

Civil Estate Occupancy Agreement for Crown Bodies

Sharing Short Leasehold Properties



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Purpose and application

- 1.1 This Agreement sets out general arrangements for shared occupations by Crown bodies in short leasehold (less than 25 years at the outset) office properties. Its purpose is to act as:
 - (i) a framework agreement which Crown bodies sharing occupation in a leasehold property should normally adopt to establish arrangements between Holders and Occupiers. There may be some differences in specific procedures within Crown bodies, and the terms and conditions may be amended by agreement between parties; *and*
 - (ii) the standard terms of occupation where an alternative agreement has not been reached.
- 1.2 **Nothing in this Agreement precludes Crown bodies from negotiating other arrangements to suit particular circumstances.**
- 1.3 This Agreement **does not apply** in respect of shared properties where each Crown body has an individual lease. In these circumstances each lease effectively constitutes a single occupation, and a formal agreement between the Crown bodies is not needed. However, in these circumstances and in accordance with Chapter 4, they **should** set up formal liaison arrangements through a House Committee or similar liaison group, in order to:
 - (i) share information and liaise over dealings with the landlord; and
 - (ii) agree responsibilities for the payment and apportionment of rates.
- 1.4 Crown bodies are in a unique position concerning their joint property occupations. The private sector has to operate within a framework of internal value for money disciplines and those imposed by statute. Crown bodies generally operate within this same framework when dealing with the private sector, but cannot resort to law in their property dealings with each other. This is because the Crown is indivisible and one Crown body cannot take legal action against another. This Agreement and its Appendices do not therefore constitute a legal tenancy agreement. However, throughout this Agreement logical disciplines broadly comparable to those imposed by statute on the private sector have been applied to govern Crown bodies' property dealings in shared occupations.

Defining the holder and the occupier

- 1.5 The owning Crown body, hereafter referred to as the **Holder**, is defined as the Crown body which has the legal obligation to pay the rent. The Holder is normally the Crown body that was responsible for the most floorspace at the beginning of a term of occupation; however, the Holder can be a minor occupier if all occupants so resolve. Arrangements for change of Holder are set out in paragraphs 3.30 - 3.32. In order to comply with government accounting policy the Holder has certain lead responsibilities in respect of a property where occupation is shared.
- 1.6 A Crown body in occupation who is not the Holder is hereafter referred to as an **Occupier**. Shared occupations will involve one or more Occupiers. Where the plural is used in this Agreement it should be read as including the singular where there is only a single Occupier.
- 1.7 The parties to a Memorandum of Terms of Occupation forming part of this Agreement are hereafter referred to as the Holder and the Occupier.

The memorandum of terms of occupation (MOTO)

- 1.8 In all occupations by Crown bodies where this Agreement applies a property-specific Memorandum of Terms of Occupation (MOTO) will be prepared for each occupation using the standard form and schedules given in Appendix 1. When completing MOTOs, Holders and Occupiers should refer to the Guidance Notes in Appendix 2.

The prescribed term

- 2.1 Unless otherwise agreed, in a leasehold building with a lease with 25 years or less to run at the date of the MOTO, the **Prescribed Term** will be the period from the date of the commencement of the MOTO until the expiry of the lease or the date of first leasebreak. The Holder and all Occupiers will each be responsible for the space they occupy at the commencement of the Prescribed Term, for the cost of that space and for their proportion of any general costs. Unless otherwise agreed, that responsibility will extend until the expiry of the Prescribed Term.

Procedure at the end of the prescribed term

- 2.2 Each occupying Crown body will decide if it wishes to leave or stay at the end of the Prescribed Term, and will notify other Crown occupants accordingly. To enable any changes to be taken into account in their internal financial planning cycles, Crown occupants should give at least one full financial year's notice of an intention to vacate, a desire to vary the MOTO, or a change in space requirement, i.e. they should notify all other Crown occupants of their intentions by the end of the financial year penultimate to the one in which the Prescribed Term ends. Depending on the date on which the Prescribed Term ends, this could require notice of a minimum of one year, and a maximum of two years. The Holder should notify the Occupiers at the outset if there are lease conditions meaning that longer periods of notice are needed.
- 2.3 Having been notified of an intention to vacate, the other Crown occupants must then decide whether to remain in occupation beyond the end of the Prescribed Term or whether to vacate themselves. If all Crown bodies choose to vacate the lease will be surrendered.
- 2.4 Crown bodies choosing to remain and take a further term will be responsible for bearing the cost of any **wholly** vacated space and/or seeking another occupant. The normal arrangement will be for the cost of **wholly** vacated space to be borne by the other Crown occupants pro-rata to the space they occupy, but this arrangement can be varied by mutual agreement if there are one or more Crown occupants prepared to make a greater contribution in order to secure a presence in the property. It is not open to a Holder who 'inherited' vacant space on 1 April 1996 to share the cost of that vacant space with other Occupiers without the agreement of the Occupiers concerned.
- 2.5 Responsibility for **partially** vacated space will remain with its previous occupant (*see paragraph 2.8 (iv)*).

