

CONTRACT STANDING ORDERS



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PAPER C – Appendix 1

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SECTION 1 INTRODUCTION AND SCOPE

1. Purpose

- 1.1. The purpose of Contract Standing Orders (CSOs) is to set clear rules for the procurement of Supplies, Services and Works for the Council, and the disposal of land.
- 1.2. Following the rules should ensure that the Council:
 - i) is fair and accountable in its dealings with Contractors and in the award of Contracts.
 - ii) obtains value for money for the Council taxpayer. Value for money is defined as the optimum combination of whole life cost and quality (or fitness for purpose) to meet the end users' requirements.
 - iii) maintains the highest standards of integrity
 - iv) complies with all legal requirements
- 1.3. By law (Section 135 of the Local Government Act 1972) the Council must have CSOs which guide the letting of contracts and which cover securing competition and regulating the Tender process.
- 1.4. The CSOs are set within the context of EU and UK legislation and EC Treaty provisions and principles, such as non-discrimination, equal treatment and transparency, which apply generally in the award of public contracts, including those below the EU threshold values. It is therefore important to ensure in all the Council's procurements that nothing is done which is discriminatory or distorts competition, and that there is a clear audit trail to evidence the decision-making process.
- 1.5. The Contracts and Procurement Officer will provide advice to Officers on CSO considerations as well as best practice procurement relative to the specific project being planned.
- 1.6. The proposed contract standing orders require that consideration is given to carbon reduction factors at the pre-procurement stage of any procurement process for a contract with a value of at least £75,000.

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2. Scope

2.1. CSOs apply to procurements and contracts entered by, or on behalf of, the Council for:

- v) the provision of goods, services and works regardless of their value,
- vi) concession contracts, (these are subject to the Concession Contracts Regulations 2016).
- vii) the disposal of land, property, or other assets (including surplus goods),
- viii) involvement by the Council in partnerships and other joint working where the money, including external funding, passes through the Council's accounts.

2.2. CSOs do not apply to:

- i) Goods, services or works purchased through an existing, valid Corporate Contract
- ii) Contracts of employment
- iii) The purchase or hire of property
- iv) To grants given by the Council
- v) In exceptional circumstances where it can be demonstrated that there is an urgent and immediate requirement to secure the provisions of works, services, or supplies.
- vi) To works, services or supplies required that are of a specialist nature such that competitive quotations are not possible.
- vii) When there are justifiable technical, specialist or supply market reasons and the works, goods, materials, or services can only be obtained from one firm, and no reasonably satisfactory alternative is available.
- viii) You are requested to purchase something by the Chief Executive making an emergency decision under special powers.
- ix) Services procured through a shared services arrangement e.g. 5 Councils.

If you are procuring any of the above; please seek approval for your route of purchasing from either the Contracts and Procurement Manager or Section 151 Officer.

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3. Principles

- 3.1. All monetary values referred to in these rules are total contract values, not annual values, and exclude VAT unless otherwise stated. They cover expenditure contracts and income generating contracts.
- 3.2. These Rules apply to all procurement decisions, regardless of the source of funding, or the status of the contractor (i.e. they apply equally to selection of both main contractors and nominated sub-contractors or suppliers).
- 3.3. Every contract must be let in compliance with The Public Contracts Regulations 2015 with applicable European and domestic legal requirements.
- 3.4. Any person procuring on behalf of the Council must ensure that procurements undertaken comply with the requirements of the Council's Scheme of Delegation and Financial Procedure Rules.
 - 3.4.1. The Section 151 Officer maintains a list of authorisation limits. This list specifies a maximum financial limit for each transaction for each authorised person. These limits must not be exceeded (**See Annex A**).
- 3.5. Officers must ensure that procurement is undertaken by persons who can demonstrate knowledge and understanding of these Rules and have the skills appropriate to the task. These Persons should already have authority under the list of authorisation limits and, if not, must be granted authority by the Responsible Officer or such person who has been delegated with the authority before undertaking any procurement. These limits are provided in the Constitution.
- 3.6. There must be funds available and all the necessary approvals in place prior to commencing a procurement procedure. This will need to be evidenced.
- 3.7. Contracts will typically be awarded on the most "advantageous value for money basis", assuming all specified criteria are met.

