direct Services Organisation (DSO) and other HRA funded positions in support services. Local authorities are advised to appoint an independent staff advisor to advise affected personnel on the local authority's proposals.

1.2.4 The need for early discussion with Assembly Government officials is stressed, particularly where local authority proposals involve complex or unusual features or there is likely to be overhanging debt. This will enable early identification and resolution of potential problems.

1.2.5 Proposals for transfer should fit within a local authority's overall housing strategy and meet identified needs for investment and service provision. They should provide:

- clear evidence that an assessment of likely housing demand and long term sustainability of social housing has been carried out (local housing market assessment). The local authority should refer to guidance on Affordable Housing Delivery Statements (AHDS) when they are available, (expected to be in 2009) which will ask local authorities to assess housing need, set targets for affordable housing and specify mechanisms for meeting the targets. The roles of local agencies and the process will be set out in the guidance. AHDS are an interim measure until Local Development Plans are adopted by the local authority in 2011 or thereabouts;

- an indication of how the transfer proposals form part of the local authority's strategy for tackling social and economic problems and delivering sustainable community regeneration, including where appropriate linkage to the *Communities First* programme;(refer to "Community First Support Network Guide"); and
- details of any partnerships with the private and voluntary sectors.

1.2.6 In the case of partial transfers, the Assembly Government will expect the local authority to demonstrate that it has a clear policy and programme for the effective management and maintenance of the retained stock and it meets the Welsh Housing Quality Standard.

1.2.7 Local authorities should have carried out by this stage 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 initial assessment should have covered an appraisal of the available options, such as continuing with local authority ownership of the stock and take on board the views of tenants and other stakeholders.

1.2.8 The Wales Audit Office under their audit remit may review local authority proposals to ensure that the proposals are in the best interests of the local authority and the wider community.

1.2.9 The Assembly Government recognises that stock transfer can be a valuable means of bringing much needed investment to improve living conditions. However, it is likely that all transfers will have costs which will fall to be met from the Assembly Government's budget. Each stock transfer proposal will be evaluated and a review will be undertaken by the Assembly Government on the basis of financial viability. Refer to Stage 4 Section 3 for further guidance.

Social and Economic Regeneration

1.2.10 The achievement of WHQS and the additional investment it will generate should be a "driver" in stimulating economic regeneration of the area and links should have already been forged with other agencies and the Assembly Government to ensure that the local, and wider, economic benefits are maximised.

1.2.11 The new landlord, in its negotiations with contractors, will be able to emphasise the use of community benefits through for example targeted recruitment and training. Local authorities should refer to the i2i "Can Do Toolkit" for further guidance

1.2.12 The expectation is that the achievement of the WHQS will act as a boost to local employment and help address economic inactivity. Initiatives should be developed with local schools and sub contractors to "drive" employment and training opportunities.

1.2.13 Improvements to homes that increase energy efficiency will help address fuel poverty as well as creating opportunities for local businesses.

Valuation of Stock

1.2.14 The baseline price for the transfer of stock is derived from the Tenanted Market Value (TMV) with the expectation that the rents will remain affordable yet take account of catch-up and future repairs. 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 a sustainable and fundable business plan that achieves the Welsh Housing Quality Standard within a timescale acceptable to Welsh Ministers and maintains this Standard thereafter.

1.2.15 Stage 1 section 3 of the guidelines describes the valuation methodology in detail, including the appropriate discount rate which is currently 6-8%.

Rental Assumptions

1.2.16 An understanding of rental assumptions is key, since valuations are effectively a capitalisation of the net income stream. The Assembly Government's policy is that there should be rational rent structures which take account of the location and quality of dwellings and that rents should not exceed the rent benchmarks set by the Assembly Government for RSLs. An electronic version of the latest rent benchmark guidance produced by the Assembly Government can be found on the Assembly Government's website at: www.new.wales.gov.uk or can be obtained from the Housing Directorate.

Effect on the Housing Revenue Account (HRA)

1.2.17 Local authorities will need to be clear about the effect of a transfer on their strategic housing function, the HRA and HRA subsidy entitlement, particularly in the case of partial housing transfers. A transfer could well affect the local 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 local authorities make an early assessment of these factors as part of the development of a transfer strategy.

1.2.18 Local authorities carrying out a whole stock transfer will be required to close the HRA as part of the overhanging debt agreement with HM Treasury. Assembly Government approval is required to close the HRA. The HRA cannot be closed until all of the property in the HRA has been disposed of. Local authorities should aim to seek consent from the Assembly Government to close their HRA at the earliest opportunity after transfer.

1.2.19 It should be noted that any surplus remaining in the HRA following transfer does not automatically transfer to the Local authorities' General Fund at the point of transfer but only on closure of the HRA. Refer to Stage 5 Section 2 for additional guidance on transferring property from the HRA and the closure of the HRA.

Choice of Landlord

1.2.20 The Assembly Government will only permit transfer to a body that is registered with the Assembly Government as a Registered Social Landlord (RSL). This ensures that the performance of the transfer landlord will be monitored and regulated as necessary to protect the interests of tenants, the wider community and the public purse.

1.2.21 Local authorities will need to consider, in consultation with their tenants, 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, the capacity of current RSLs and the views of key stakeholders including tenants and elected members. Local authorities should, however, bear in mind that it can be easier to implement, and fund, smaller transfers to larger, 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.

Views of Funders

1.2.22 Local authorities should obtain the initial views of funders at an early stage on the fundability of transfer proposals and whether they are likely to meet funding criteria. This is of particular relevance where the proposal might be of a more complex and unusual nature. A local authority should be reasonably confident that a scheme will ultimately be capable of obtaining funding before taking forward proposals. A local authority will be required to issue a funding prospectus at the post ballot stage. Refer to stage 4 Section 2 for further guidance.

Stock Condition

1.2.23 Although a stock condition survey will already have been undertaken at this stage, more detailed 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 purposes and how it can be obtained.

1.2.24 Local authorities should be mindful of the varying information needs of the different parties who will be involved in the process and endeavour to ensure that the brief can cater for future demands, to avoid unnecessary duplication of costs at later stages. The precise amount of information required will depend on the purpose, but a detailed stock condition survey will be required before a transfer deal can be finalised.

1.2.25 The proposed new landlord and funders will need a clear description of the stock to be transferred, information about the tenants and current management issues. It is important that adequate descriptive information is given. The information required is set out in the table on the next page.

Profile of the stock	
Location/type of stock	Where estate(s) are located within a local authority; numbers and type of dwellings; traditional or non traditional; 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, ASBOs
Regeneration activity	Description of major regeneration activity to date and current action

1.2.26 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 'The Welsh Housing Quality Standard revised guidance 2008'. This guidance can be found on the Assembly Government's website at www.new.wales.gov.uk or can be obtained from the Housing Directorate.

Conflicts of Interest

1.2.27 The Assembly Government is keen to ensure that the process of stock transfer is undertaken with probity and in a spirit of co-operation. To this end it encourages the development of procedures which maximise open and accountable practices by all parties to the process.

1.2.28 All local authorities undertaking a transfer must ensure that throughout the process an appropriate degree of independence is established between the disposing local authority and the prospective acquiring landlord in order to avoid conflicts of interest.

1.2.29 The Assembly Government accepts that some officers and Councillors will inevitably have a dual role working for both the disposing local authority and acquiring landlord during the early stages of a transfer and the run-up to the ballot. It is important that the local 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. Local authorities should:

- avoid or minimise the involvement of local authority representatives who are serving on the governing body of the acquiring landlord, shadow or

otherwise, also participating in the decision making process of the local authority 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 conflicts of interest; and
- be particularly careful about conflicts of interest post ballot, when negotiations about the price and terms of sale will take place.

1.2.30 The local 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. Local authorities should consider setting up a separate register covering those members and officers specifically involved in the option appraisal and transfer processes.

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

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

1.2.33 Experience has identified that the process of informing tenants benefit from having a high profile local authority 'champion' with responsibility for promoting the democratic process involved and ensuring that the local authority information to tenants is comprehensive, factually accurate and balanced.

Staff Resources

1.2.34 It is essential that the local authority recognises the significant amount of work that is required at all stages of the transfer process and understands the complexity of the process. Staff resources should be provided to reflect this. Full details will be required as part of the provisional approval criteria.

Confidential Information

1.2.35 During negotiations with the acquiring landlord, local authorities must also ensure that they have in place arrangements for handling confidential information on the valuation of the stock and the terms of the contract.

Use of advisers

1.2.36 The same principles apply to the employment of advisers to assist with 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, particularly where the

same advisers are employed by both the acquiring landlord and disposing local authority.

Tenant advice and involvement

1.2.37 This is a complex but vital element of the consultation process. Refer to Stage 2 Section 2 for further guidance.

The Strategic Housing Function

1.2.38 The strategic housing function must be separated from the landlord function at an early stage following a successful ballot. The local authority is advised to consider the guidance on 'Surviving Transfer- the strategic housing function and retained activities.' at an early stage in the process. The strategic housing function that remains with the local authority must be adequately resourced and the Assembly Government will expect to see initial proposals pre ballot and detailed evidence of this during the post ballot stage.

Programme of works

1.2.39 The timing of refurbishment and associated works are at the discretion of the new landlord in consultation with the local authority and tenants, subject to the agreed deadline.

STAGE 1

SECTION 3

Valuation Methodology

1.3.1 A Tenanted Market Value (TMV) must be prepared for all transfers in the way specified in these guidelines to enable the Assembly Government to compare transfers on a like-for-like basis. The Assembly Government requires local authorities to submit these valuations both electronically and in hard copy in support of their proposals. Any significant changes to the assumptions used in the valuations should be agreed with the Assembly Government in advance of seeking consent to a transfer. Where the transfer involves the registration of a new landlord by the Assembly Government, the valuation has to be agreed before registration can take place.

Valuation

1.3.2 Social housing stock is valued as a going concern. 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 determined using a discounted cash flow model to arrive at the net present value of rents less the catch-up repairs, future repairs, management and maintenance, and improvements costs necessary to achieve the target standard.

1.3.3 In addition to the overall housing stock itself, there may be other aspects to the transfer that will need to be recognised in the valuation e.g. commercial premises, land for future development etc. Whilst it is important that the local 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

1.3.4 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 local authority and the acquiring landlord. The Assembly Government will wish to ensure that the actual level of rents paid by tenants remains affordable and sub-market.

1.3.5 The Assembly Government's overriding principle is that the rent structure should be fair and equitable. Tenants should pay comparable rents for comparable dwellings and services. The local authority and acquiring landlord are therefore required to provide to the Assembly Government details of the proposed rent changes and structure.

Rent Guarantees

1.3.6 Feedback from local authorities indicates that tenants are concerned at the lack of clarity in respect of rent increases post transfer. As a result local authorities can at their discretion under current Assembly Government rent policy now offer guarantees to transferring tenants that rent increases post transfer will not exceed the rent increases they would have paid as council tenants if transfer had not taken place.

1.3.7 Any rent guarantee that is given to tenants should make it clear that this is under current Assembly Government policy, as this may change in the future. The local authority must ensure that any promises made to tenants on rents in both the informal and formal consultation material (the Offer document) takes into account the potential implications for the ongoing viability of the proposed transfer business plan and ensure that Lenders covenants will not be jeopardised.

1.3.8 New tenants i.e. people who are not currently secure tenants of the Council and who move into a home for the first time after transfer are not offered the above guarantee which applies to transferring tenants only. The transfer business plan must be predicated on the assumption that “new” tenants post transfer will be charged RSL benchmark rents as set by the Assembly Government from the start of their tenancy.

1.3.9 RSLs will be required to publish details of their rent policies and their average rents and service charges. Whilst the rental assumptions identified below must be used in preparing the initial valuation model for the purpose of calculating Assembly Government dowry gap funding support, actual rent policies, post transfer, may, at the discretion of the acquiring landlord in consultation with the local authority, diverge from those used in the valuation model.

1.3.10 However, no additional costs that may arise from the divergence will be allowed to fall on the Assembly Government or the Exchequer.

Rent Assumptions in the Valuation

1.3.11 The Assembly Government is concerned to ensure that the rent assumptions used in valuations are in line with the Assembly Government’s rent policy. The Assembly Government takes account of both the starting level of rents for transferring and re-let properties 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 properties should be set as follows:

Transferring tenants rents

Tenants will move to RSL rent benchmark structures as soon as possible following transfer.

For re-let rents

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

1.3.12 Rational rent structures, which take account of location and quality of dwellings, should be in place immediately after transfer for both former council tenants and new tenants. Allowance can be made for phasing in periods.

The Treatment of Major Works and Demolitions in Valuations

1.3.13 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 Valuations

1.3.14 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.

1.3.15 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.

STAGE 1

SECTION 4

Capital Finance and Treatment of Transfer Costs

Capital Finance

1.4.1 The sum received as a result of the disposal of local authority housing stock is the local authority's capital receipt.

1.4.2 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 considering the treatment of any balance remaining.

1.4.3 In accordance with section 59 of the Local Government and Housing Act 1989, 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 full or in part (including any breakage costs on premature redemption of debt) depending on the net receipt available.

1.4.4 For some authorities the amount of capital receipt they receive will not be sufficient to cover the HRA debt outstanding. This remaining debt is referred to as "overhanging debt".

Welsh Assembly Government Financial Support (Capital)

Rationale

1.4.5 Amongst the core objectives identified within Welsh Assembly Government policy is the achievement of the Welsh Housing Quality Standard for all social housing and the continuation of RSL rent benchmarking as the key to affordable rent increases. The process by which any stock transfer valuation is determined is based upon the net income stream arising from the stock portfolio calculated over thirty years and discounted back to present day values.

1.4.6 Consequently the Assembly Government accepts that compliance with the above requirements i.e. defined expenditure and constrained rent income may well depress the calculated valuation and is prepared to provide financial support to the local authorities' stock transfer business plan.

Criteria

1.4.7 The primary criterion is that the local authority must be able to demonstrate compliance with these Housing Stock Transfer Guidelines including the Treasury requirements relating to the funding of overhanging debt. Compliance is also defined to include ongoing liaison with the Assembly Government from the earliest stage of the process.

How Such Financial Support is Calculated

1.4.8 The amount of financial support required and eligible for Assembly Government support is determined by reference to any shortfall between costs of transfer and the valuation receipt. Specifically, support is required where a positive valuation receipt is insufficient to meet the eligible pre and post ballot cost of transfer in full.

1.4.9 Additional support will be required where a negative rather than a positive valuation is determined. Any such negative valuation represents a funding shortfall within the transferee RSL landlord's stock transfer Business Plan and must be met in order to satisfy lenders and the Assembly Government of the new Association's long term financial viability.

1.4.10 The level of rent increase allowed within the RSL rent benchmarking criteria is a constraint on the maximum increase allowable and is **not** a requirement to set increases at that level.

1.4.11 Further, there is no requirement to raise rents set by the local authority to RSL benchmark level (should they be higher) following transfer.

1.4.12 Consequently, a transferee RSL landlord may set rent increases at a lower (but not higher) level than benchmark guidance. However, the effect of projecting lower than benchmark rent increases within the stock transfer Business Plan would result in a reduced valuation, possibly converting a positive into a negative or increasing an existing negative valuation.

1.4.13 In such circumstances any Assembly Government financial support would be limited to the amount determined by a "notional" calculation of support i.e. where the full allowable rent benchmarking increases had been applied within the Business Plan.

1.4.14 Where the projection of lower than benchmark increases results in a (lower) positive valuation, which still covers the total pre and post ballot costs no Assembly Government support would be needed as outlined above. However, the calculation would still be used to determine the extent to which the notional valuation receipt would provide an offsetting reduction in the Treasury overhanging debt funding required.

1.4.15 The effect of the above means that should a local authority, at its discretion, choose to project lower than benchmark rent increases within its stock transfer Business Plan, it would be required to meet any funding gap between the actual valuation receipt and the notional valuation receipt from its own resources i.e. not supported by Assembly Government funding.