Holder's residual responsibility

- 2.6 Where all Crown occupants including the Holder **wholly** vacate at the end of the Prescribed Term, the Holder will remain responsible for rent and related payments until lease expiry or until the interest is transferred to a new Holder.

Lease renewal negotiations

- 2.7 On lease break/expiry, unless otherwise mutually agreed, the Holder will be responsible for any negotiations for lease renewal. If the Holder is vacating, the Crown bodies intending to remain in occupation will agree between them who will take the lead in negotiations. This is likely to be the new Holder. In any lease renewal negotiation the Holder, or other lead negotiator, will take account of the requirements of all the intended Crown occupants. These occupants should agree their requirements and set them out in writing before negotiations commence. The Holder, or other lead negotiator, will consult these occupants once Heads of Terms have been provisionally agreed with the landlord. If the Heads of Terms satisfy their requirements as stipulated before negotiations commenced then these Crown occupants must commit to the renewed lease. The costs of negotiation will be shared between the Crown bodies that have committed to occupy space under the new lease, pro-rata to the space they will occupy. The Holder will agree a new MOTO with each remaining Occupier.

Crown occupation continuing beyond the prescribed term

2.8 When Crown occupation by the Holder or any Occupier continues beyond the Prescribed Term:

- (i) Occupiers will have the right to a further Prescribed Term of occupation;
- (ii) if the Holder **wholly** vacates then one of the remaining Occupiers must become the new Holder and agree new MOTOs with each of the other remaining Occupiers;
- (iii) any continuing costs in respect of space **wholly** vacated will be shared between the remaining Crown occupants pro-rata to the space they occupy as set out in paragraph 2.4;
- (iv) in the absence of agreement to vary the space requirement, responsibility for **partially** vacated space will remain with its previous occupant when MOTOs are renewed; and
- (v) where the Occupier wishes to remain in occupation but a new MOTO has not been agreed before the end of the Prescribed Term the occupation will continue in accordance with paragraph 3.36.

Holders or occupiers vacating during the prescribed term

2.9 In accordance with paragraph 2.1 the Holder and all Occupiers will each be responsible for their space throughout the duration of the Prescribed Term. This responsibility will continue even if the Holder or Occupier has vacated, until an alternative occupant takes over (see paragraphs 3.8 to 3.32).

3.1 Periods of occupation and general financial responsibilities are set out in Chapter 2 of this Agreement.

VACATION AT THE END OF THE PRESCRIBED TERM

- 3.2 Where Crown occupation by the Holder or any other Crown body taking over the Holder's role continues after the expiry of the Prescribed Term Occupiers have the right to a further Prescribed Term **except** where the end of a Prescribed Term coincides with the expiry of a lease and there is no legal right of continued occupation. This may occur because, for example, in England, Wales and N. Ireland the normal statutory right of continued occupation has been withdrawn by agreement in the lease, or because the landlord wishes to occupy or redevelop the property, or because in Scotland there is no statutory security of tenure provision. In these circumstances the Occupiers must seek space elsewhere. Where the Holder wants the Occupier's space for its own use it may **request** the Occupier to vacate, but the Occupier has the right to refuse this request. The rights, responsibilities and procedures set out in paragraphs 3.20 to 3.29.
- 3.3 Similarly, if the Holder intends to vacate a leasehold property at a leasebreak **in order to surrender the lease**, then the Occupiers must seek space elsewhere unless one of them or another Crown body is prepared to become the new Holder by acquiring the leasehold interest by Administrative Transfer.
- 3.4 The Holder will inform the Occupiers and OGC of the likely position at least one full financial year prior to the lease expiry or break notice date, and if necessary keep the Occupiers fully informed of the landlord's position thereafter.
- 3.5 When vacation occurs under the circumstances outlined in paragraphs 3.2 to 3.4 the Holder and Occupiers will each bear their own relocation costs.