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4. Responsibilities and Conduct

- 4.1. These CSOs apply to every Member, Officer, Consultant, or other external Agents appointed to act on behalf of the Council in procurement matters.
- 4.2. Any personal interest which may affect or be seen by others to affect a procurement must be declared. It is expected that the highest standards of honesty, integrity, impartiality, and objectivity are maintained.
- 4.3. The appropriate procurement route, determined by the value and nature of the goods, service or works being purchased must be followed.
- 4.4. Officers are expected to manage contracts to cost, quality, time, and budget
- 4.5. Compliance with the rules is mandatory. Failure to follow these rules and/or failure to enter a Contract in accordance with them could lead to disciplinary actions.

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SECTION 2 – PURCHASING PROCESS

1. Value of Contract

- 1.1. The financial values stated throughout these CSOs represent the total value of the Contract over its whole life and are not, for example, the estimated annual value of the Contract. Where the duration of the contract is indeterminate, the contract value should be the estimated value of the contract over a period of four years
- 1.2. Where the Contract is for Supplies or Services, the value of the Contract shall include all options under the Contract. For example, if the Contract allows the Council to either purchase additional Supplies or Services, or to extend the Contract beyond its original term, the financial implications of these must be included in the value of the Contract, even if the likelihood of taking up these options is small.
- 1.3. The value of contracts must not be deliberately or artificially underestimated, split or disaggregated to avoid the application of the financial thresholds in these CSOs or the Regulations.

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2. Pre-procurement Checks

- 2.1. Appraise the need for the expenditure and its priority
- 2.2. Assess if a Data Protection Impact Assessment is required (DPIA). A [quick checklist](#) is available to evaluate if a full [DPIA](#) is required. Refer to the Data Protection Officer for assistance.
- 2.3. Ensure there is budgetary provision for the goods/services
- 2.4. Check the authorisation route for the procurement. Some procurement will need Member approval before starting, some procurement will only need Member approval when any tendering process is complete, and the financial impact is known. You will need to check before starting what authority or delegation you do, or don't have.

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3. Quotation and Tender Procedures

3.1. The Quotation and Tender Procedures vary according to the value of the contract, with stricter more rigorous procedures for higher value transactions. This is to ensure that the benefits of a more thorough, complex process are not outweighed by the cost relative to the value of supplies, services or works in question.

3.2. The table below indicates the relevant procedure to be followed for different levels of contract value:

Estimated Contract Value	Section	Procedure
<u>Low value contracts</u> Below £5000		Check if an existing supply contract is appropriate to use. If not obtain at least one quotation, three if possible. Follow value for money criteria and be transparent and fair Retain documentation to evidence adherence to policy
<u>Medium value contracts</u> Between £5000 & £75,000		Use Procurement Framework or the Capita Procurement service
<u>High Value contracts</u> Between £75,000 and EU threshold for Services, Supplies and Works,		Use Open Tender Process or Capita Procurement service
Above EU threshold for Services, Supplies and Works		Use EU Procurement procedures Involve Legal Services

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4. Medium Value Contracts

4.1. A Procurement Framework is an agreement put in place with a provider or range of providers that enables buyers to place orders without running a tendering process. These suppliers would have already been assessed for quality and terms and conditions agreed. These agreements may have been established by the Council, by other public bodies or by public buying consortia.

4.1.1. Hart District Council (HDC) have established frameworks for frequently purchased goods/services. The Contracts and Procurement Officer can advise.

4.2. HDC have a framework agreement with Capita who offer a procurement service. Capita will manage the advertising process and provide guidance to ensure that [requests for quotations](#) are issued effectively.