How the Assembly Government Provides the Financial Support

1.4.16 The Assembly Government has committed itself to providing support to ensure that local authorities are able to consider the stock transfer option so that tenants throughout Wales are not disadvantaged by the poor quality of the social housing property they live in or its location. However, it is also concerned to ensure that all local authorities are treated in an “even handed” manner by relating financial support to the specific council circumstances.

1.4.17 Consequently, the Assembly Government financial support will be provided on a “phased” basis (annually) in relation to the “earmarked” housing capital resources (the Major Repairs Allowance “notionally” accruing to the council based on the stock numbers transferred) if the transfer had not taken place.

1.4.18 Local authorities are reminded that their lead/financial consultants will need to factor the above arrangements and phasing of any Assembly Government financial support into any stock transfer Business Plan they produce.

Overhanging Debt

1.4.19 Where a local authority disposes of the whole of its Housing Revenue Account stock and the capital receipt is insufficient to repay the estimated debt attributable to the stock, the local authority is said to be left with overhanging debt.

1.4.20 Where a local authority anticipates that it will have overhanging HRA debt following a transfer, it should contact the Assembly Government at the earliest opportunity.

1.4.21 An agreement has been secured with the Treasury which will provide financial support to meet any overhanging PWLB debt and early redemption penalties.

1.4.22 Local authorities proposing transfer are required to demonstrate that the stock valuation represents the ‘best price’ obtainable for the stock commensurate with the need to comply with these guidelines on rent structures and achievement of the WHQS by the agreed deadline.

1.4.23 The Assembly Government will be reviewing proposals where overhanging debt is involved and produce an economic appraisal and comparison of the business plans produced by the local authority (the HRA Retention Plan) and the latest Transfer Plan. This report will provide conclusions on the benefit/cost to the Exchequer of the proposals submitted. The Assembly Government will also produce a housing policy business case relating to the conclusions within the economic appraisal.

1.4.24 Treasury, in considering its decision to fund overhanging debt will scrutinise the economic appraisal and the business case.

1.4.25 The Assembly Government is prepared to assist authorities in those cases where Treasury support will not be available to meet breakage costs not covered by the receipt itself.

1.4.26 Guidance to be used in the calculation of the overhanging debt can be found in Annex 5.

The Treatment of Costs

1.4.27 When considering the need for Assembly Government support in respect of pre and post ballot costs local authorities must ensure that their projections comply with the eligibility criteria set by the Assembly Government, i.e. type of cost and quantum with particular reference to the treatment of internal staff costs. Since these are costs as a direct consequence of the local authorities decision to progress with transfer proposals the eligible pre and post ballot costs (in the event of a yes vote) will be reimbursable but no interest will be allowable on those costs directly.

1.4.28 The local authority will also need to be aware that local authority pension deficits prior to transfer are not eligible for reimbursement within eligible pre or post ballot costs.

1.4.29 Since each individual local authority's circumstances may well vary in certain areas the responsible officials should seek specific advice from the Assembly Government Housing Directorate.

1.4.30 For the purpose of the calculation the "pre ballot" period commences with the notification to the Assembly Government of the decision of the local authority to ballot tenants on stock transfer.

1.4.31 In principle, i.e. subject to review of the type of cost included in the pre and post ballot cost projections, Assembly Government policy is to support pre ballot costs up to 100% in the event of a "no" vote.

1.4.32 For further information the HRA must bear the direct cost of the ballot itself e.g. the fees of the independent organisation carrying out the ballot, since that reflects the landlord's legal requirement to "consult" its tenants on a significant change to their tenancy arrangements.

1.4.33 In the event of a "yes" vote the pre ballot costs (excluding the ballot costs) will be "rolled up" together with the much higher figure of post ballot costs and the total is to be met from the valuation receipt at point of transfer. Where the valuation is projected to be negative then the total will be met from Assembly Government "dowry" support which would also cover the negative valuation itself. Please note that the agreed "dowry" commitment will be funded by annual instalments of grant to the new RSL equivalent to the annual "notional" MRA that the transferring local authority would have received had transfer not taken place up to a maximum of 30 years.

1.4.34 This phasing requirement will need to be built into the Council's 30 year transfer business plan in order to cover the financing costs of a phased dowry payment. Repayment of the total pre and post ballot costs would be the first charge on the phased Assembly Government dowry payments.

Overhanging debt

1.4.35 Turning again to the issue of the repayment of overhanging debt. The funding to repay the debt derives directly from the Treasury and the criteria involved in the calculation are set out in Appendix 5. Specifically, you will note that the Treasury defines the calculation criteria for the debts to be covered under the agreement. Broadly, the Treasury will fund, via the Assembly Government but additional to the Welsh Block Vote, the outstanding historic PWLB debt (plus associated early breakage costs) at point of transfer to the extent that the valuation receipt is unable to do so.

1.4.36 Obviously, given a projected negative valuation, the whole of the PWLB housing debt plus breakage costs would stand to be covered by the Treasury funding agreement. Any premium or discount attributable to the PWLB debt will be absorbed into the funding due from the Treasury.

1.4.37 Should historic housing debt at point of transfer include non PWLB debt according to the Treasury calculation criteria at Appendix 5 then the Assembly Government should be advised as a matter of urgency. The Assembly will consider options on a case by case basis if the debt was incurred funding the refurbishment of housing stock to meet the Welsh Housing Quality Standard and if the maximum amount of dowry support available does not exceed the equivalent of the Major Repairs Allowance (MRA) a local authority would have received in the current year, up to a maximum of 30 years.

Pension Deficits

1.4.38 You will also need to be aware that the Assembly Government will not approve transfer proposals which seek to place liability for projected pension deficits up to point of transfer as a liability of the new transferee RSL which will only be responsible for post transfer pension liabilities. Again broadly, the local authority, at its discretion, can determine the way in which it funds the pre transfer pension deficit so long as the method is legal, within local government funding regulations and is acceptable to your external auditors and the Pension Scheme Administrators.

Transfer costs

1.4.39 The costs which are incurred in undertaking a transfer can be analysed as follows:

- **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. Newsletters serving a wider purpose should not be for statutory consultation.
- **post-ballot costs**, including the costs of arranging and implementing stock transfer, ongoing consultants' fees, legal fees and additional staff costs.

1.4.40 For registered social landlords set up specifically to receive the local authority's stock, these include pre-transfer costs such as the initial costs of renting of office accommodation, additional 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 land tax, funders' arrangement fees, legal fees and registration fees.

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

Local Authority Costs

Costs which are a charge to the HRA

1.4.42 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 and Schedule 3A of the Housing Act 1985, including the cost of any ballot, is considered by the Assembly Government 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 Government'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

1.4.43 Section 42(2) of the Local Government and Housing Act 1989 (the 1989 Act) lists certain kinds of expenditure that 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.

1.4.44 These costs 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.

Costs to be charged to the Council Fund

1.4.45 Any costs of housing transfers not allowed to be charged to the HRA or to the capital receipt; must be charged to any revenue account within the Council Fund other than the HRA. Authorities may also choose to meet the "administrative costs of and incidental to" a housing transfer from any such revenue account.

Costs of abortive transfers

1.4.46 Once tenants have given their mandate to transfer but the Council aborts the transfer the costs arising from abortive transfers must be borne by the HRA or the Council Fund, depending on whether or not they have been incurred in connection with the management of houses. Any unspent funds loaned to the proposed RSL should be returned but if none left unspent the Council must write off the loan.

1.4.47 However, If the Council has made all best endeavours for the transfer to take place then it is aborted through no fault of their own a business case should be submitted to the Assembly Government who will consider meeting some of these costs subject to Ministerial Consent and subject to funds being available.

New Landlord Costs

1.4.48 Local authorities may apply to the Assembly Government under section 25 of the Local Government Act 1988 to enable a local authority to make a loan to a RSL 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.

1.4.49 Loans for the following purposes are, in the Assembly Government's view, examples of expenditure to be treated as capital:

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

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

- staff recruitment and salaries;
- research and consultancy costs;
- legal fees;
- loan arrangement fees;
- land registry and other fees;
- training; and

- publicity, stationery, telephones, photocopying etc.

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

1.4.52 The Wales Audit office will be involved in reviewing all aspects of the local authority involvement from its own regulatory audit perspective.

Vat and Corporation Tax Issues

1.4.53 This is initial procedural guidance on VAT and Corporation Tax issues that should be considered by local authorities during the stock transfer process. Local authorities will be expected to take their own specialist legal and professional advice relating to their own particular circumstances.

VAT Efficiency Considerations:

1.4.54 The transferring local authority will draw up a proposal for the repair and improvement of the housing stock. VAT is a significant element of the cost of delivering the improvements of housing stock to the Welsh Housing Quality Standard.

1.4.55 Whilst it must be a matter for the local authority, in consultation with tenants and other key stakeholders to ultimately decide on how improvements will be structured and delivered, consideration must be given to arrangements that facilitate the reduction in VAT costs borne by both the local authority and the RSL (details are set out in paragraph 1.4.60) .

1.4.56 Detailed proposals for the use of VAT efficient structures should be discussed with the Assembly Government as soon as possible. This is of particular importance if the local authority is expected to transfer with an overhanging debt.

1.4.57 In submitting proposals, which include provision for VAT recovery to the Assembly Government, the local authority should give consideration to the impact of the RSL structure on the effectiveness of the VAT arrangements. **Particular attention must be paid to the corporation tax consequences.** This will involve consideration of the appropriate status of the new body i.e. whether charitable or non-charitable. The Assembly Government expects local authority proposals for transfer to assume RSL charitable status post transfer in order to mitigate the corporation tax consequences. If local authority proposals do not assume charitable status this decision must be justified by a strong business case supported by professional advice; and

1.4.58 In order to properly implement the agreed VAT arrangements, the local authority and transferee RSL will need to work closely together to enable the following:

- clearances from Customs & Excise regarding the VAT recovery; and
- the appropriate procedures for EU procurement; and

- the appropriate legal agreements needed to effectively secure VAT recovery and mechanisms to protect the RSL.

1.4.59 The Assembly Government will review submitted transfer proposals to ensure that the local authority has obtained and considered appropriate legal and professional advice at an early stage.

Reduction of VAT costs

Stock transfer- recovery of VAT on refurbishment work carried out post transfer

Outline of VAT arrangements

1.4.60 The VAT savings can be achieved by the following steps:

- a local authority (LA) transfers the freehold title to the stock to an RSL;
- The sale contracts will refer to the transfer of refurbished stock that is in a modern state or good state of repair. Where that work has not been completed by the LA prior to the transfer, the stock will be transferred with a contractual obligation to modernise the housing stock at the Local Authorities own expense;
- agreement (usually but not necessarily) with the RSL. Under which the RSL will supply the works to the LA that are necessary to allow the LA to fulfil its obligations under the sale contract. The scope of the works would be outlined in the transfer agreement and development agreement.
- the RSL will pay for the stock (at the enhanced value to reflect improvements);
- the RSL will also raise an invoice in accordance with Section 6 Value Added Tax Act 1994, for the works that it will carry out on behalf of the LA. This will constitute a taxable supply by the RSL and will entitle it to recover the VAT it incurs in carrying out those works;
- both parties will complete the financial transactions and account for the transactions within the financial year of disposal. The development agreement will be for the same amount as the enhanced value. For example, where the stock in its current state is worth £1 million and the value (at date of transfer) of works to be undertaken are £10 million then we would envisage the stock being sold for a capital value of £11 million (non business supply by the LA) and RSL invoicing the LA for the works for £10 million plus VAT on the same day;

- the Local authority's obligation to refurbish the stock is matched by the RSL's agreement to carry out the works.

STAGE 1

SECTION 5

Partial Stock Transfer

Rationale for choice of option

1.5.1 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 local authority. Local authorities will need to consider the effect of the transfer on their other services and, particularly, the effect this might have on their corporate structure.

1.5.2 Proposals to transfer less than the whole of a local authority's housing stock should form part of a comprehensive strategy which demonstrates that all its stock will be brought to WHQS within an agreed timescale and maintained at this standard thereafter. This overall strategy must be supported by a HRA 30 year Business Plan which clearly illustrates the achievement of the Standard and its ongoing maintenance during the plan period.

1.5.3 Whilst support for partial transfers will be subject to a tenant vote the local authority must produce an initial rationale for its decision to adopt a partial transfer option. This business case would need to be supported by an independent stock condition survey and option appraisal process covering the whole stock.

1.5.4 If a local authority undertakes a ballot on a whole stock transfer proposal and there is a negative ballot result, the feasibility of a partial stock transfer or a series of partial transfers could be examined by the local authority. In order to inform a decision on this option the local authority should consider approaching the independent organisation conducting the ballot to seek an analysis of voting patterns over postcode areas. In turn it may be possible to link this information on an area and/or an estate basis.

Tenant Consultation

1.5.5 The local authority must be able to demonstrate consultation with the tenants whose properties would be subject to transfer and are therefore entitled to vote.

Stock Composition

1.5.6 Whole stock transfers rely heavily on long term viability deriving from a mix of property types, locations and condition i.e. the "good" less costly to repair stock balances the "poor" more costly to repair properties. Where a local authority proposes a partial transfer the property mix will be of crucial importance in determining transfer viability and private lender interest.

1.5.7 The quantity of stock to be transferred to any one landlord will be entirely a matter for the local authority and its tenants but has to be a viable number of units. Partial transfers may be acceptable where part of an overall strategy. The presumption will be that, in formulating its proposals, the local 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. Local authorities must advise and consult with the Assembly Government before making any binding commitments.

Effect on the Housing Revenue Account (HRA)

1.5.8 When considering the property mix authorities will also need to take into account the effect that the removal of the stock proposed for transfer will have on the HRA post transfer.

1.5.9 Specifically, the effect of the transfer on the rent levels of the remaining tenants must be assessed to ensure that the result of the transfer is at least financially neutral for the remaining tenants within the HRA.

1.5.10 The local authority must also consider the potential effects of a partial transfer on its options to refurbish the remainder of its stock. The initial transfer of a significant proportion of its stock may constrain its options for the remainder e.g. a further transfer at a later date.

Viability Issues

1.5.11 Where the option appraisal concludes that a partial transfer of predominantly “poorer” properties is an integral component of the local authority’s overall strategy then the resultant Transfer Business Plan must clearly identify the financial implications.

1.5.12 It is likely that such a proposal will result in a low or negative valuation which may not attract lenders’ interest. In such circumstances the Assembly Government is prepared to provide financial support on an equivalent basis to that agreed in respect of whole stock transfers subject to Ministerial agreement. “Dowry” funding would be made available to the transferee Registered Social Landlord on an annual basis equivalent to, and capped at, the Major Repairs Allowance notionally related to the stock being transferred i.e. number of properties transferring multiplied by the MRA figure per property. In such cases the transfer Business Plan must be capable of modelling to ensure long term viability and lender participation.

The Transferee Landlord

1.5.13 Depending on the size of the proposed transfer, the condition of the stock and the resultant valuation, it is possible that the new RSL landlord would be unviable as a “stand alone” body. In such circumstances the local authority may consider, subject to Assembly Government approval, seeking subsidiary status within an existing RSL group structure. The potential reduction in the costs of management, repairs administration, procurement and debt servicing may serve to

make such a transfer viable. It is also quite possible that a financially strong “parent” will have the capacity to “subsidise” the debt security of the new subsidiary by using its own “unencumbered” stock on a transitional basis as the transferred stock is refurbished.

Overhanging Debt

1.5.14 H M Treasury has agreed to extend its arrangement to fund “overhanging” PWLB debt and associated breakage costs to partial transfers. Their presumption is that this will be determined by an apportionment of outstanding HRA debt pro rata to the property numbers transferred as a proportion of the whole local authority housing stock. The pro rata approach, whilst simplistic and not taking into account actual debt costs etc, has the merit of being easily understandable and capable of independent verification from local authority HRA returns and audited accounts.