The holder's responsibility to notify an intention to vacate

- 3.6 The Holder intending to vacate at the end of the Prescribed Term as described above will:
- (i) give the earliest possible written notification to the Occupiers of its wish to obtain vacant possession stating the reason why. Although political decisions may impose time constraints, wherever possible, the Holder will give at least one full financial year's notice before the lease break notice date, and consult with the Occupiers as early as possible to discuss timing, implications and the various options available in accordance with paragraph 2.2; and
 - (ii) notify OGC to alert them to a possible relocation need. OGC should be involved in the discussions at an early stage with the aim of reaching an agreed strategy for the way forward.

The occupier's responsibility to notify an intention to vacate

- 3.7 The Occupier intending to vacate at the end of the Prescribed Term will give the Holder and other Occupiers the earliest possible notice of its intention, in accordance with paragraph 2.2. Similar notification procedures to those set out at paragraph 3.6 should apply to Occupiers intending to vacate in these circumstances.

VACATION DURING THE PRESCRIBED TERM - OCCUPIERS

3.8 The following provisions apply

What the occupier should do

- 3.9 The Occupier intending to vacate during the Prescribed Term will give the Holder the earliest possible notice of its intention. This notification should be copied to OGC.
- 3.10 The Occupier will continue to be responsible for all charges specified in the MOTO until the end of the Prescribed Term or until the vacant space has been reoccupied by another Crown body or disposed of to a non-Crown body (see paragraph 2.1). A liability to pay rates continues even though space has become vacant, although rating reliefs are available.

How the holder should respond

- 3.11 Within four weeks of being notified of space that is capable of reallocation to another Crown body, the Holder will:
- (i) decide whether it is interested in taking over the vacant space itself;
 - (ii) notify the other Occupiers and determine whether any of them wishes to take over the vacant space;
 - (iii) notify OGC of the vacant space; and
 - (iv) ascertain whether any legal or other restrictions prevent the letting of the vacant space to a non-Crown body.
- 3.12 OGC will act as a clearinghouse for the space requirements of Crown bodies within the Civil Estate. The Holder must notify OGC of any prospective vacant space that it considers capable of reallocation to another Crown body. The Holder must also notify OGC of any prospective vacant space where disposal to a non-Crown body is under consideration (including surrender to the landlord).
- 3.13 The other Occupiers and OGC will respond to the Holder's request/notification within three weeks.

Reuse by Crown occupiers

- 3.14 Where there are competing Crown requirements for vacant space, the benefit to the Exchequer will be paramount in reaching a decision. If agreement cannot be reached between Crown bodies, the dispute procedure at paragraphs 7.1 to 7.2 of this Agreement will apply.
- 3.15 The grant of space in the property to other Crown bodies will be subject to the following:
- (i) neither the Holder nor existing Occupiers will unreasonably withhold permission for the granting of space to a Crown body; and
 - (ii) no Occupier will part with possession of nor share occupation of their space or any part of it without the express consent in writing of the Holder; and
 - (iii) Incoming Occupiers will hold space under the terms of this Agreement and will be responsible for their entire fitting out works on taking up occupation, unless agreed otherwise with the Holder.

Reuse where there is no Crown requirement

- 3.16 Where there is no Crown requirement for the vacant space, and there are no restrictions preventing letting to non-Crown bodies, neither the Holder nor existing Occupiers will unreasonably withhold permission for the granting of space to a non-Crown body under a commercial tenancy. In order to achieve a commercial letting the Holder will agree the following with the Occupier possessing the vacant space:
- (i) the letting agent to be appointed, the terms, including any use of incentive fees, and the marketing strategy;
 - (ii) a regular reporting and review process with the agent, which the Holder will ensure is followed; and
 - (iii) the terms of any letting, which must be acceptable to both Holder and Occupier.
- 3.17 All agents' fees, financial incentives and legal fees will be met by the former Occupier. If the terms allow for a rent lower than that which the Holder has to pay for the space (i.e. if the market rent is less than the passing rent), the former Occupier will pay the Holder the difference until its liability ceases at the end of the Prescribed Term. Payment should be made **direct to the Holder** from the former Occupier.
- 3.18 The incoming commercial tenant will require a new lease from the Holder. In the case where this lease expires **before** the end of the Prescribed Term the existing MOTO will be placed in abeyance, to be reactivated by the

Holder at the end of the commercial lease. The existing MOTO will remain the responsibility of the former Occupier, or, if that Occupier has ceased to be a Crown body, its sponsoring Crown body (*see paragraph 3.45*).