4.3. Alternatively, this process can be run in-house. A pre-defined [template](#) is available. Any contracts worth over £10,000 should be advertised on <https://www.gov.uk/contracts-finder>. The Contracts and Procurement Officer manages this process.

5. High Value Contracts

5.1. Open tendering is a competitive public procurement process.

5.2. The HDC framework agreement with Capita offers a request for [tender service](#). Capita will manage the advertising process and provide guidance to ensure that tender requests are issued effectively.

5.3. Alternatively, this process can be run in-house. A pre-defined [template](#) is available. Any contracts worth over £10,000 should be advertised on <https://www.gov.uk/contracts-finder>. The Contracts and Procurement Officer manages this process

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6. EU Procurement Procedures

- 6.1. Where the estimated value of the contract is more than the relevant EU threshold, the procedures set out in the EU Public Procurement Directives as well as CSO's must be followed.
- 6.2. For current EU procurement procedures refer to [GOV.UK](https://www.gov.uk).

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7. Evaluation of Tenders for High Value Contracts in excess of £75,000

- 7.1. It is expected that tenders will be submitted electronically. The submitted tenders will be held securely in a 'locked box' identified by a unique email address.
- 7.2. Late tender submissions will not be accepted unless exceptional circumstances prevail. Seek advice from the Contracts and Procurement Officer.
- 7.3. All Tenders will be opened at the same time, by a suitably trained Officer (and observed by at least one other suitably trained officer) or appointed agent. This process must be recorded
- 7.4. Tenders will be evaluated against the criteria defined in the tender documentation.
- 7.5. An assessment of contractor suitability will form part of the evaluation, including but not limited to:
 - 7.5.1. Valid business address and contact details
 - 7.5.2. minimum insurance provision
 - 7.5.3. demonstratable expertise and experience
 - 7.5.4. registered for VAT with a valid VAT certificate
- 7.6. **Transfer of Undertakings (Protection of Employment) Regulations (TUPE):** Where the letting of a contract will affect any employee, either of the Council or of a contractor, the Head of Service shall inform Human Resources in order that, where applicable, the requirements of TUPE can be considered and managed correctly.
- 7.7. **Parent Company Guarantees** may be sought if the risk of using a contractor warrants additional security against loss.
- 7.8. **Climate Emergency** ; Consideration is given to carbon reduction factors at the pre-procurement stage of any procurement process for a contract with a value of at least £75,000.

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8. Acceptance of Quotations and Tenders

- 8.1. The results of the tender/quotation award process must be recorded. A contract may only be awarded by a Head of service or other nominated Officer(s), as authorised under the scheme of delegation.
- 8.2. Contracts procured under the EU Procurement Directives have a specific award procedure. For current guidelines refer to GOV.UK.
- 8.3. Once a contract has been awarded the [Corporate Contract Register](#) must be updated.
- 8.4. If an existing Framework Agreement is utilised inform the Contracts and Procurement Officer.
- 8.5. Following completion of the tender award process, all tenderers must be notified in writing of the results. This should include:
 - 8.5.1. Where based on price alone, unsuccessful tenderers should be informed of the winning price; or
 - 8.5.2. Where based on the “value for money criteria”, tenderers should be given sufficient information to explain how the Council applied its selection and how the final award decision was made.
 - 8.5.3. Further guidance can be sought from the Contracts and Procurement officer.

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9. Contents of orders and Contracts