1.5.15 If there is a partial debt write-off on the basis of a pro rata approach there must be no overall additional public expenditure impact as a result. The Assembly Government will undertake an economic appraisal as part of its verification and approval process and to support applications to HM Treasury for overhanging debt funding.

1.5.16 Specifically, where a local authority proposes a series of partial transfers as a means of transferring its whole stock the verification and approval process will ensure that no local authority is given the opportunity to write off more than 100% of its total debt i.e. each partial transfer should collectively result in the same level of debt write off as in a whole stock transfer.

1.5.17 The calculation mechanism to be applied will derive from a local authority’s overhanging debt calculation prepared on a whole scale transfer basis in compliance with the relevant Assembly Government guidance shown at Appendix 5. The Assembly Government will require confirmation of this from the relevant local authority official with the necessary authority.

1.5.18 A pro rata calculation of the debt to be written off would then be made based on the number of units proposed to transfer as a proportion of the whole stock.

1.5.19 Breakage costs relating to the partial debt write off would then be determined by the Public Works Loans Office in consultation with the local authority.

Receipts from a Preserved Right to Buy (PRTB)

1.5.20 The local authority’s proposals in respect of Right to Buy (RTB) receipt “sharing” will be considered by the Assembly Government in relation to the amount of support it agrees to provide, if any, for the partial transfer Business Plan as with whole transfers.

1.5.21 Where the Assembly Government undertakes to provide dowry gap funding the presumption must be that no receipt sharing arrangement with the local authority will be allowed.

Corporate Implications and Impact

1.5.22 The composition and amount of pre and post ballot costs will also be considered as part of the Assembly Government's verification and approval process. These will be subject to discussion and review from the earliest stage.

1.5.23 Again in accordance with the Assembly Government guidelines the local authority will need to consider, and identify, the corporate impact of their proposals on their staffing e.g. TUPE considerations, pension arrangements, warranties and covenants – also their contracting arrangements.

Regeneration

1.5.24 Within any partial transfer submission to the Assembly Government, local authorities will be required to specify their proposals for social and economic regeneration identifying ways in which the investment from a partial transfer will provide benefits to the whole local authority area. This will include opportunities to create and sustain employment and training opportunities within the community.

1.5.25 Local authorities should refer to the Value Wales' step by step guide to community benefit and the i2i "Can Do Toolkit" which provides guidance to social landlords on including targeted recruitment and training within their housing contracts.

STAGE 2

Section 1

Pre Ballot Process

2.1.1 The checklist below identifies the main activities the Assembly Government expects a local authority to have undertaken during stage 2.

CHECKLIST
Formal meeting with Assembly Government
Appoint Advisers
Prepare a detailed pre ballot project plan
Informal consultation with tenants
Identify/establish stock transfer body/bodies
Establish new legal entity
Consider governance arrangements- separation, management, liaison etc
Formation of shadow Board
Secondment of staff
Investment programme development
Detailed provisional valuation and Business Plan
Consider environmental issues
Consider need for warranties to prospective RSL and Funders
Consider data sharing arrangements with prospective RSL
Consider Dowry gap funding agreement
Determine level of overhanging debt
Prepare Offer Document
Formal consultation - Stage 1 notification
Approval of WAG (or Welsh Ministers) needed in advance
Formal consultation - Stage 2 notification
Approval of WAG (or Welsh Ministers) needed in advance
Prepare pre ballot costs

Liaison with the Welsh Assembly Government

2.1.2 Once provisional approval has been granted the local authority are advised to set up a series of regular meetings with Assembly Government staff to discuss progress on the pre ballot project plan; progress on the developing programme of tenant consultation and its role and a regular analysis of the transfer business plan as it develops and tenants aspirations are included.

Appointment of advisers

2.1.3 The local authority is responsible for selecting advisers to assist with the transfer process. Professional advice will be required in areas such as legal, communication, financial and VAT/Tax Treasury Management, staff etc.

Pre ballot project plan

2.1.4 The local authority will be required to prepare a detailed pre ballot project plan clearly identifying the work to be completed prior to the issue of the formal Offer Document with an indicative timetable. This will need to be agreed by the Assembly Government.

Tenant consultation

2.1.5 Tenants should be involved in all stages of the transfer process. An Independent Tenants Advisor (ITA), appointed by tenants, should provide advice to tenants on all the issues surrounding a transfer. Special attention must be paid to meeting the information and advice needs of vulnerable groups of tenants and those from ethnic backgrounds.

2.1.6 The pre ballot stage requires an extensive programme of informal and formal consultation with tenants. This is probably one of the most important decisions that tenants will face on the future of their homes and it is essential that tenants are able to make an informed decision based on the facts. More detailed guidance on tenant consultation can be found in stage 2 section 2.

Choice of Landlord

2.1.7 The local authority will be required to identify and establish the new landlord that will be receiving the housing stock in the event of a positive tenant ballot.

2.1.8 The Assembly Government will need to be satisfied that the local authority has selected the new landlord after taking account of the effect of transfer size on the cost, fundability, viability, and availability of expertise at Board and officer level.

Registration

2.1.9 The Assembly Government's policy is to give consent to transfers only to existing or newly created social landlords registered with the Assembly Government.

2.1.10 Registration takes place during the post ballot stage shortly before transfer. Refer to Stage 4 Section 5 for further guidance.

Formation of the Shadow Board

2.1.11 A local authority will be required to set up a Shadow Board to represent the potential transferee landlord in negotiations with the local authority prior to the issue of the Offer Document.

2.1.12 When considering the recruitment and appointment of Shadow Board members, attention should be given to the Assembly Government Circular RSL 001/09 in respect of permitted payments and benefits. The circular can be found at <http://wales.gov.uk/topics/housingandcommunity/housing/social/management/circulars/0106/?lang=en>

2.1.13 Whilst the expectation is that Board membership will be on a third, third, third basis i.e. Council nominees, tenants and independents, there are advantages in having the views of other sectors of the community on the Board particularly leaseholders.

2.1.14 The Assembly Government would anticipate and encourage the representation of the views of leaseholders to the Board. The local authority may wish to consider that a leaseholder be appointed to the Shadow Board.

2.1.15 The local authority may at its discretion determine whether such an appointment be on a co option basis.

2.1.16 The transferee landlord will be required to produce General and Board Membership policies to the Assembly Government for approval prior to registration.

2.1.17 Applicants for the Shadow Board should be required to make a formal declaration of whether there could be any **“potential Para 2 issues”** if the transfer proceeds e.g. “is the applicant related to any member of the local authority’s staff, who could potentially transfer to the new RSL under TUPE arrangements”.

2.1.18 The authority should consider all declarations and seek legal advice as appropriate. If the Shadow Board Member is appointed after making such a declaration, the Assembly Government would not normally agree for the Board Member to remain in place once the transfer has taken place. The Board Member would be asked to resign upon transfer.

Establish Legal Entity

Community Mutual Model

2.1.19 The Community Mutual is a type of social landlord successfully employed by a number of local authorities wishing to engage with their tenants in developing their stock transfer proposals. Whilst it must be a matter for local authorities and their tenants to ultimately decide on the structure of any new organisation, this model gives far greater influence to tenants than under other models.

2.1.20 This model, promoted by the Co-operative movement develops the concept of mutuality. It offers a real opportunity to create a structure for Wales that reflects the many communities that comprise every local authority area. This model has since been followed in England under the name “Community Gateway”.

2.1.21 The most important aspect of the Community Mutual is that the people who benefit from the services of the landlord (i.e. the tenants) are also required to be not less than one-half of the members or owners of the Community Mutual and their involvement is required for certain “fundamental” elements of the landlord’s business.

2.1.22 The main difference between the Community Mutual and the traditional model for RSLs is the commitment made within the Community Mutual’s constitution, and thereby its culture, to community development and regeneration, to all tenants

being able to be members of the Community Mutual and a proportion of the board, and to the development of local management of housing.

2.1.23 Unlike existing models, however, not only is the business conducted for the benefit of the community, but the organisation is also owned by the community. As mentioned above, not less than half of membership must be tenants. The balance may be leaseholders and those who live in the local community. It therefore helps tenants to feel that their housing organisation is not remote or unaccountable.

2.1.24 Giving tenants real ownership provides the opportunity to create smaller management units, under the 'umbrella' transferring organisation, that reflect the particular size and needs of local communities, and are themselves then managed at a local level by the tenants in those communities. By this means tenants have a real involvement through membership.

2.1.25 Empowering tenants effectively through the creation of community businesses could enable regeneration of those communities at both an economic as well as housing level. Such structures may potentially have greater access to additional funding sources for wider community initiatives than would otherwise be available to traditional RSL models.

2.1.26 A copy of the full model can be found on the Assembly Government's website at: www.new.wales.gov.uk, or can be obtained from the Housing Directorate. A copy can also be obtained from Cobbetts (telephone 0161 833 3333 email: Richard.StJohnWilliams@ cobbetts.co.uk

Group structure

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

2.1.28 Early advice and guidance should be sought from the Assembly Government's Housing Directorate where a transfer involves the establishment of a group structure or there is a proposal that the stock be transferred to a member of an existing group.

Board Composition and Tenant Representation

2.1.29 The composition of the governing body should be such that it has the full range of business and financial skills to be capable of managing a large organisation which will have significant debt at the outset.

2.1.30 The Assembly Government 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.

2.1.31 The Assembly Government will, at its discretion, 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 equipped with suitably skilled and experienced individuals. In considering the composition of the Board the requirements of charity law will need to be taken into account.

Secondment of Staff

2.1.32 It is essential that the local authority recognises the significant amount of work that is required at all stages of the transfer process and understands the complexity of the process. Staff resources should be provided to reflect this with dedicated staff at the right level seconded into a project team set up specifically to manage the process. Previous duties should be backfilled as required. It should be noted that only additional staff costs are eligible pre ballot costs.

Investment Programme Development

2.1.33 Local authorities should develop a detailed investment programme to achieve and maintain the Welsh Housing Quality Standard. This will form the basis of the offer to tenants and must be detailed in the Offer Document.

Physical adaptations

2.1.34 The Assembly Government stresses the importance of authorities taking full account of the arrangements for physical adaptations, including the cost of adaptations post stock transfer, into their business plans and transfer agreements. The transfer business plan should provide adequate resources for the likely demand for physical adaptations so that the promises made to tenants in the offer document can be met.

Detailed provisional valuation and business plan

2.1.35 The basis of valuation is the tenanted Market Value (TMV). The TMV shows the present value of rents less the costs necessary to achieve the standard. Refer to stage 1 section 3 for guidance on the valuation methodology.

2.1.36 Prior to the issue of the Offer document, the Assembly Government requires local authorities to submit detailed provisional valuations and an updated business plan setting out clearly assumptions for rents and the capital costs of bringing stock up to the required standard and its maintenance over the 30 year period. The level of any Assembly Government dowry gap funding support should be identified.

Consideration of environmental issues

2.1.37 Local authorities are recommended to give early consideration to environmental issues. The achievement of the Welsh Housing Quality Standard includes improvements to the environment and adequate resources must be factored into the business plan to achieve this.

Consider the need for warranties to prospective RSL and Funders

2.1.38 Local authorities are recommended to give early consideration to the issue of the warranties that they will be required assuming transfer proceeds. Warranties will be required for both the acquiring landlord and the lender(s) funding the transfer. Refer to stage4 section 6 for further guidance.

Consider data sharing arrangements with prospective RSL

2.1.39 Local authorities are recommended to give early consideration on data sharing arrangements with the prospective RSL that will be mutually beneficial.

Determine the requirement for Dowry Gap Funding

2.1.40 The purpose of Assembly Government dowry support is to offer financial assistance to the landlord receiving the stock, if it is necessary, to ensure that there is a financially viable business plan that is both capable of achieving and maintaining the Welsh Housing Quality Standard and delivers the promises made to tenants in the Offer Document.

2.1.41 The maximum amount of dowry support available must not exceed the equivalent of the Major Repairs Allowance (MRA) a local authority would have received in the current year, up to a maximum of 30 years. The terms of Assembly Government gap funding are not open to negotiation. A copy of the Gap Funding Offer letter template can be obtained from the Housing Directorate.

2.1.42 It is essential that the amount of dowry gap funding is determined and agreed with the Assembly Government prior to the issue of the offer document.

Determining the Level of Overhanging Debt

2.1.43 The local authority should periodically update the Assembly Government of the level of overhanging debt.

Preparation of the Offer document and Tenancy agreement

2.1.44 Formal consultation material must be agreed by the Assembly Government before it is issued. This is a substantial piece of work and sufficient time should be built into the project plan to allow for this. The Assembly Government will need a minimum of 6 weeks to undertake its review.

Preparation of pre ballot costs

2.1.45 The local authority is responsible for preparing a schedule of pre ballot costs which should be submitted to the Assembly Government following a ballot. Refer to stage 1 section 4 for further guidance.

2.1.46 An example of pre ballot costs can be found at Appendix 6

STAGE 2

SECTION 2

Tenant consultation

2.2.1 It is vital that tenants are able to obtain independent advice on the transfer. It is a good practice to employ an Independent Tenants Adviser (ITA) at an early stage to enable tenants to have independent advice. Local authorities must therefore ensure that an independent consultant is appointed to act as Tenants' Advisers prior to development of the detailed stock transfer proposals.

2.2.2 In making appointments the Assembly Government requires authorities to use a consistent set of criteria against which the activities of ITAs should be judged. These are contained in Appendix 4. These cover accountability; impartiality; independence; transparency; quality; and redress.

2.2.3 Local authorities should involve their tenants in the selection and appointment of the ITA. They should only appoint an adviser that is acceptable to the tenants. Where tenants' groups already exist the local authority may wish to involve those groups or to establish a Tenants' Panel for this purpose.

2.2.4 Where tenants express the desire to undertake the selection without local authority involvement, this should be agreed and authorities should provide a shortlist of candidates who fit the parameters and specification agreed with the tenants. This shortlist should be a minimum of three where possible. If appropriate, training for tenant representatives in selecting an ITA should be provided.

2.2.5 The role of the ITA 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 tenants or their representatives, for the Tenants' Adviser setting out responsibilities throughout the transfer process. The Tenants' Adviser should be independent from, and not seen as representing, the views of the local authority, acquiring landlord, or tenant groups.

2.2.6 At the beginning of the transfer process the Tenants' Adviser'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 Government.

2.2.7 It is recommended that the ITA carry out an early test of tenant opinion to assess the degree of understanding and support for a local authority's proposals.

2.2.8 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.

2.2.9 The ITA 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.

2.2.10 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' and where possible, the Assembly Government would expect the acquired landlord to continue with the TMO after transfer.

2.2.11 Where a TMO exists, the management agreement with the council will need to be terminated and replaced with a new contract on the same terms with the acquiring landlord. The ITA can help to negotiate the terms of the new contract.

2.2.12 The ITA should work with tenant representatives and also offer advice to all individual tenants. They should normally issue information directly to tenants both before and after the initial proposal stage. Advisers will usually be expected to submit formal representations to the local authority in response to the initial proposal and to the Assembly Government in response to the final proposal notice.

2.2.13 Tenants' consultative groups can provide a forum for the exchange of information on the proposed transfer 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 Cymru (CIH).

2.2.14 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

2.2.15 Authorities are strongly recommended to set up consultative groups with tenants' involvement from an early stage, as a means of ensuring tenant involvement, co-ordination, and information sharing.

2.2.16 Clear procedures/protocols should be established to ensure a proper dialogue is established between tenants groups, the local authority and the acquiring landlord.

2.2.17 The Assembly Government cannot consent to transfer if the majority of tenants who vote in a ballot are opposed to the transfer. Tenants therefore play an important role in the transfer process and should be involved at all stages.