Vacant space which is not capable of reallocation or reletting.

- 3.19 Arrangements for dealing with vacant space that is not capable of reallocation to another Crown body or commercial letting to a non-Crown body will be determined by the House Committee (*see paragraph 4.5 (ix)*).

HOLDERS REQUESTING OCCUPIERS TO VACATE DURING OR AT THE END OF THE PRESCRIBED TERM

What the holder should do

- 3.20 The Holder may only request Occupiers to vacate when the Holder requires the Occupiers' space for its own use, and should offer appropriate financial assistance if an Occupier agrees to vacate. Vacation in this circumstance must be by mutual agreement. The Holder has no right of 'eviction'. **Occupiers have the right to refuse the Holder's request.**
- 3.21 Where a disagreement arises, an appraisal based on best value for money for the Exchequer will normally indicate the solution. The Holder will take account of the Occupiers' costs and their operational needs in the appraisal. If the Occupiers are unable to accept the result of the appraisal the Holder may invoke the Disputes Procedures (*see paragraphs 7.1 and 7.2*).
- 3.22 Where vacation is requested as above, the Holder will take the following steps:
- (i) give the earliest possible written notification to the Occupiers of its wish to obtain vacant possession stating the reason why. Although political decisions may impose time constraints, wherever possible, the Holder will give at least one full financial year's notice and consult with the Occupiers as early as possible to discuss timing, implications and the various options available. Reasonable time targets should be agreed for all processes involved. Clearly, the earlier the Occupiers can be informed, the more responsive they can be. The notification will be made at local level and it will be an Occupier's responsibility to notify its Head Office if appropriate; and
 - (ii) notify OGC to alert them to a possible relocation need. OGC should also be involved in the discussions at an early stage with the aim of reaching an agreed strategy for the way forward.
- 3.23 Where the Holder wants Occupiers to leave in the circumstance set out in paragraph 3.20 it has no right to terminate the MOTO, but can offer contributions towards the cost of relocation. The following financial assistance will be available from the Holder by negotiation with the Occupiers and subject to their demonstrable need on a case by case basis:
- (i) reimbursement of reasonable removal costs;
 - (ii) funding of reasonable in-going works to the same standard as the existing space; and
 - (iii) where the rental cost of alternative space provided exceeds the rental cost of the existing space, the Holder should be prepared to provide appropriate 'top up' funding at least until the start of the financial year following the next estimates round as part of the financial planning cycle.

How the occupiers should respond

- 3.24 The Occupiers have a clear responsibility to co-operate with the Holder wherever possible and to deal with occupancy matters in a positive and constructive way. An example would be by agreeing to reduce notice times where the Holder is subject to unexpected and urgent pressures that could not be foreseen in planning.

- 3.25 After receiving a request to vacate there are a number of options that each Occupier can explore in conjunction with the other Occupiers, the Holder and OGC. These are:
- (i) to decide whether or not there is a continuing operational need for their presence in that location;
 - (ii) where the Holder wishes to vacate and dispose of the property, to decide whether to become the new Holder of the complete building. The Occupier taking this course of action would then need to formalise its new position by an administrative transfer at open market value;
 - (iii) to explore the possibility of sharing if the Holder is moving to another property in a suitable location; or
 - (iv) to consider finding suitable alternative space, by consulting OGC on available vacant space on the Civil Estate, or if necessary via a new acquisition.
- 3.26 The Occupiers should exercise restraint in the costs they seek to recover from the Holder and should not seek to gain financial advantage because of the Holder's request.