- 9.1. Purchase Orders should be raised for all procurement unless an exemption applies. Exceptions include regular payments to utilities, or purchases made by Corporate Credit Card (separate rules apply).
- 9.2. In addition, procurement of goods, services or works which are complex and carry a level of risk must be supported by a suitably drafted set of terms and conditions. Consult Legal Services for guidance.
- 9.3. All purchase orders and contracts should be state clearly and carefully:
 - Purpose of the contract, specifying the services, goods or works to be supplied.
 - Agreed programme of delivery and terms for any sub-contracting.
 - Price and terms for payment including but not limited to agreed deductions, discounts, or penalties.
 - The requirement for employers, public liability, product liability or any other form of insurance, and the level of insurance required.
 - Contracts must be written, subject to English Law and, unless under seal, signed by a person authorised to do so under the scheme of delegation
 - Every contract should seek to protect the Council's legal and financial position and reputation.
- 9.4. The Officer managing the Contract must ensure that contractors are fully aware of the Council's responsibilities when acting on its behalf. Failure to comply will lead to the contract being terminated immediately and the contractor liable for consequential damages.
- 9.5. Where, prior to completion of the contract acceptance documentation, it is considered advantageous to advise a contractor of the Council's intention to enter into a contract, perhaps to reserve resources or to allow a sufficient lead-in period before commencement of works, the Head of Service concerned or Legal (if so instructed by the relevant Head of Service) may send a letter of intent or similar.
- 9.6. A tender that cannot be contained within approved budgets (capital or revenue) shall not be accepted until the Head of Finance/Chief Executive and /or Cabinet has considered a report from the relevant Head of Service and the required additional funds have been properly authorised.
- 9.7. The individual managing and procuring the contract must ensure that any contractual terms include where necessary reference to GDPR, Security, Climate Change, Safeguarding and Social and Economic wellbeing; the Data Protection Officer, S.151 Officer and Contracts and Procurement Manager can provide further guidance on this.

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10. Managing Contracts

- 10.1. For each medium-value contract, e.g. over £50,000, the Head of Service must designate an appropriate lead officer as primary contact and Contract Manager.
- 10.2. For particularly large and/or strategically important contracts, the Head of Service should consider the appointment of a dedicated project manager, who should be supported by other professional disciplines, prior to the award of the contract.
- 10.3. Liquidated Damages – where appropriate the contractor shall be required to pay liquidated damages to the Council if the contract is not completed within the specified period. The amount to be included for liquidated damages in a contract must represent the anticipated loss or expense likely to be incurred by the council as result of any delay in completion of the contract, rather than a penalty payment. Examples of expenses likely to be incurred by the Council include cost of capital used; loss of income; additional staff or consultant fees.
- 10.4. Surplus Goods - Online auction and informal routes for disposal are appropriate where the anticipated value of the goods does not exceed £2,500.
- 10.5. Disclosure As part of the Council's commitment to be open and transparent with its residents, a list of all payments over [£500](#) made to suppliers and contractors will be published monthly on the Council website. In addition, disclosure of expenditure details may be required under the Freedom of Information Act.

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ANNEX A – Scheme of Delegation

Maximum Authorisation Value	Role	
Up to £20,000	Budget Manager List of authorisers available in Integra: "REQNPTAUTHLEVELS"	Role responsibility defined In Job Description.
£20,000 to £100,000	Heads of Service	
Over £100,000	S151 Officer and Chief Executive Officer	

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ANNEX B – Land Disposals

1. Introduction

- 1.1. Council decisions to dispose of land are subject to statutory provisions; in particular, under section 123 of the Local Government Act 1972, to obtain the best consideration that can be reasonably obtained for the disposal of land. This duty is subject to certain exceptions that are set out in a government document, referred to as “the [General Disposal Consent \(England 2003\)](#)”
- 1.2. If the Council wishes to dispose of land for less than best consideration, and it is not covered by the General Disposal Consent, the Council can resolve to do so, but will require the formal consent of the Secretary of State. The General Disposal consent allows the Council to dispose of sites at an under value of up to £2m in the interests of social, economic, and environmental well-being of the community.

2. Definition

- 2.1. Land means any freehold disposal, by sale or exchange, of Council owned land or buildings and any disposal by the granting of a lease.
- 2.2. This excludes:
 - 2.2.1. the granting of licences, easements, rights of way, wayleaves,
 - 2.2.2. tenancies-at-will, periodic hiring arrangements
 - 2.2.3. the renewal of leases under the Landlord and Tenant Act 1954,
- 2.3. A decision to dispose of land or property and the terms for that disposal will be determined depending upon the Delegation Scheme set out in the Constitution.