2.2.18 The Assembly Government attaches great importance to the manner in which local authorities consult their tenants about potential transfers. Consulting tenants on a transfer proposal is a fundamental part of the transfer process.

Informal Consultation

2.2.19 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 local authority has to make an offer to tenants the “offer document” on the terms for the transfer.

2.2.20 To ensure that there is impartial advice for tenants before stock transfer ballots, the Assembly Government as part of the pre ballot process reviews **all consultation material**. Therefore, the local authority is advised to submit informal consultation material to the Assembly Government before it is issued and allow sufficient time for feedback.

2.2.21 Once an authority has reached the stage of preparing the offer to tenants “Offer document” this is known as the formal consultation stage and all information to tenants from the Council or the Independent Tenants Advisor (ITA) must be approved by the Welsh Assembly to ensure its factual accuracy and impartiality.

2.2.22 Welsh Assembly guidance on the stock transfer process requires that in all stock transfers an ITA is appointed to further ensure that tenants receive impartial advice.

2.2.23 The Assembly Government considers that an independent ballot is the best means of demonstrating the degree of support for the transfer. **Authorities are required to hold a ballot for all transfers.**

2.2.24 Assembly Government guidance requires local authorities to ensure that their tenants (and other stakeholders) receive advice and guidance on relevant issues throughout the pre-ballot process as an essential prerequisite to an informed vote.

2.2.25 The aim of consultation is to give all 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.

2.2.26 Consultation material should be measured and balanced. It should not over simplify at the expense of accuracy and coverage and should set out clearly the case for and against transfer.

2.2.27 The information should explain fully the consequences of staying with the local authority and of transferring both now and in the future. The local 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 local 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.

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

2.2.29 It is essential to brief local authority personnel, including housing managers, carers and wardens, Direct Service Organisations (DSOs) and other front-line staff who come into day to day contact with tenants as they can be helpful in explaining proposals to tenants and reassuring them. However, it should be made clear to staff that they should not seek to persuade tenants to vote one way or another.

2.2.30 It is likely that a number of housing staff will be seconded to the new organisation. To avoid possible conflicts of interest, authorities should consider adopting an appropriate Code of Conduct.

2.2.31 In carrying out the consultation exercise, local authorities should adhere to the National Assembly for Wales's Code of Recommended Practice on Local Authority Publicity. This encourages the local authority to explain and justify its proposals and ensures that local authority publicity concentrates on facts or explanation or both.

2.2.32 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 local authorities should therefore consider the need to produce consultation material, especially the formal consultation document, in other 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.

2.2.33 Special attention must be paid to meeting the information and advice needs of vulnerable groups of tenants and those from ethnic backgrounds. Consultation mechanisms should ensure that people with visual impairment and all other relevant disabilities, and those with literacy problems, are able to engage in the consultation process in a full and meaningful way. Consideration should be given to providing material through a range of media catering for all potential client needs including vulnerable groups e.g. in large print, Braille, on the Internet and on audiotape.

2.2.34 The Assembly Government would expect ITAs to consider disability and equality issues and make available a free telephone advice service and consider offering minicom and email facilities throughout the period up to the ballot, where this is justified by the scale of the transfer.

2.2.35 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.

2.2.36 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, which is not subject to transfer proposals, should be informed of the likely consequences of the transfer for them, and their views should be sought.

2.2.37 The statutory procedures are concerned solely with secure tenants or those with an introductory tenancy. They should include tenants against whom there is a suspended possession order as upon commencement of provisions of the Housing and Regeneration Act 2008 the status of tolerated trespassers will no longer exist. Any ballot would only involve secure tenants or those with an introductory tenancy of the disposing local authority.

2.2.38 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.

2.2.39 Authorities should also consult other stakeholders likely to be affected, including leaseholders, local businesses, public services and other neighbouring residents. Careful consideration should be given to 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 set out how long leaseholders would be affected by the transfer and seek their views on the proposal. The ballot of tenants, however, is the primary determinant of the mandate for a transfer.

2.2.40 A local 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.

2.2.41 The Assembly Government 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.

2.2.42 A local 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.

2.2.43 Authorities should have arrangements in place to provide prompt and informative responses to queries from individual tenants or representative groups. All tenants should be given information on where to address their enquiries.

Methods and techniques for consulting tenants during the informal consultation period

2.2.44 The methods and techniques used to consult tenants are not prescribed and will need to be tailored to individual circumstances. These will vary depending on

the size of the transfer, whether whole stock or partial, and the geographical spread of the tenants.

2.2.45 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 accountable process.

2.2.46 The consultation procedure might include a mixture of formal events such as public meetings or exhibitions, tenants' forum meetings or visits to individual tenants. Local authorities should present information in their proposals to tenants in an objective and balanced way setting out the available options and their implications.

2.2.47 The range of consultation methods used will need to take account of the scale of the proposed transfer and the needs of those affected. Pamphlets, leaflets, DVD's, posters, press advertisements, newsletters, meetings, show homes, door-knocking, exhibition caravans and telephone hot-lines have all been used in the informal consultation process.

2.2.48 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.

2.2.49 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. If appropriate, this may include a copy of the stock condition survey and/or the draft business plan.

Show Homes

2.2.50 The effectiveness of the information process to tenants would be enhanced by showing tenants proposed WHQS improvements "on site" via "show homes". Whilst local authorities would be responsible for identifying suitable locations within local communities the assumption is that these would involve the refurbishment of void properties, including associated environmental works so far as practical. They would serve as a focal point for the local tenant electorate both locally and in nearby communities.

2.2.51 The Assembly Government has approved proposals to provide financial support to local authorities to fund the development of "Show Homes" to promote WHQS in areas where local authorities have taken the decision to ballot tenants. Eligible refurbishment costs (to a maximum of £250,000 per local authority) may be included within the "dowry" funding procedure already advised to local authorities. Specifically these costs are to be treated as eligible for inclusion within set up costs following a council resolution to ballot tenants on a potential transfer of their homes.

2.2.52 To the extent that such refurbishment costs fall to be reimbursed within setup costs the Assembly Government would need to be satisfied that costs for refurbishment for these properties would not be included in the long term business plan i.e. cost neutral to Assembly Government budgets.

2.2.53 Authorities should take full account of the expressed views of tenants, and provide feedback on outcomes.

DVD

2.2.54 The production of a short, well produced, DVD explaining the benefits of transfer for tenants enables the local authority to provide information in a format that is easily accessible and understood.

People with support needs

2.2.55 The consultation process should take account of the particular needs and circumstances of tenants in supported housing projects, and reflect good practice guidance on tenant participation as advised in the guidance for implementation of the National Tenant Participation Strategy

2.2.56 In relation to the position for people with support needs the guidance for implementation document states the following:

2.2.57 “The issues associated with engagement with tenants with support needs and residents of supported housing projects can be very wide-ranging and include a wide variety of different support needs. In particular there are particular challenges to enabling tenants of temporary accommodation to engage”.

2.2.58 It is important to recognise the distinct nature of the landlord and the support provider role. The scope of the Local Strategy should limit itself to the former. The Assembly Government is currently developing a strategy for housing related support which will develop policy in relation to service user participation in this service. Specialist support agencies, or staff involved in internal service provision of this kind should be involved in participation initiatives. This should aim to ensure supported tenants are enabled to include their views and the views and experiences of carers or agencies are also secured.

2.2.59 Appropriate mechanism will need to be developed, according to the nature of the users and the landlord service offered to them, for meaningful engagement. This should cover the full spectrum of approaches set out in this guidance but it must be particularly recognised that engagement with formal tenants and residents groups is less likely for these service users. More flexible approaches should therefore be adopted in this arena in particular.

2.2.60 The consultation process must also include ‘hard to reach tenants’ such as those from ethnic backgrounds where there may be language barriers or tenants who have not had a history of engagement with normal participation models.

Aids to Informing Tenants and Other Stakeholders

The Council Tenants and Leaseholders Stock Transfer Charter

2.2.61 The Charter should be issued to all tenants and leaseholders of councils considering stock transfer as soon as possible after the decision has been made to proceed to ballot tenants on stock transfer proposals. The Charter outlines the basic rights and standards of service that any council tenant or leaseholder in Wales involved in a stock transfer should expect from their existing and new landlord. It also covers what can be done if these rights and standards of service are not met.

2.2.62 Copies of the Charter are available from the Housing Directorate and can also be accessed on the Assembly Government's website at www.new.wales.gov.uk

Tenants Guidance and Training Manual

2.2.63 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 tenants along with Council Members and officers will need relevant training and access to information on comparable experiences elsewhere. It is particularly important that tenants' representatives have training in this area.

2.2.64 The Assembly Government has published and issued to local authorities in Wales a guidance and training manual to aid local authorities to develop the skills and knowledge of tenants.

2.2.65 The aim of this guidance, and the associated training materials, is to assist local authorities and their tenants to achieve effective levels of tenant participation. The guidance describes a range of means by which local authorities should, at each stage of decision-making, support and enhance the capacity of their tenants to participate effectively.

2.2.66 It sets out a framework within which local authorities should develop tenants' skills and knowledge, and the standard and indicators by which their success in doing so may be assessed. This training manual can also be accessed on the Assembly Government website at www.new.wales.gov.uk or can be obtained from the Housing Directorate.

What Tenants Want

2.2.67 'What tenants want' is a series of 3 resources developed by i2i – inform to involve, an Assembly Government project to support landlords and tenants in achieving WHQS:

Resource 1- a template for providing information to tenants

Resource 2- a guide on providing information

Resource 3- a directory of good practice on providing information

2.2.68 A Tenant Participation GB database is currently being developed by the Chartered Institute for housing (CIH) for the Assembly Government.

Tenant Empowerment Grants (TEGs)

2.2.69 TEG is an Assembly Government programme to provide funding to local tenant groups exploring ways of increasing involvement and participation with their landlords. Details on how to apply together with information on current and completed projects can be found at <http://www.whq.org.uk/teg/index.php>

Formal Consultation the “Offer” document

- Formal tenant consultation material must be agreed by the Assembly Government before it is issued.
- Authorities are legally required to have a formal consultation, but should only proceed to this stage with the agreement of the Assembly Government.

2.2.70 Authorities are required to give the Assembly Government an opportunity to see and comment on **formal** consultation material before it is issued. Failure to do so may jeopardise Assembly Government funding of pre ballot costs. It will enable the Assembly Government to let the local authority know if there is anything that is unacceptable or if there are concerns about the overall adequacy or comprehensiveness of the consultation material. Drafts of formal consultation material should be submitted at least six weeks before the planned issue date.

Stage 1 Notice

2.2.71 The formal consultation period commences with the issue of the stage 1 notice. The stage 1 notice is issued to tenants with a formal “Offer Document”.

Approval must be obtained from the Assembly Government in order to commence formal consultation.

2.2.72 The aim of the formal consultation process is to seek tenants’ views on the terms of the proposed transfer (the offer to tenants). It should not start until the local authority has made a detailed provisional calculation of the valuation of the properties and has a clear understanding of the nature of the services to be provided by the acquiring landlord.

2.2.73 This will help to ensure that information given to tenants and promises made regarding future policy for 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 – the issue of the “Offer Document”

2.2.74 (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).

2.2.75 The notice must invite representations within a reasonable period. The Assembly Government requires a period of at least 28 days between the service of the notice and the close of consultation.

2.2.76 The local authority is required to consider any representations made within that period and may need to revise their proposals accordingly. The Assembly Government will need to see evidence of this.

The “Offer” Document

2.2.77 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.

2.2.78 The Offer document must contain a copy of the proposed **tenancy agreement** that will be offered to transferring tenants by the new landlord. Further details are contained in stage 2 section 3.

2.2.79 Tenants who transfer will have the preserved right to buy (PRTB) and this must be reflected in the Offer document..

2.2.80 The issues which are expected to be covered in the Offer Document 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 local authority from the tenants to proceed with transfer and, in the case of split transfers, a clear indication of what the local 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 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 Government;
- i. future rents, including how they will be determined for transferring or new tenants, when increases will be implemented and how tenants will be consulted on rents and changes in future rent policy. 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 and register complaints;
- 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. The consultation material should also indicate proposals for adoption of roads, drains and other communal areas;

- p. the proposed management arrangements for sheltered housing and supported housing projects, including proposals for physical adaptations;
- q. performance targets should be included where appropriate;
- r. 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;
- s. 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;
- t. 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;
- u. tenant participation in the new landlord's organisation including a statement of policy and procedures on tenant representation, consultation and participation;
- v. details of existing local authority and new landlord's proposed tenant participation strategy. A clear explanation should be provided where it is not feasible or sensible to continue with the existing strategy;
- w. a copy of the proposed tenancy agreement; and
- x. Details of social and economic regeneration opportunities.

2.2.81 Once the consultation responses on the "Offer Document" have been considered and any amendments made, which must be agreed by the Assembly Government, a Stage 2 notice is issued to tenants.

Stage 2 Notice

2.2.82 (Para 3(3) of Schedule 3A of the 1985 Act): the local authority is required to serve a further written notice on tenants known as the Stage 2 notice:

- describing any significant changes in the proposal;
- saying that objections may be made to the Assembly Government within 28 days or a specified longer period; and

- drawing attention to the fact that the Assembly Government cannot give consent to a transfer if it appears that the majority of tenants who vote in a ballot are opposed to the transfer.

2.2.83 In general, authorities should conduct the ballot of tenants immediately after the service of the Stage 2 notice.

2.2.84 Local authorities should be aware that the Offer Document is a legally binding contract and that all promises contained in the offer document must be kept by the new landlord. It is therefore essential that there are sufficient funds built into the new landlord business plan to deliver the promises.

2.2.85 Local authorities should be aware that there can be no material changes to the “Offer” Document or tenancy agreement after the Ballot has been conducted. There may be some exceptional circumstances whereby minor amendments are acceptable but this is subject to prior approval by the Assembly Government and only if these changes are beneficial to tenants.

2.2.86 It is the responsibility of the local authority to ensure that the version tenants vote upon is both legally and factually accurate.

STAGE 2

Section 3

Tenancy Agreements and Rights To Home Purchase

2.3.1 The acquiring landlord is required to covenant with the local 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 to the Assembly Government as part of an application for consent under section 32 and/or 43 of the 1985 Act.

2.3.2 The agreement should deliver an assured tenancy which is in accordance with the Housing Act 1988; is compatible with the Assembly Government's Regulatory Requirements and fulfils relevant undertakings which were offered to tenants during the consultation period.

2.3.3 Tenancy agreements should be drafted to current best practice standards, taking account of models produced by the Community Housing Cymru.

2.3.4 Normally it will be expected that the non-statutory terms of the local authority's existing tenancy agreement will remain the same or similar in the new tenancy agreement or provide improvements to tenants' rights. Any changes must be explained to tenants during consultation.

Preserved Right to Buy (PRTB)

2.3.5 When a local authority transfers housing to a registered social landlord, transferring tenants who have the right to buy with the local authority will have the statutory Preserved Right to Buy (PRTB) following transfer. This means that they still have the Right to Buy (RTB), with certain modifications, even though the RTB is based on its market value, less a discount related to the number of years the purchaser has been a public sector tenant.

2.3.6 Under the PRTB a tenant's entitlement to discount will continue to accrue after transfer to the new landlord. However, the amount of discount is subject to a maximum of £16,000. In addition, the discount under the PRTB cannot reduce the price below the costs incurred by the landlord on the property over the last 15 years. This rule is generally referred to as the "PRTB cost floor" (see below).

2.3.7 For cases of stock transfer occurring after 30 April 2001 the costs which can be included in the calculation of the "cost floor" are the costs of; (i) acquisition or construction, (ii) improvements, and (iii) repairs or maintenance to the extent that the cost exceeds £5,500.

2.3.8 Also, where the dwelling has no value on transfer to a landlord, the costs may be extended to include; the costs of certain communal facilities (such as a play area or community hall), administrative costs not exceeding £2,000, and

professional and consultancy fees. The PRTB cost floor operates by including costs incurred over the 15 years prior to the date of the application to exercise the RTB.

2.3.9 A tenant buying under the RTB or the PRTB undertakes to pay back, on demand, a proportion of the discount if the property is sold within 5 years. There is no right to service charge loans or discretionary aid from the Assembly Government where legal proceedings are necessary to exercise the RTB.

2.3.10 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 (RTA)

2.3.11 The Housing Act 1996 confers a statutory Right to Acquire (RTA) 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 be able to buy under either the PRTB or the RTA, 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".

Proposed suspension of the Right to Buy, the Preserved Right to Buy and the Right to Acquire

2.3.12 'One Wales' has a commitment to draw down legislation to the National Assembly for Wales that will enable local authorities, (subject to prior Assembly Government approval) to suspend the RTB and the RTA in areas of housing pressure. The proposal, already approved by Assembly Members is still subject to approval by Parliament and in the Privy Council. Once approval has been obtained the Assembly Government proposes to legislate to implement the 'One Wales' commitment. Local authorities will be informed of developments in due course.

STAGE 3

Section 1

The Ballot

3.1.1 The checklist below identifies the main activities the Assembly Government expects a local authority to have undertaken during stage 3.

Checklist
Prepare ballot paper Arrange an independent ballot Inform Assembly Government of ballot result

3.1.2 The Assembly Government will shortly consult local authorities on draft statutory guidance on meeting the requirements imposed on them by paragraph 3 to schedule 3A of the Housing Act 1985 - Consultation before disposal to private sector landlord (as amended by Section 294 of the Housing and Regeneration Act 2008)

3.1.3 For background information the requirements imposed by section 294 are:

- Section 294 of the Housing and Regeneration Act 2008 makes it a **statutory requirement** to hold a ballot of tenants to establish whether or not the tenants wish to the proposal to proceed.
- Although the local authority may conduct a ballot themselves the Assembly Government strongly advises that an independent ballot is held in order to avoid a conflict of interest.
- Paragraph 3 (6) of section 294 of the Housing and Regeneration Act 2008 requires the local authority, at the end of the ballot, to write to all tenants (whether or not they voted) informing them of the result. A majority vote against the transfer would mean that transfer cannot proceed and the local authority should make this clear to tenants.
- Where the majority vote in favour of transfer the local authority must inform tenants of how they intend to proceed and advise the tenants that they have 28 days to make further representation to the Assembly Government.

3.1.4 Following the consultation exercise the Assembly Government will issue a supplement to these transfer guidelines to reflect the new requirements. In the meantime local authorities should take their own legal advice to ensure that they meet the statutory requirements imposed by Section 294 of the Housing and Regeneration Act 2008.

3.1.5 All ballot questions should be expressed impartially and in plain language, and is subject to the agreement of the Assembly Government prior to issue.

3.1.6 It is recommended that the local authority require that the organisation conducting the ballot is instructed to provide feedback on the results, including an analysis of votes within a post code area. This may be useful in the event of a “no” vote to determine if there are any areas where tenants voted in favour of transfer. A partial transfer or series of partial transfers in the future could be considered based on the information provided.

3.1.7 In general, authorities should conduct the ballot of eligible tenants immediately after the service of the Stage 2 notice.

3.1.8 The Assembly Government will consider a simple majority of those voting in favour sufficient to indicate tenant support for a transfer. Stage 1 and Stage 2 notices should state the mandate required by the local authority from tenants to proceed with its proposals and this should bind the local authority’s future action.

3.1.9 The ballot paper should be delivered to each tenant under separate cover from any of the local authority’s or the purchaser’s consultation material. It is normal practice to allow 28 days for the ballot period.

Tenants eligible to vote

3.1.10 Any ballot would only involve secure tenants or those with an introductory tenancy of the disposing local authority. They should include tenants against whom there is a suspended possession order (unless that tenant is not complying with the order and the local authority has taken steps to set a date for possession).

3.1.11 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.

3.1.12 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 must include them in the ballot.

3.1.13 In the case of a partial transfer only those tenants whose homes are affected by the transfer will be eligible to vote in the ballot to address the question of transfer. Occupiers of local authority stock within the area, which is not subject to transfer proposals, should be informed of the likely consequences of the transfer for them, and their views should be sought.

3.1.14 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 local authority considers it reasonable to clarify certain aspects of the proposed transfer. For example, where other organisations make

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. **However, no new issues should be raised.**

The Ballot result

3.1.15 As soon as the result is known the local authority should inform the Assembly Government by telephone and email with details on:

- The total number of votes received shown as a percentage of eligible voters;
- The number of positive and negative votes shown as a percentage of the valid votes; and

3.1.16 The local authority should also provide a copy of the Electoral Reform Services' (or other independent organisation) report on the ballot result as soon as possible which should include a breakdown of the results by post code area where available.

Negative Ballot result

3.1.17 If the majority of tenants who vote are against stock transfer then the stock transfer cannot proceed. The local authority should submit an application to the Assembly Government for reimbursement of pre ballot costs. Examples of eligible pre ballot costs are found at Appendix 6.

3.1.18 The local authority should then attend regular liaison meetings with the Assembly Government to establish how the local authority will achieve the WHQS.

3.1.19 At its discretion a local authority may wish to consider a partial transfer where the ballot results have indicated an area where tenants voted in favour of the proposals.

3.1.20 The local authority may consider a re ballot but will not be permitted to ballot tenants within the life time of the current administration unless a significant change of tenant attitude can be demonstrated.

Positive Ballot result

3.1.21 The local authority should arrange a meeting with the Assembly Government as soon as possible after the ballot result and proceed to the post ballot stage.

Pre Ballot costs are rolled up with post ballot costs.

STAGE 4

Section 1

Post Ballot Process

4.1.1 The checklist below identifies the main activities the Assembly Government expects a local authority to have undertaken during stage 4.

CHECKLIST
Preparation of a Post Ballot project plan for Council and RSL
Separation of LA and RSL
Appoint advisers to Shadow Board
Separation of the strategic housing function and landlord function
Prepare pre and post ballot costs
Application for s.25 consent
Agree allocations and nominations
Provide energy performance certificates
RSL staff recruitment including consideration of TUPE
Apply for charitable status
Confirm VAT arrangements
Confirm bank details
Overhanging debt update
Final Valuation and final business plan
Agreement with lenders
Consider exchequer and public expenditure costs/benefits
Plans for tenant participation
Registration with Assembly Government
Preparation and submission of transfer agreement
Obtain Assembly Government consent to transfer
The transfer

Post ballot project plan

4.1.2 The local authority and shadow board of the proposed new landlord will be required to prepare a detailed post ballot project plan clearly identifying the work to be completed prior to the transfer with an indicative timetable.

4.1.3 This will need to be agreed by the Assembly Government at a meeting with the key stakeholders in the process so that everyone is clear and agree the timetable for key activities leading up to the transfer. This should be held as soon as possible following a positive ballot result.

Separation of local authority and proposed new landlord RSL

4.1.4 Following a positive ballot result, the local authority and the shadow board will need to consider and take professional advice upon, the extent to which each

party requires its own independent advice particularly on the timing and means by which the separation of interests is to be achieved. However, close partnership working will be essential to complete the transfer at the preferred date. Both parties are advised to set up a series of regular meetings with Assembly Government staff.

Appointment of advisers

4.1.5 The local authority and the Shadow Board of the new organisation will need to employ advisers to provide advice on the post ballot process. Whilst there may be a perceived benefit in using the same advisers pre and post ballot to provide continuity, it is essential that arrangements are put in place to ensure that there is a clear separation of interests and that no conflict can arise, such as the use of the same lead and legal advisers by both the acquiring landlord and disposing local authority.

Separating the strategic housing function and the landlord function

4.1.6 The strategic housing function must be separated from the landlord function at an early stage following a successful ballot. The strategic housing function that remains with the local authority must be adequately resourced and the Assembly Government will expect to see detailed evidence of this prior to the consent to transfer. Local authorities are advised to refer to the following guidance which can be found on the Assembly Government's website at: www.new.wales.gov.uk:

'Surviving Transfer- the strategic housing function and retained activities.'

Statutory Duties of Local Authorities

4.1.7 Before granting consent for a transfer, the Assembly Government will need to be satisfied that the local authority and the acquiring landlord are able to meet their statutory obligations.

4.1.8 Part VI of the Housing Act 1996 (1996 Act) places the following duties on local housing authorities:

- each local authority must establish a register (the housing register) of people who qualify to be considered for long term accommodation (secure and assured tenancies);
- each local 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 Government; and
- with limited exceptions, each local 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.

4.1.9 Functions, and responsibilities under homelessness legislation (Part VII of the Housing Act 1996), will remain with authorities after transfer. However, 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 (1994 Act), enables a local authority to contract out the operation of its housing allocations, and many of its functions under the homelessness legislation.

4.1.10 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 local authority. Additionally, Part VI of the 1996 Act allows authorities to choose how they keep their housing register. In particular, section 162(2) allows a local authority to keep its housing register as part of a common register with other RSLs provided the entries comprising the housing register are distinguishable.

Pre and Post Ballot Costs

Pre ballot costs

4.1.11 The local authority should submit a schedule of eligible pre ballot costs to the Assembly Government as soon as possible following a positive ballot result. The pre ballot costs (excluding the cost of the ballot itself) will be rolled up together with the much higher figure of post ballot costs.

Post ballot costs

Section 25 Consent

4.1.12 The local authority should apply to the Assembly Government for a consent under section 25 of the Local Government Act 1988 to enable the local authority to offer financial assistance in the form of a loan to the Association being set up to receive the transferring stock. Details of eligible post ballot costs can be found stage 1 section 4 and an example is attached at appendix 6 although each transfer will differ.

4.1.13 At this point in time an initial assessment should be made of the amount of the loan. A final assessment of the amount will need to be provided to the Assembly Government when the local authority applies for consent to transfer.

4.1.14 The pre and post ballot costs are met from the valuation receipt at point of transfer. Where the valuation is projected to be negative then the total cost will be the first call from Assembly Government dowry support

4.1.15 The Assembly Government expects early agreement on issues such as pre and post ballot staff costs and the mechanism for the funding of warranties.

4.1.16 The Assembly Government requires written confirmation from the local authority and the Shadow Board that the set up costs total (to be entered into the Transfer Agreement schedules and paid back following transfer) have been agreed

by both parties. This will be required prior to the consent submission being sent to the Minister.

4.1.17 If there are material disagreements between the parties then the Assembly Government should be advised and consulted.

Allocations and nominations

4.1.18 Authorities contemplating transferring stock should have a clear strategy that defines the need for social housing in their areas. Nomination agreements between local authorities and registered social landlords should be designed to address identified needs.

Nominations to Tenancies in a Transfer Landlord's Stock

4.1.19 The 1996 Act requires registered social landlords to co-operate with local authorities in offering accommodation to people with priority on the local authority's housing register and in offering assistance to homeless persons. Assembly Government policy, requires the transfer agreement between the Council and new RSL landlord to allow the Council at least 66% nomination rights to vacant properties post transfer although we would encourage a level of 75%.

Energy Performance Certificates (EPCS)

4.1.20 Local authorities should seek professional advice from their consultants to ascertain whether Energy Performance Certificates are required for transferring stock. This is not an area devolved to the Assembly Government and is being implemented in England and Wales by Communities and Local Government (CLG) and the following CLG guidance currently applies:

<http://www.communities.gov.uk/publications/planningandbuilding/epclandlordguide>

<http://www.communities.gov.uk/publications/planningandbuilding/epcsforlandlords>

4.1.21 Any costs associated with the provisions of EPCS should be discussed with the Assembly Government at the earliest opportunity.

Selection of staff

4.1.22 Selection of staff by an acquiring landlord should be at its own discretion. For a local authority sponsored landlord, the local authority may identify key senior staff to 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.

Appointment of new staff

4.1.23 When considering the recruitment and appointment of new staff members, attention should be given to Welsh Assembly Government Circular RSL 001/09 in respect of Permitted Payments and Benefits. The circular can be found at <http://wales.gov.uk/topics/housingandcommunity/housing/social/management/circulars/0106/?lang=en>

4.1.24 The Board of the new RSL should ensure that appropriate policies, procedures and training are put into place to ensure that the appointment of new members of staff do not result in a breach of paragraph 2 of the circular.

Appointment of Chief Executive and Senior Management team

4.1.25 The Assembly Government will wish to satisfy itself that job descriptions and person specifications properly identify the requisite qualifications and necessary experience for posts at this level. The local authority and RSL will need to consider TUPE advice in consultation with their professional advisors to identify whether existing staff meet the criteria for direct appointment. Where this is not the case the clear expectation of the Assembly Government is that the recruitment process will be open and transparent particularly evidenced by an open advertisement available to external candidates.

Application for charitable status

4.1.26 The Assembly Government will require confirmation that the proposed RSL has sought professional advice in respect of charitable status in order to mitigate corporation tax consequences.

Confirmation of VAT arrangements

4.1.27 The Assembly Government will require confirmation that arrangements have been put in place that will facilitate the reduction of VAT costs. Refer to stage1 section 4 for further guidance.

Confirmation of bank account details

4.1.28 The local authority should provide details of the account where the overhanging debt payment should be made. This must be emailed to the Assembly Government by a senior finance officer and include details of the name of the bank, the address, account name and sort code. This should be received at least 4 weeks before the proposed transfer date.

4.1.29 The proposed new landlord should request a PL8 from the Assembly Government to confirm bank account details. This should be completed by the Director of finance and returned to the Assembly Government in hard copy at least 4 weeks before the proposed transfer date.

Contracts with Local Authorities

4.1.30 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 Government should be notified of any contractual arrangements that the local authority proposes to enter into with the acquiring landlord under this legislation.

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

4.1.32 The Assembly Government'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. A number of tests will be applied to ensure that the contracts do not fetter the independence of the landlord.

Overhanging debt calculation

4.1.33 The local authority will have provided the Assembly Government with an estimate of the overhanging debt and associated breakage costs during the provisional approval stage and the pre ballot stage (calculated in accordance with Assembly Government guidance which can be found at Appendix 5). During the post ballot stage updated estimates will be periodically required.

4.1.34 Local authorities are advised to make contact with the Public works Loan Board (PWLB) a few weeks prior to transfer to discuss the process and expected transfer date. Refer to Stage 5 Section 1 for details of the mechanics for payment of overhanging debt.

The Transfer Business plan and final valuation

4.1.35 The transfer business plan should be updated throughout the post ballot process leading up to a final valuation and final business plan. These are submitted to the Assembly Government with the Transfer Agreement at the appropriate time as supporting documents.

STAGE 4

SECTION 2

Agreement with Lenders

The funding prospectus

4.2.1 Local authorities are required to consider the most effective funding options to ensure public sector financial support is minimal.

4.2.2 Once the Shadow Board has approved the funding prospectus and draft business plan, local authorities are required to submit these to the Assembly Government for agreement prior to issue.

4.2.3 The local authority should also submit a cover letter accompanying the documents that confirms:

- the business plan and funding prospectus has been approved by the Board;
- that the business plan complies with a maximum of dowry gap funding of MRA over 30 years;
- that the business plan can deliver the promises made in the "offer document"
- that the funding prospectus is issued with the template dowry gap funding agreement making it clear that this is not open to negotiation; and
- that if appropriate a securitisation quote has been commissioned or advice on how the securitisation requirement is being approached.

4.2.4 The Assembly Government will require up to 5 working days to approve the funding prospectus and draft business plan.

4.2.5 The funding prospectus should be issued with a copy of the Assembly Government's template dowry gap funding agreement. This makes clear to prospective funders the level of Assembly Government dowry gap funding which is not open to further negotiation. A copy of the dowry gap funding template can be obtained from the Assembly Government's Housing Directorate..