3. Valuation

- 3.1. This will be arranged by the Head of Technical Services who will engage a specialist Valuer in accordance with the Royal Institute of Chartered Surveyors guidelines.
- 3.2. Where there is likely to be a delay in completing a sale/lease, such that the Council may be in danger of not obtaining the best consideration, the Head of Technical Services will ensure that prior to finalisation, a current valuation is undertaken.

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4. Methods of Disposal

4.1. Disposals shall normally be by formal tender, informal tender, public auction, or private treaty.

5. Formal Tender

5.1. With a formal tender, potential purchasers must make binding offers in a specified form, by a specified date and within a specified deposit.

5.2. Sale of land by formal tender is likely to be appropriate in the case of freehold land disposals and where the land ownership and corporate sale objectives are not complex.

5.3. The Council will place a public advertisement seeking expressions of interest and publicise the selection criteria by which it will assess tenders. The tender process will be carried out in accordance with the Council's CSO's.

6. Informal Tender – with post tender negotiations

6.1. With an informal tender, non-binding offers are secured by a specified date and preferred bidder(s) is/are selected. Terms are negotiated with selected bidder(s) which may include the nature of development proposals. This method also allows for the use of conditional contracts, including clauses linked to planning permission.

6.2. This method is likely to be particularly useful for freehold land disposals for large or complex development or regeneration sites where the proposals need to be developed in co-operation with the preferred bidder to meet the Council's corporate objectives and to achieve the best consideration that can be reasonably obtained.

6.3. The Council will ensure a competitive process is followed and participants will be informed in advance of the procedures and criteria for assessing proposals. Tender bids will be invited in accordance with the Council's CSO's adapted and recorded, as necessary.

7. Disposal by Informal Tender – without post tender negotiations

7.1. With such an informal tender, non-binding offers are secured by a specified date and a preferred bidder is selected. This can be on a conditional basis, including obtaining planning consent as well as being subject to contract. This method is likely to be particularly useful for freehold land disposals which are simpler.

7.2. The Council will ensure a competitive process is followed to seek expressions of interest and participants will be informed in advance of the procedures and criteria for assessing proposals. Tender bids will be invited in accordance with the CSO's adapted and recorded, as necessary.

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8. Disposal by Public Auction

- 8.1. Sale by public auction may be appropriate in certain cases to achieve best consideration and where speed and certainty is required.
- 8.2. In the event of a disposal by auction, a reserve price, based on the Head of Technical Services valuation, will be imposed, which must first be approved within the Scheme of Delegation.
- 8.3. The contract for sale or auction must be ready for exchange at the auction where a binding contract will be made on acceptance of the highest bid providing it has reached any reserve price.

9. Disposal by Private Treaty – through Open Marketing

- 9.1. With such a private treaty sale the property is first marketed, including advertising to generate interest, normally with an asking or guide price, with the aim of achieving a bid (without there being a need to have a specified time limit for obtaining bids) representing the best consideration that can be reasonably obtained. The Council may as part of this process and after the commencement of marketing, request best and final offers be made by a specified date. This method is applicable to freehold disposals of lower value, or non-development property.
- 9.2. Negotiations will take place between the Council and the prospective purchasers (or their respective agents). A letting/sale by this method will only take place once the terms have been approved within the Council's Scheme of Delegation.

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10. Disposal by Private Treaty – off Market

10.1. With such a private treaty sale the land is not offered on the open market as a first stage, but negotiations will take place between the Council and one party.

This may be justified where:

- i) The land is small in size/value
- ii) The purchaser is an adjoining or closely located landowner, and the only potential or likely purchaser
- iii) the nature of the Council's land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained
- iv) where there is a special purchaser for whom the land has a higher value than anyone else e.g. ransom strips, or where there is marriage value
- v) where Council objectives would be best met by undertaking private treaty negotiations with a single party who would bring social environmental or economic benefit
- vi) where the proposed transaction involves a party who already had a property interest in the land in question

10.2. The reasons justifying an off market private treaty sale must be recorded in writing and must be approved by the authorising party under the Scheme of Delegation.