4.2.6 For those transferee RSL landlords anticipating peak debt in excess of £100m this will include the need to obtain a securitisation quotation. Where a securitisation quotation is required, local authorities will be expected to approach an independent "securitisation" expert, alongside its approaches to banks and building societies. The detailed report must be provided to the Assembly Government.

4.2.7 Local authorities will be expected to submit detailed funding quotes to the Assembly Government and provide a report outlining the reasons for choosing a particular funding package. The Assembly Government will consider the content of the report in assessing the gap funding/dowry support it is prepared to offer the transferee landlord.

4.2.8 The Council and the Association should be aware of the need to ensure that there is adequate asset cover to secure the private finance and the Association will need to take their own professional advice on this.

STAGE 4

SECTION 3

The Economic Appraisal

Assessing the Outcome of the Economic Appraisal

4.3.1 Housing transfers can have significant financial effects on the public sector. The precise impact varies according to a local 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.

4.3.2 As part of the process of assessing transfer proposals, including complex schemes involving a significant element of transfer), local authorities wishing to undertake a housing transfer, whether whole stock, split or partial, are required to provide detailed information during the post ballot process to the Assembly Government.

4.3.3 The Assembly Government will undertake a full financial appraisal of public expenditure effects and prepare a business case to HM Treasury to support the overhanging debt application.

4.3.4 The economic appraisal is undertaken by officials within the Economic Advice Division of the Assembly Government who will contact the local authority to request the detailed information requirements.

4.3.5 Details are required on the latest version of the transfer business plan model and the latest available version of the HRA business plan. Further discussions may be needed to discuss the details of the models with the authors.

4.3.6 The local authority should provide contact details of the relevant official as soon as possible post ballot.

4.3.7 Split transfers may have to be treated as partials if there is a significant lapse of time between the first transfer and the remainder.

4.3.8 The appraisal alone will not necessarily determine whether a transfer can or should go ahead. It is one of the key issues which the Minister will take into account in considering whether to grant consent to transfer.

4.3.9 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.

4.3.10 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 transfer should seek advice on these aspects from the Assembly Government at an early stage.

Principal Financial Effects of Transfer on Public Expenditure and Appraisal of Partial Transfers

4.3.11 The financial effects of transfer on public expenditure are assessed essentially in terms of the public sector borrowing requirement (PSBR) and involve consideration 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.

4.3.12 A local authority which transfers all of its stock will be required to close its Housing Revenue Account (HRA). It will therefore no longer be subject to HRA subsidy.

Appraisal of Partial Transfers

4.3.13 A partial stock transfer is where a local 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 local authority's total stock, or it may be as much as 50 per cent (or more) of the stock of a local authority.

4.3.14 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.

4.3.15 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.

4.3.16 It is important that a local authority considers the effects of the proposed partial transfer on its HRA and HRA subsidy entitlement. There may be either a net cost to a local authority's HRA, which would have to be borne by the tenants who remain with the local authority, or a net gain.

4.3.17 The effect of the transfer is unlikely to be 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.

4.3.18 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 Tenant Market Value (TMV) therefore is the net present value over 30 years of the excess of gross rents

over management, maintenance and repair expenditure. The discount rate currently in general use by the Assembly Government is 6-8% but this may be varied at the Assembly Government's discretion. The net transfer receipt is the transfer receipt after the reimbursement of eligible set up costs.

4.3.19 The housing element of the HRA subsidy calculation (i.e. the notional HRAS surplus or deficit) may rise or fall as a result of a partial transfer.

STAGE 4

SECTION 4

Tenant participation

4.4.1 Transfer landlords must comply with the relevant sections of the Assembly Government's Regulatory Code for RSLs registered in Wales. This includes requirements for acquiring landlords to provide information to tenants, consult them, and offer opportunities to influence and participate in the provision of housing services and the management of the organisation.

4.4.2 Acquiring landlords will be required to include tenant representation (normally a third of available places) on its governing Board. Arrangements should give tenants the opportunity to develop the extent of involvement desired, including the chance to take full management responsibility, in partnership with their landlord. Any proposals to increase the percentage representation of tenants on the Board should be discussed with the Assembly Government at a very early stage.

4.4.3 Consideration must be given to the implications of higher levels of tenant representation in relation to the status (charitable / non charitable) of the new landlord.

4.4.4 Effective tenant participation at all levels should be facilitated as this helps to prevent all (not just tenant) board members from becoming isolated from the tenants they house and should help to ensure that there is a succession of potential new tenant board members.

4.4.5 The Assembly Government expects the acquiring landlord to draw up a policy to achieve effective accountability to its residents, covering the provision of information, participation and complaints.

4.4.6 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.

4.4.7 Acquiring landlords will need to develop a Local Tenant Participation Strategy and action plan in conjunction with their tenants. The Strategy should assist the landlord to plan and decide, in conjunction with their tenants, how they will ensure that tenant participation is a key feature of all services provided.

4.4.8 In developing local strategies, social landlords and their tenants are expected to take into consideration information contained in the National Tenant Participation Strategy for Wales (May 2007) and the Developing Local Participation Strategies: Guidance for Implementation (May 2008). Landlords and tenants can agree to develop a Tenant Participation Compact as well as a local strategy.

4.4.9 Authorities should consider whether the Independent Tenant Adviser should help develop suitable arrangements for post-transfer tenant consultation and participation. Local authorities considering a stock transfer should ensure that transferring tenants continue to enjoy at least the same privileges they enjoy under the local authority Tenant Participation Strategy. Where it is not feasible or sensible to continue with the existing Strategy, the reasons for this should be sound and transparent and the new landlord should commit resources to producing a new Tenant Participation Strategy which should reflect the existing level of rights set out in the Local Authority Strategy.

Tenant Management Organisations (TMOs)

4.4.10 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' and where possible, the Assembly Government would expect the acquired landlord to continue with the TMO after transfer.

4.4.11 Where a TMO exists, the management agreement with the local authority will need to be terminated and replaced with a new contract on the same terms with the acquiring landlord. In cases where it is not feasible or sensible to continue with the existing management arrangements, the new landlord must justify any decision not to continue with the existing TMO by providing sound and transparent reasons.

Feasibility and development

4.4.12 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 on completion or development.

4.4.13 The Assembly Government will consider funding the completion of any consequent RTM feasibility study, and where appropriate, 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 local authority (i.e. 75% contribution towards development costs with a 25% contribution from the acquiring landlord).

4.4.14 However, the Assembly Government would be less minded to support a TMO if the RTM notice were served following the announcement of a successful stock transfer ballot. Further information on the circumstances in which funding may be approved is available from Assembly Government officials.

4.4.15 The Assembly Government requires RSLs to provide positive opportunities for tenants to participate in or influence the management of their housing and related services. Although development of a tenant management organisation is one way of meeting the requirement, the present legislation precludes RSLs tenants being given the right to establish a TMO. Although tenants lose their statutory right

to manage in the case of stock transfer RSLs should also be open to proposals from tenants who wish to take on the management of some housing services through the development of a tenant management organisation.

4.4.16 Social housing organisations should encourage and support interest in regards to tenant management and explain:

- how it can be explored further
- where tenants can get more information, and
- how they can access independent advice, support and funding.

4.4.17 Additionally transfer landlords may wish to offer tenants these rights upon transfer by means of a contract

4.4.18 **Ownership models** - Some tenants may be interested in owning as well as managing services, for example through a co-operative or Community Housing Mutual form of organisation. There are circumstances in which these models may not be appropriate, but social housing organisations should be willing to explore their feasibility where tenants seek to do so.

STAGE 4

SECTION 5

Registration

Registration of the proposed landlord as a Registered Social Landlord (RSL)

4.5.1 Registration can only be granted to established legal entities, the form of which is a matter for the transferring local authority and acquiring landlord. The purpose of registration is to ensure that the transfer landlord will remain permanently subject to monitoring and regulation in the interests of tenants and the wider community. An Assembly Government lead officer will be appointed to liaise with the local authority throughout the registration process. The Assembly Government will only grant registration once it is satisfied that the new body meets its formal registration criteria.

4.5.2 The new landlord receiving the housing stock from the local authority must be registered with the Assembly Government. The process of registration commences in the post ballot stage although actual registration does not happen until Ministerial consent to the transfer has been given.

4.5.3 The criteria for registration are set out in a Registration Pack that can be obtained from the Regulation branch of the Housing Directorate. 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 the transferring local authority. The Assembly Government will only permit the area of operation to expand into the area of a neighbouring local authority if the local authority concerned specifically supports this.

4.5.4 Following a successful ballot the local authority should apply to the Assembly Government's Housing Directorate for a Registration Pack.

4.5.5 The acquiring landlord will need to be able to demonstrate to the Assembly Government that it is capable, independent and free standing. The Assembly Government 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 local authority through any continuing service provision. The local authority's membership or share holding in an acquiring registered social landlord, whether direct or indirect, must be a minority interest.

Welsh Assembly Government registration policies and procedures

4.5.6 Appendix 7 provides a matrix on the minimum policy requirements that will need to be provided to the Assembly Government before a new 'Large Scale Voluntary Transfer' (LSVT) may be registered. Some are required pre transfer, some post transfer; and for others the Assembly Government requires confirmation that

they are in place. This is by no means an exhaustive list and additional policies may be required or provided to complete the registration process.

4.5.7 Pre registration policies and procedure documents need to be provided and agreed by the Assembly Government as soon as possible during the post ballot process and may be submitted on a 'drip feed basis' as and when they are ready and at least four weeks prior to the projected date of transfer. Post registration policies and procedures will need to be provided within eight weeks of transfer.

4.5.8 The proposed new landlord should submit an application for registration within four weeks of the proposed transfer date.

4.5.9 Although registration does not occur until the point of transfer, a registration number will be supplied to the proposed new landlord for limited use in the weeks leading up to transfer.

STAGE 4

SECTION 6

The Transfer Agreement (Transfer Contract) and Consent to Transfer

4.6.1 The actual sale of housing and the future relationship between the local authority and purchaser is governed by the "Transfer Contract". This contract has to be submitted to the Assembly Government in support of the local authority's application for consent to transfer council house stock under section 32-34 and/or 43 of the Housing Act 1985.

4.6.2 Two copies of the transfer agreement, associated schedules and the supporting documentation should be submitted to the housing directorate and sent electronically to the appropriate official.

4.6.3 This is a significant and complex part of the post ballot process and the amount of work involved should not be underestimated. Several stakeholders are involved and close partnership working and cooperation is essential to facilitate a transfer on the preferred date.

4.6.4 The date for the submission of the transfer agreement, supporting documentation and application for consent to transfer will have been agreed by all parties at the beginning of the post ballot process and reflected in the post ballot project plan. Experience from previous transfers indicate that up to 8 weeks should be built in to the project plan for the review of the transfer agreement and a further 4 weeks to obtain Ministerial consent to transfer.

All endeavours should be made to comply with the agreed timetable to facilitate transfer on the preferred date.

The transfer Contract

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

- the transfer agreement and warranties which determine the terms of the sale of the housing stock;;
- 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;
- an agreed disputes procedure;
- draft conveyance documents; and
- future Right to Buy receipts sharing arrangements.

4.6.6 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 local 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.

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

Warranties

4.6.8 The transferring local authority will be required to provide warranties 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). Typically warranties may be required for such areas as:

- Proof of asset title;
- Transferring staff;
- Major defects; and
- Environmental issues etc.

4.6.9 Authorities are recommended to enter into early discussions on warranties through consultation with their advisers, as offers of funding may ultimately be dependent 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.

Covenants

4.6.10 The purchaser should covenant with the local authority to abide by any promises made to transferring tenants during the consultations conducted in accordance with Schedule 3A of the Housing Act 1985. Covenants by the purchaser in favour of the local authority which affect the rights and welfare of the tenants should be secured by a declaration of trust by the local authority in favour of the transferring tenants.

4.6.11 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 between landlords.

STAGE 4

SECTION 7

Obtaining Consent to Transfer

4.7.1 Authorities and their advisors should have informed the Assembly Government at the beginning of the post ballot stage of the date on which they would like consent to be granted to help ensure completion within the required timescale. Whilst it is accepted that the parties to the proposed transfer will need a projected date to work to, this “working” date **should not be publicised** until it is certain to avoid undue pressure and the raising of tenant expectations.

4.7.2 A formal application to transfer should be made at least four weeks before the date when consent is required. This issue will have been the subject of early discussions with the Assembly Government prior to the preparation of a post ballot project plan.

Consents Required

4.7.3 The following represent the usual consents required but it is not an exhaustive list and the parties to the transfer will need to take its own legal advice.

Section 25 of the Local Government Act 1988
Sections 32-34 and/or 43 of the Housing Act 1985
Section 133 of the Housing Act 1988
Section 9 of the Housing Act 1996
Section 171(D) of the Housing Act 1985

4.7.4 The principal consents required for a transfer to take place are under sections 32-34 and/or 43 of the Housing Act 1985. Section 32 enables a local authority to dispose of land held for the purpose of Part 2 of the Housing Act 1985 (Provision of Housing Accommodation) and section 43 enables a local authority to dispose of housing not acquired or appropriated for the purposes of Part 2 of the same Act.

4.7.5 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 Housing Act 1988) will be subject to the consent of the Assembly Government 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 mortgagees in possession. The Assembly Government 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

4.7.6 Disposal of housing owned by RSLs (including disposal by way of security for a loan) requires the consent of the Assembly Government 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

4.7.7 At the same time as a local 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. The detail of the expenditure that is allowable is given in stage 1 section 4 of this guidance.

Criteria for Granting Consent

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

- details of the way in which the local authority intends to provide and resource its strategic housing function post transfer;
- that the council's consultation exercise has been properly carried out;
- 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 Government;
- that the acquiring landlord is independent of the council;
- that there is a long term demand for the properties being transferred;
- that the stock valuation has taken into account the standards defined by the Assembly Government and 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.

4.7.9 In addition the Assembly Government may consider any other matters it considers relevant.

4.7.10 Before consent can be granted, the Assembly Government will require the following information which should be submitted with the transfer agreement as supporting documentation:

- Council minutes resolving to pursue a transfer;
- Sales contract between local authority and purchaser, including:
 - contractual arrangements for use of LA services by purchaser;
 - procedure for allocations and nominations;
- Copies of prospective purchaser's registrations with, where appropriate, the Registrar of Friendly Societies, the Registrar of Companies or the Charities Commission or, where appropriate, confirmation of charitable exemption issued by Her Majesty's Revenue and Customs;
- Details of purchaser's governing body, membership, shareholders or members;
- Information about any ongoing contractual relationships 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;
- Local authority external and housing debt at transfer;
- Finalised Business Plan;
- Details of the funders, the total facilities and repayment terms (copies of the funding agreement should be provided);
- Certificate from the local authority that tenant consultation has been carried out in accordance with schedule 3A of the Housing Act 1985;
- Tenant consultation documents, including copies of notices served, the offer document, briefing used at meetings, ballot papers; methods of consultation and a list of commitments made during consultation;
- Result of ballot including numbers entitled to vote and numbers voting;
- Details of representations made by any other parties who have an interest in the transfer (e.g. long leaseholders) and responses to these;
- Copy of the proposed tenancy agreement;
- Confirmation of any set up costs for the new landlord approved under section 25 of the Local Government Act 1988.

4.7.11 It is the Assembly Government's practice not to give consent to a transfer until the final version of the transfer contract and supporting documentation has been received and agreed.

4.7.12 The Assembly Government appreciates that some of the documentation on the above list, such as some of the schedules to the transfer contract and the funding agreement, will not be finalised until near to the date when consent is expected to be granted. However, adequate time is required to consider these documents before consent can be given so authorities are advised to provide a draft of the transfer contract which should be at least 95% complete and a draft funding agreement by the deadline agreed at the beginning of the post ballot stage.

4.7.13 The Assembly Government requires that two sets of the near final version of the transfer agreement and associated schedules are submitted to the appropriate official in the housing directorate. Each set should be presented in a lever arch file with an appropriate contents page. Electronic copies should also be made available.

4.7.14 The Assembly Government also requires that two sets of the supporting documentation are also submitted. Each set should be presented in a lever arch file with a contents page and each document should be clearly referenced.

4.7.15 Once the Assembly Government has considered the contents of the transfer agreement and supporting documentation from a housing policy perspective legal instruction will be prepared for Assembly Government lawyers. A period of intense discussions take place between the lawyers of all stakeholders until a final version of the transfer contract is agreed.

4.7.16 Once a final version of the transfer contract has been agreed the Assembly Government requires one copy of the final bound version of both the transfer contract and the loan facilities agreement for office retention, one copy to append to the Ministerial consent submission plus as many copies as are required to be authenticated by other parties preferably before the consents are issued.

4.7.17 Where the full bound version is not available pre transfer this must be provided to the Assembly Government within three months of transfer (see Stage 5).

4.7.18 A period of up to four weeks should be allowed for the Minister to consider the application for consent to transfer and this period needs to have been built into the post ballot project timetable.

Signing of the Transfer Agreement

4.7.19 Once Ministerial consent has been granted the local authority and proposed RSL should arrange a date for the official signing of the transfer agreement to complete the transfer.

4.7.20 Once the transfer contract has been signed the Assembly Government should be formally informed as soon as possible so that the process for the overhanging debt payment can proceed. Refer to stage 5 Section 1 for further details.

STAGE 5

Section 1

Post Transfer

5.1.1 The checklist below identifies the main activities the Assembly Government expects to be undertaken during stage 5.

CHECKLIST
Payment of overhanging debt
Submit bound copy of transfer agreement to the Assembly Government
First gap funding payment to new landlord
Transfer costs paid
Dowry monitoring report
Closure of HRA

Payment of overhanging debt

5.1.2 The overhanging debt payment process proceeds as soon as the transfer agreement has been signed. (As an example, assume that this happens on a Monday). The local authority will be required to telephone their contact at the PWLB to request the final calculation of the overhanging debt figure and the associated breakage cost. **Please note that this must be before 16:15 hours as the Bank of England lines close at that time.** This telephone call is binding and the Bank of England will provide the final figures within one hour which should be confirmed by fax.

5.1.3 The local authority should telephone and email the Assembly Government with the final figures and provide a copy of the Bank of England's fax as soon as they can, preferably on the same day **but no later than 9:30am the following day.**

5.1.4 The Assembly Government will pay the local authority by a CHAPS payment early on Wednesday morning. The Council **must** pay the PWLB by close of business on the same day.

Transfer agreement

5.1.5 Unless this has already been completed prior to transfer two or more final bound copies of the transfer agreement and funding agreement must be submitted to the Assembly Government within 4 weeks of transfer.

Dowry Gap funding payment

5.1.6 The Assembly Government dowry gap funding payments are made in accordance with the Gap Funding Offer Letter. The first payment is normally made

to the new landlord within 5 working days following transfer. Subsequent payments are made within 5 working days of the 5th April each year.

Monitoring

5.1.7 The terms of the dowry gap funding agreement refer to offers of financial assistance from the Assembly Government. The amount of any dowry gap funding which the Welsh Ministers may agree to pay will depend upon satisfactory progress being made and compliance with the terms and conditions of the Gap Funding Offer Letter.

5.1.8 Paragraph 5 of the Gap Funding Offer Letter outlines the requirement for a written report to be submitted to Welsh Ministers by 30 November each year, outlining the progress the RSL are making against the business plan and the planned schedule of works; together with a forecast of the progress that will be made in the following financial year. Newly established RSL landlords are advised to discuss the format with Assembly Government officials at an early stage following transfer.

5.1.9 On receipt, Welsh Ministers will, after consultation and agreement with lenders and the RSL, where necessary, confirm a further offer of financial assistance to the RSL with agreed payment being due to the Association within 5 working days from the 5th April the following year.

Transfer set up costs

5.1.10 For cash flow reasons it has become custom and practice for the set up cost reimbursement due to the local authority at the point of transfer (or otherwise as specified in the transfer agreement) to be met from the first “dowry” payment. The Assembly Government expects the new landlord and the local authority to arrange the necessary reimbursement between them in a transparent way and in a spirit of partnership working.

5.1.11 The Assembly Government requires written confirmation from both the local authority and the new landlord confirming set up costs have been agreed between them, that they are actual costs and in line with the Assembly Government’s eligibility criteria.

Post transfer registration policies

5.1.12 The new landlord should provide the Assembly Government with copies of the policies and procedures required post transfer within eight weeks of transfer. These are shown in the matrix in Appendix 7.

STAGE 5

SECTION 2

Closure of the HRA

5.2.1 Under section 74 of the Local Government and Housing Act 1989, a local authority must keep a housing revenue account (HRA) in respect of land, houses or other buildings which are provided, acquired, appropriated or otherwise held under certain housing powers, primarily Part II of the Housing Act 1985, unless the relevant Minister consents otherwise.

5.2.2 As part of the overhanging debt agreement HM Treasury requires a local authority to close its HRA as soon as possible following transfer.

5.2.3 Welsh Ministers will not consider granting consent to close the HRA until all HRA property has been disposed of. (HRA property includes all land, houses or other property). Once all HRA property has been disposed of and once the Assembly Government have received and agreed the local authority's final HRA claim form for the last financial year in which the authority held dwellings within the HRA, certified by the appointed auditor and there are no outstanding issues from previous years a local authority should then apply to the Assembly Government to close the HRA. **The HRA can only be closed on the 1st April following this.**

5.2.4 For the avoidance of doubt if for example all property has been disposed of by the 31 March 2009, the earliest the HRA can be closed is the 1 April 2010 (subject to Ministerial consent). If all property has not been disposed of by the 31 March 2009 then the HRA cannot be closed until 1 April 2011 (subject to Ministerial consent).

5.2.5 Any surplus in the HRA following transfer cannot be credited to the local authority General Fund until the HRA has been closed. ***This does not happen at the point of transfer.***

Disposal of property from the HRA following a stock transfer

5.2.6 A local authority may transfer all of the property held in its HRA to the receiving RSL at the point of transfer.

5.2.7 However, it is possible that a local authority may not transfer all of its HRA property at the point of transfer. E.g. it may wish to retain a hostel for the homeless to meet its strategic housing obligations. In this situation the local authority will still need to dispose of any remaining property out of the HRA after transfer in order to close the HRA.

5.2.8 Where this is the case, the local authority should prepare a schedule of all property that remains in the HRA following transfer and determine how this property is to be disposed of, in order that the HRA may be closed. General advice follows

but a local authority must obtain its own specialist legal advice. It should refer to the relevant Housing Revenue Account Manual for guidance and, where necessary, seek the advice of the Assembly Government.

To remove property from the HRA under a section 74(3)(d) Direction

5.2.9 Welsh Ministers have power under section 74(3)(d) and 87 of the Local Government and Housing Act 1989 to direct that land, houses or other buildings accounted for within the HRA shall not be accounted for within that account where a local authority holds 50 or fewer dwellings.

5.2.10 If such a direction were issued in respect of **all** property remaining in a local authority's HRA following transfer, the local authority would be able (at the appropriate time) to apply for consent to close the HRA subject to the Assembly Government having received and agreed to the local authority's final HRA claim form, certified by the appointed auditor. The HRA can only be closed on the 1st April following this.

5.2.11 Prior to a Direction being issued it is a legal requirement that the local authority formally applies for a Direction to remove any property out of the HRA under sections 74(4) and 87 of the Local Government and Housing Act 1989.

5.2.12 If a Direction is issued the properties should be transferred to the Council's General Fund.

5.2.13 Applications for Directions should be made to the Housing Directorate, Welsh Assembly Government, Rhydycar, Merthyr Tydfil, CF48 1UZ.

5.2.14 Authorities should provide full information with their application for a Section 74 (3)(d) Direction about the properties to be included in the Direction. This should be attached to the application in the form of a schedule and include the full postal address; the powers under which the properties were acquired and are currently held; the use to which they are currently put; the reason why they haven't been included in the transfer; and their value.

5.2.15 A local authority should allow a period of up to 14 days for the Assembly to consider the application for a Direction (which is subject to Ministerial consent).

5.2.16 Once an application for a Direction has been received the Assembly Government will issue, subject to Ministerial consent, a draft Direction to the local authority for consultation. This will normally be for a 28 day period.

5.2.17 There is a legal requirement under Section 136 of the Leasehold Reform, Housing and Urban Development Act 1993, that the Welsh Assembly Government consults representatives of Local Government before making a new Direction or varying existing ones and that the local authority seeks its own legal advice on the terms of the Direction.

5.2.18 If the local authority agrees to the terms of the Direction, indicates that it is satisfied that it has been consulted and confirms that it has taken its own legal advice then a formal Direction is issued. The local authority should then transfer the property listed in the schedule attached to the Direction to its General Fund.

5.2.19 If a local authority wishes to appropriate property other than dwellings, from a purpose connected with housing to a purpose other than housing, Welsh Minister's consent is not required and the local authority can use its own powers under section 122 of the Local Government Act 1972.

5.2.20 Where a dwelling is currently held for the purpose of Part II of the Housing Act 1985, authorities may apply to the Assembly Government under section 19(2) of the Housing Act 1985 for consent to change the purpose for which the dwelling is held (e.g. to hold it for education or social services purposes instead of housing purposes). However, the property may not then continue to be used for Part II housing purposes, for example, as a hostel for the homeless. Consent cannot be given under section 19(2) of the Housing Act 1985 to simply transfer dwellings or other property "out of the HRA" or "to the General Fund".

5.2.21 It is for the local authority to determine how it intends to dispose of **all** property remaining in the HRA following transfer having taking their own legal advice.

5.2.22 Once all property has been removed from the HRA the local authority will be able to apply to the Assembly Government at the appropriate time to close its HRA.

To close the HRA

5.2.23 Welsh Ministers may also issue a Direction under Section 74(4) of the 1989 Act, which allows a local authority not to keep an HRA subject to compliance with such conditions. However, before this can be done, the Assembly Government must have received and agreed to the local authority's final HRA claim form, (submitted in December) certified by the appointed auditor and be satisfied that there are no outstanding issues from previous years.

5.2.24 Once the local authority has been informed that the Assembly Government is satisfied with the conditions outlined in paragraph 5.2.23 the local authority should immediately send a formal application to formally close the HRA to the Head of Housing Stock Transfer at the address specified in appendix 9.

5.2.25 Once an application for a Direction to close the HRA has been received, the Assembly Government will issue, subject to Ministerial consent, a draft Direction for consultation purposes. This will normally be for a 28 day period. If the local authority agrees to the terms of the Direction; indicates that it is satisfied that it has been consulted; and confirms that it has taken its own legal advice then a formal Direction is issued, to take effect on the 1 April.

5.2.26 When the HRA is closed, the end of year balance and any continuing income and expenditure on the property disposed of, should be accounted for in the local authority's General Fund.

Appendices

1. Key Abbreviations
2. Glossary of terms
3. Provisional approval pro forma
4. Independent tenant advisor
5. Calculation of overhanging debt
6. Example of set up costs
7. Registration policies and procedures
8. Useful publications
9. Contact details

APPENDIX 1

Key Abbreviations

AHDS		Affordable Housing Delivery Statements
CIH		Chartered Institute of Housing
CHC		Community Housing Cymru
CHMM		Community Housing Mutual Model
CLG		Communities and Local Government
DSO		Direct Service Organisation
DWP		Department for Work and Pensions
I2i		Inform to Involve
HRA		Housing Revenue Account
HRAS		Housing Revenue Account Subsidy
ITA		Independent Tenant Adviser
LSVT		Large Scale Voluntary Transfer
MRA		Major Repairs Allowance
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
RTA		Right to Acquire
RTB		Right to Buy
RTM		Right to Manage
SCA		Supplementary Credit Approval
TMO		Tenant Managed Organisation
TMV		Tenanted market Value
TPAS		Tenant Participation Advisory Service
WAG		Welsh Assembly Government
WHQS		Welsh Housing Quality Standard
WLGA		Welsh Local Government Association
WTF		Welsh Tenants' Federation

APPENDIX 2

Key Definitions and Glossary Of Terms

1.1 Community Ownership

Ownership of former council housing by a new independent Registered Social Landlord whose board is jointly composed of local authority and tenant representatives, as well as individuals with business skills and experience. The purpose of the new body would be to provide improved living conditions for tenants and a continuing service to the community.

1.2 Dowry Gap Funding

Financial support which may be provided by Welsh Ministers to the transferee landlord where there is a funding shortfall within the transfer business plan.

1.3 Housing Revenue Account

Council housing has a bespoke revenue finance regime. Every local authority with council dwellings is required to maintain a ring-fenced Housing Revenue Account (HRA). The HRA records income and expenditure on items such as rents, management and maintenance, loan charges, etc. in respect of a council's housing stock.

1.4 Housing Revenue Account Subsidy

Revenue support to council-owned housing is provided through the Housing Revenue Account (HRA) subsidy system.

1.5 Major Repairs Allowance (MRA)

Major Repairs Allowance is a grant to local authorities and is to be used for capital expenditure on Housing Revenue assets

1.6 National Tenant Participation Strategy

The Strategy sets out the Assembly Government's aim to develop quality tenant participation services across Wales. It will do this through promoting participation as a vehicle for improving services; through setting out what it expects of social landlord tenant participation activities; through setting out what it will do to engage social housing partners when developing housing policy; and how it will monitor and review the effectiveness of its approach to tenant engagement.

1.7 Overhanging Debt

Overhanging debt arises when the capital receipt from a stock transfer is less than the attributable HRA debt, including any premium payable on early redemption of loans. Further guidance on its application is contained in Appendix 5.

1.8 Right to Buy (RTB) and Preserved Right to Buy (PRTB)

Secure tenants of a local authority have the right to buy the property in which they live. This right is preserved if the property is transferred to a Registered Social Landlord. (Assured Tenants do not normally have the right to buy). The Preserved Right to Buy allows eligible tenants to purchase the property in which they live at a discounted price. The discount is based on the length of time spent as a public sector tenant, not just the time spent in the current property.

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 3 (Commencement and Transitional Provisions No 1) Order 1993'.

1.9 Preserved Right to Buy (PRTB) Cost Floor

The PRTB Cost Floor applies to properties transferred to an RSL. It operates to ensure that the RSL does not have to sell the property for less than it cost to build, buy or improve during the 15 years before the tenant applied to exercise the right to buy. Repairs and maintenance (to the extent that the cost exceeds £5,500) may also be taken into account. Where the dwelling has no value on transfer to a landlord, the costs to be included in the cost floor may be extended to include other costs such as the cost of certain communal facilities and consultancy fees.

The Regulations on the PRTB cost floor are set out in 'The Housing (Preservation of Right to Buy) (Amendment) (Wales) Regulations 2001'.

1.10 Public Sector Borrowing Requirement (PSBR)

In any particular year, the amount by which the Government's tax revenue falls short of its spending requirements is known as its borrowing requirement. The financial effects of transfer on public expenditure are assessed essentially in terms of the PSBR.

1.11 Regulatory Code

The Regulatory Code for Registered Social Landlords in Wales sets out the key expectations under which RSLs in Wales must operate and by which the Assembly Government will review their performance.

The regulatory Code was published in March 2006 and an electronic version can be accessed at the Assembly Government's website at: www.new.wales.gov.uk

1.12 Rent Benchmarks

Rent benchmarking is the system of rent controls applied by the Assembly Government to Registered Social Landlords.