11. Negotiations with Prospective Developers/Purchasers/Tenants

11.1. Generally, these will take place either at the Council's offices, on site, at an agent's office, or at the purchasers/tenants office, within normal office hours. Where possible, in relation to higher value disposals, two officers should be present. However, it is accepted that this will not always be possible / a sensible use of resource. File notes are kept of all negotiations with prospective developers / purchasers or tenants. The progress of negotiations will, where appropriate, be reported to relevant Members, however, Councillors will not be directly involved in negotiating the disposal of land.

11.2. Prior to completion of legal documentation all proposed transaction details and negotiation details will remain confidential.

12. Late Bids

12.1. The Council discourages the submission of late bids in all cases when it is disposing of land. It will attempt to minimise problems by aiming for early exchange of contracts.

12.2. Each "late bid" must be considered in the context of the individual circumstances at the time. The Council's approach to "late bids" will vary depending upon the method of land disposal used. In each case the overriding duty will be to obtain the best consideration that can reasonably be obtained (subject to any exceptions in the General Disposal Consent).

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12.3. Late bid approach:

- i) Where land is disposed of by way of formal tender, bids received after the deadline for tenders, will not be considered.
- ii) Late bids cannot be considered where land is being disposed of by public auction after a successful bid has been accepted.
- iii) Except as provided in points (i) & (ii) above, until the Council has entered into legally binding agreement with another party, it will consider late bids unless there are good commercial reasons for not doing so. This must be explained to any purchaser when disposal by private treaty or informal tender is agreed.

The Council may, in appropriate circumstances, ask both the late bidder, the person to whom the land was previously to have been sold, and any other relevant interested parties (e.g. previous bidders) to submit their last and final bids in a sealed envelope by a set deadline.

- 12.5. A decision on whether to accept a late bid for a private treaty sale or informal tender will be made based on the value of the land and within the Scheme of Delegation as appropriate

13. Public Open Space

- 13.1. Land which is designated as public open space will not be sold/leased by the Council until the applicant has first obtained the necessary planning consent, the proposal has been advertised and local Ward Members have been consulted, and observations/objections received have been considered.

14. The Crichel Down Rules

- 14.1. When disposing of land which has been acquired by the Council by use of Compulsory Purchase powers, the Cabinet will consider the Crichel Down Rules which state that former owners or their successors should be given first opportunity to repurchase the land, provided that it has not been materially changed in character since acquisition.

15. Works in Lieu of Payment

- 15.1. In some cases, it may be appropriate for the purchaser to be required to provide replacement facilities or other works such as highways or landscaping as part consideration for the land/property.
- 15.2. Any proposed works in lieu of payment should be thoroughly examined at the option appraisal stage to ensure value for money and the Head of Finance (s151) should be consulted to determine the accounting treatment. The works required should be clearly specified in any marketing package in order that there is competition between bidders in relation to procurement of the works.

16. Disposals for Less than Best Consideration

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- 16.1. In certain circumstances, the Council may dispose of land for less than the full market value. Those circumstances are clearly defined by law and in any other cases specific consent is needed from the Secretary of State. General Disposal Consents have been given by the Secretary of State for certain transactions.
- 16.2. The General Disposal Consent makes provision for the Council to dispose of land at less than full market value, known as “under-value”. Specified circumstances must apply as follows:
 - i) The Council considers that the purpose for which the land is to be disposed of is likely to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the whole or part of its area, or any person resident or present in its area.
 - ii) The difference between the unrestricted or market value of the land to be disposed of and the consideration for the disposal does not exceed £2million.
- 16.3. The Council must still comply with its duty to obtain best consideration for the restricted value and must also comply with normal and prudent commercial practices including obtaining professional valuer advice on the likely amount of any under-value.
- 16.4. All disposals covered by the definition of less than best consideration must be referred to Cabinet for approval.
- 16.5. The General Consent does not override restrictions on state aid arising under European Legislation