1.13 Tenant management organisations

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). In these organisations residents are the driving force behind the governance of the landlord with only co-opted independents to give specialist advice.

1.14 Terms of Tenure

Transferring tenants must be offered a tenancy agreement that delivers an enhanced assured tenancy, which complies with the provisions of the Tenants Guarantee as a minimum and fulfils undertakings made during the consultation period. Transfer Tenants who have transferred from a local authority to a RSL will have a statutory Preserved Right to Buy.

1.15 Transfer Levy

The Large Scale Voluntary Transfer levy was introduced by section 136 of the Leasehold Reform, Housing and Urban Development Act 1993 to compensate for some of the public expenditure costs of housing transfers and is paid into the consolidated fund. A levy is payable on the receipts arising from the disposal of 500 or more council properties to a RSL over a five year period, where these receipts exceed the housing debt attributable to the properties. If the receipts are less than the debt, there is no levy payable.

1.16 Types of Tenancy

Secure Tenancies were created by the Housing Act 1980. Additional rights were granted under the Housing Act 1985 and subsequent legislation.

Assured tenancies were created by the Housing Act 1988. The Act had the effect of limiting some of the rights of Assured Tenants as compared to those given to Secure Tenants. In recognition of the concerns this would produce, the same Act gave regulatory bodies like the National Assembly for Wales, the power to issue guidance to Registered Social Landlords on the rights that Assured Tenants must expect from Registered Social Landlords. This guidance is known as the "Tenants Guarantee". In short, the Guarantee requires that the rights of Assured Tenants mirror those of Secure Tenants as much as possible though there are some differences. One noticeable difference is that Assured Tenants do not have the Right To Buy.

1.17 Types of Transfer

Whole stock transfer - where a local authority transfers all, or all but a small part of its housing stock.

Partial stock transfer - where a local authority transfers only part of its housing stock.

Split transfer - where a local authority transfers its stock to more than one landlord.

Trickle transfer - where a local authority transfers vacant dwellings.

Appendix 3

Provisional Approval Application Pro forma

Local Authority		
Total housing stock		
No. of tenanted dwellings to transfer		
No. of leasehold properties to transfer		
New landlord		
Valuation	Total (£ m)	Per dwelling
PSBR cost	Total (£ m)	Per dwelling
Estimated HRA Debt comprising: (a) PWLB (b) Non PWLB (c) Total HRA Debt Breakage Costs comprising: (d) PWLB (e) Non PWLB		
Estimated private finance		
Capital receipt (£m)		
Timetable - Formal Consultation - Ballot -Transfer		

Contact Names, Addresses and Phone Numbers

Local authority	
Consultants	

APPENDIX 4

Independent Tenant Advisers (ITA)

It is a requirement of the Assembly Government that councils considering stock transfer appoint an Independent Tenant Adviser.

Independent Tenant Advisers are people who have expertise in working with tenants. There are a number of companies who specialise in this work.

Advisers' Role

The role of the Independent Tenant Adviser is to provide impartial and accurate advice and guidance on stock transfer.

Accountability

Independent Tenant Advisers must be accountable to tenants and the council. In providing support, impartial advice and guidance on stock transfers, their prime responsibility is to tenants.

Advisers must operate in an open and fair manner and adopt working practices that both reflect and maximise this approach.

Independence

Independent Tenant Advisers should be independent from, and not seen as representing the views of the council, transfer landlord or tenants groups.

Advisers will be allowed to offer impartial advice to tenants without interference.

Impartiality and Transparency

Independent Tenant Advisers will:

- operate in an open and fair manner
- be accessible to all tenants
- provide non directive advice
- be clear about their legal status, management, accountability, aims and objectives, primary business and track record.

Service Delivery

Independent Tenant Advisers will provide a service that has been agreed by all parties to the process. Services should include:

- the type, quality and frequency of information to be used to meet a range of tenant needs which should reflect an understanding of tenant issues in relation to stock transfer;
- good practice in producing information to meet a range of needs;
- the range of consultation and customer feedback mechanisms to be adopted;
- opportunities for, and the achievement of, tenant participation;
- mechanism for monitoring and evaluating the Adviser's performance throughout the process.

Selection Criteria

Quality and Cost

Independent Tenant Advisers will need to provide evidence of their ability to undertake this work and fully satisfy the requirements of the role. In particular, Advisers should be able to demonstrate:

- an in depth knowledge of stock transfer and an understanding of the issues that tenants face;
- their ability to be accessible to all tenants and to provide accurate and impartial advice;
- good practice in producing information to suit a range of needs;
- a proven track record in tenant consultation and participation;
- their capacity to fulfil the Adviser role for the period for which they are appointed.

Clearly cost will be a factor, but not necessarily the over riding factor, in considering tender submissions from Advisers. Costs should be evidence based wherever possible.

Redress

A procedure for dealing with disputes and issues of non-compliance with the contract should be drawn up and agreed by all parties. The Independent Tenant Adviser's contract of employment will refer to the mechanisms by which such issues may be resolved.

Good Practice

Councils should advise all tenants of the role and responsibilities of the Independent Tenant Adviser before an appointment is made.

Councils should appoint the Tenant Adviser when it is considering how it may repair and improve its stock. Appointment of an Adviser at this time will ensure that tenants have access to expert advice on the different repair and improvement options.

Councils should empower tenants to fully participate in the selection and appointment of the Independent Tenant Adviser.

If the proposals involve transfer to a new registered social landlord, Advisers should be allowed to work with the shadow board of the transfer landlord. If the transfer is to an existing landlord Advisers should be able to work with their Board in matters of relevance to the transfer.

The role of Advisers and the performance criteria they must work to should be written into their contract of employment.

APPENDIX 5

Calculation of Overhanging Debt for Local Authorities Undertaking Stock Transfer

Where a local authority disposes of the whole of its Housing Revenue Account stock and the capital receipt is insufficient to repay the estimated debt attributable to the stock, the local authority is said to be left with overhanging debt.

The calculation of the overhanging debt is described below.

1. The starting point for calculating the outstanding Housing Revenue Account Subsidy (HRAS) debt is the Opening Subsidy Capital Financing Requirement for the year within which stock transfer takes place. It should agree with cell 0280 of the latest HRAS Interim Estimate claim form received by the Assembly Government in that year.

2. Local authorities should then calculate cells 0294 to 0350 as if they were completing the mid year Subsidy Capital Financing Requirement.

3. Cell 0360 relates to the aggregate of the proportion of the certified value of dwellings or other property ceasing to be accounted for in the Housing Revenue Account (HRA) for a reason other than disposal. It includes properties which have been transferred from the HRA to the Council Fund where these are for ongoing use, but not where such properties are to be demolished. These should remain within the HRA until demolition has taken place. The certified value is the market value certified by the District Valuer or a qualified valuer employed by the local authority. The calculation is as follows:-

- 75% of the certified value of dwellings, and
- 50% of the certified value of other property

4. Cell 0375 should then be calculated as follows, ignoring any receipt relating to overhanging debt:

$$\text{Cell 0280} - [\text{cell 0330} + \text{cell 0360}] + [\text{cell 0315} + \text{cell 0318}] - [\text{cell 0320} + \text{cell 0340} + \text{cell 0350}]$$

5. The above calculation determines the outstanding HRAS debt at point of transfer.

6. The following guidance should be used to determine the actual HRA debt at point of transfer:

- Opening HRA Capital Financing Requirement for the year of transfer (Cell 0385);

- Reduced by total amount of Prudential Borrowing it includes (if any);
- Derive sub total:
- Adjust for movement in actual HRA debt (other than Prudential Borrowing) during the year of transfer to the point of transfer;
- The resultant figure represents the actual HRA Debt at point of transfer excluding Prudential Borrowing which is not reimbursable by HM Treasury under the Overhanging Debt Agreement.

7. Where the resultant figure at paragraph 6 is greater than the figure at paragraph 4, the higher figure is the amount chargeable to the Overhanging Debt agreement with HM Treasury to be adjusted for early redemption penalties in respect of that debt (see paragraph 8 below).

8. Public Works Loan Board (PWLB) early redemption premia are added to the figure taken in paragraph 4 or 6, as appropriate, to give the overhanging debt payable to the PWLB.

9. It should be noted that in calculating the overhanging debt in paragraph 8, the following are assumed:

- a. All debt is PWLB
- b. All stock transfers have nil or negative values
- c. Set up costs of the transferee are payable by WAG and remain outside the overhanging debt calculations.

10. Local Authorities will need to contact the Assembly Government Housing Directorate should HRAS Debt (as calculated at paragraph 4) exceed Actual HRA Debt (as calculated at paragraph 6).

11. Local Authorities will need to submit a business case to request that Prudential Borrowing be met from Assembly Government's Dowry arrangements.

Appendix 6

Example of types of set up costs

NB: RSL costs should be no more than the minimum cost necessary to establish a Shadow Board (with appropriate advice) so that the local authority is able to consult on the contents and timescales relating to the Offer Document.

No cost should be incurred or committed in respect of the “new RSL landlord” that should only arise following a yes vote

	Council	RSL	
Pre ballot	£'000	£'000	
Lead consultant			
Legal advisor			
Tenants advisor			
Communications consultant			
Communications material			
RSL set up costs		xxxxxxx	
Staff time	0	0	Up to 100% refund with "no" vote, 100% yes
Ballot	xxxxxxx		(non-refundable) HRA Charge
	0	0	
Post ballot			
Lead consultant			
Legal advisor			
Communications consultant			
Tenant information and handbook			
HR consultant/recruitment costs		xxxxxxx	
Funders valuation		xxxxxxx	
Business plan audit			
IT advisors		xxxxxxx	
Funding advisors		xxxxxxx	

Asset management planning		
Taxation advice		xxxxxxx
Land registry fees		
Environmental survey		
Environmental warranty insurance		
Training and expenses		
Loan arrangement fees		xxxxxxx
Lender's legal expenses		xxxxxxx
Staff costs		
	<hr/>	<hr/>
	0	0
Non recoverable		
VAT		
Interest on bridging loan to RSL		
		xxxxxxxxx
Total post ballot	<hr/>	<hr/>
	0	0
Overall total	<hr/>	<hr/>
	0	0
Total Recoverable from WAG		xxxxxxx

Appendix 7

Welsh Assembly Registration Policies/procedures Required – Pre and Post Transfer.

Policy	Pre	Post	Certified
Housing Management			
Abandoned Properties		√	
Access to personal records		√	
Compensation		√	
Complaints/ Customer care			√
Confidentiality		√	
Domestic Violence		√	
Eviction			
Harassment/ Anti Social Behaviour/Nuisance(including eviction)		√	
Homeless Service Cooperation		√	
Tenants improvements		√	
Lettings/allocations/access to housing		√	
Local Authority nominations		√	
Transfers			√
Exchanges/assignments of tenancies		√	√
Void Management			
Shared Ownership		√	
Lodgers		√	
Management and review of supported housing (if applicable)			√
Pets		√	
Relationship Breakdown		√	
Rent Arrears (including Eviction)	√		
Rent Setting – new transferring tenants –to be reviewed by WAG	√		
Rent Setting – transferring tenants – to be reviewed by WAG	√		
Procurement- to include ‘community benefits’ ‘targeted recruitment’ and ‘consultant and contractor selection’		√	
Planned maintenance and Improvement policy- <ul style="list-style-type: none"> • Summary of progress on stock condition survey • Planned maintenance programmes • Financial plans and long term cash flow forecasts 		√ √ √	

<p>Response repairs policy</p> <ul style="list-style-type: none"> • Target response times • Tenants repair rights and obligations • Target response times • The tenants' repair rights and obligations • The Association's repair obligations • Arrangement for access • Out of office hours emergency service • Tenants' right to carry out improvement • (recharges) 		<p>√</p> <p>√</p> <p>√</p> <p>√</p> <p>√</p> <p>√</p> <p>√</p> <p>√</p> <p>√</p> <p>√</p>	
<p>Cyclical Maintenance policy</p> <ul style="list-style-type: none"> • Decorations • Landscaping • Equipment testing and servicing 		<p>√</p> <p>√</p> <p>√</p>	
<p>Maintenance Quality policy</p>		<p>√</p>	
<ul style="list-style-type: none"> • Pre-inspection and post-completion inspection. • Voids - minimum standards of accommodation for re-lets; • specification of maintenance standards; • Code of Conduct for Maintenance operatives / Customer Code; • Feedback and monitoring of Tenant Satisfaction with repairs service. • Committee reporting on the Association's performance in respect of :- <ul style="list-style-type: none"> target response times; post-completion inspections; voids maintenance; tenant satisfaction. 		<p>√</p> <p>√</p> <p>√</p> <p>√</p> <p>√</p> <p>√</p>	

Relationship breakdown		√	
Requiring tenant to move/decanting			√
Right to buy and Voluntary Sales Leasehold Management.		√	
Service Charges	√		
Subletting		√	
Support for tenants in general needs stock		√	
Sustainable Development Policy – Action Plan required post transfer		√	√
Tenancy Agreement	√		
Tenants Consultation and Participation	√		
Tenants damage to property		√	
Tenants Handbook			√
Unauthorised occupants			√
Corporate			
Standing Orders and Financial Instructions	√		
5 Year Strategic Business Plan	√		
Code of Conduct for Board Members	√		
Code of Governance / Independence from LA	√		
Procedure for Registering the interests of Board Members	√		
Board Membership Policy	√		
Shareholding Membership Policy	√		
Policy on Gifts and Hospitality Given and Received			√
Procedure for the use of exemptions under Para 2 Schedule 1 of the Housing Act 1996	√		
Policy for monitoring performance against the Offer Document.		√	
Equal Opportunity – Strategy - Action Plan	√	√	
BME Housing Strategy	√		
Race Equality Plan	√		
Whistleblowing policy	√		
Recruitment Policy		√	
Financial			
30 year financial forecast – WAG capacity model		√	
Risk Management Strategy	√		
Treasury Management Strategy	√		
Internal control Arrangements	√		
Disaster Recovery Policy		√	
Schedules of Delegated Authority	√		

Appendix 8

Useful publications

The Can Do Toolkit

<http://www.whq.org.uk/docs/i2i/english/aboutDocE21.pdf>

The Communities First Support Network Guide

<http://www.whq.org.uk/docs/i2i/english/aboutDocE16.pdf>

Developing Local Participation Strategies: Guidance for Implementation (May 2008).

<http://new.wales.gov.uk/topics/housingandcommunity/housing/publications/localtenantparticipation/?lang=en>

Homelessness and Stock Transfer

<http://www.whq.org.uk/docs/i2i/english/aboutDocE5.pdf>

More than Bricks and Mortar

<http://www.whq.org.uk/docs/i2i/english/aboutDocE16.pdf>

Surviving Transfer

<http://www.whq.org.uk/docs/i2i/english/aboutDocE15.pdf>

National Tenant Participation Strategy for Wales (May 2007)

What Tenants Want!

<http://www.whq.org.uk/docs/i2i/english/aboutDocE1.pdf>

WHQS plus (first report)

<http://www.whq.org.uk/docs/i2i/english/aboutDocE17.pdf>

WHQS plus - maximising benefits across Wales

<http://www.whq.org.uk/docs/i2i/english/aboutDocE24.pdf>

The following publications can be found on the Assembly Government's website at: www.new.wales.gov.uk or are available from the Housing Directorate

Regulatory Code for Housing Associations Registered in Wales

The Guarantee for Housing Association Tenants

The Stock Transfer Council Tenant and Leaseholder's Charter

Value Wales- step by step guide to community benefit

The Welsh Housing Quality Standard- revised guidance 2008

WHQS Developing the skills and knowledge of tenants

Appendix 9

Contact Details

Housing Directorate
Welsh Assembly Government
Merthyr Tydfil Offices
Rhydycar
Merthyr Tydfil
CF48 1UZ

Tel: 01685 7291000

Fax: 01685 7299549