Holders requesting occupiers to vacate part of their space

- 3.27 There are only two legitimate reasons whereby the Holder can reasonably request Occupiers to give up **part** of their space. These are:
- (i) expansion by the Holder within the property due to changes in operational requirements or increase in staffing; or
 - (ii) expansion by the Holder within the property due to an estate rationalisation scheme.
- 3.28 The rights, responsibilities and procedures appropriate to the particular circumstances as set out in paragraphs 3.23 to 3.26 above will apply. To summarise; in all cases the Holder must take the following steps:
- (i) give the earliest possible written notification to Occupiers of their requirement to take over part of their space and the reason(s) why. At least one full financial year's notice should be given and the notification should be made at local level;
 - (ii) at local level, consult with Occupiers as early as possible to discuss timing, implications and the various options available; and
 - (iii) if agreement is reached, pay all reasonable costs incurred as a result of the internal move/alterations.
- And, as above, Occupiers have a responsibility to co-operate with Holders wherever possible and to deal with such requests in a positive and constructive way. Where a disagreement arises, an appraisal based on best value for money for the Exchequer will normally indicate the solution.
- 3.29 It may be that after consultation, all parties agree that complete vacation by the Occupier is the only solution. If this occurs, the procedures in paragraphs 3.25 to 3.32 governing vacation at the request of the Holder then apply.

HOLDERS VACATING DURING THE PRESCRIBED TERM

Change of holder

- 3.30 The Holder is the Crown body that was responsible for the most space at the beginning of the Prescribed Term, unless it was agreed that another Crown body should be the Holder (*See paragraph 1.5*). If a Holder **wholly** vacates **all** its space during the Prescribed Term, then normally another Crown body will, by agreement, become the new Holder. If agreement cannot be reached, the Holder will remain responsible until one or more other Crown bodies or non-Crown bodies as commercial tenants have occupied **all** its vacant space in

the property. The Crown body responsible for the most space in the property **at that point** will become the new Holder by default, but see paragraph 3.37 below.

- 3.31 The default rule in paragraph 3.30 above should **not** operate if;
- (i) the Holder retains even a small amount of space within a property; or
 - (ii) it retains a financial interest because it has 'sub-let' the space to another Crown body or commercial tenant at a market rent which is less than the appropriate apportionment of passing rent it is paying to the landlord; or
 - (iii) it retains a financial interest because it has sub-let to a commercial tenant at a rent which is greater than the approximate apportionment of the passing rent; or
 - (iv) it has let to a commercial tenant for a term expiring **before** the expiry of the Prescribed Term and therefore retains an interest in abeyance (*see paragraph 3.18*); or
 - (v) the Occupiers agree that another Occupier should become Holder.
- 3.32 A change of Holder by default must allow the Crown body taking on this responsibility adequate time to make appropriate arrangements in respect of the flows of rent, rates and service charges. Where only revenue flows are concerned (rent, rates, service charges), a period covering at least two full quarters should be allowed for the transition.

SHORT TERM USE OF VACANT SPACE

Short term use of vacant space

- 3.33 The Holder, or Occupiers with the Holder's agreement, may offer vacant space to other Crown bodies short-term (for example, for decant purposes), or to non-Crown bodies as commercial tenants; but only for a period which does not extend beyond the Prescribed Term. If the market rent is below the appropriate proportion of the passing rent, the space may be offered at market rent, to either another Crown body, or a non-Crown body (if the lease allows) with the Crown body responsible for the vacant space making up the difference as a 'top-up' payment in accordance with paragraph 3.17. Where the Crown occupants are jointly responsible for the vacant space following MOTO renewal they will contribute to the 'top-up' in accordance with the apportionment of costs. If, however, the market rent is above the passing rent, ie in a rising market, then the vacant space should first be offered to any interested Crown body **at the appropriate proportion of the passing rent**. Only if there is no interest should the Holder or Occupier consider offering it at market rent to a non-Crown body. Where Crown occupants have agreed to share the costs of vacant space following MOTO renewal they will benefit from any profit rent in accordance with the apportionment of costs.

VARYING THE TERMS OF THE MOTO

Varying the MOTO during the prescribed Term

- 3.34 Occupiers or Holders wishing to vary the terms of their MOTO's during the Prescribed Term, including a change in space requirement may only do so by agreement. Paragraphs 3.20 to 3.29 relate specifically to situations where the Holder desires one or more of the Occupiers to vacate all or part of their space. There may be other circumstances in which a variation is desired and these should be the subjects of negotiation between the parties and in House Committee (*see paragraphs 4.3 to 4.5*).
- 3.35 As much notice as possible should be given to enable changes to be allowed for in financial planning cycles.

Varying the MOTO at the end of the prescribed Term

3.36 Holders and Occupiers wishing to vary the terms of their MOTO at renewal, ie at the end of the Prescribed Term, should notify other occupants in accordance with paragraph 2.2. Where notification has **not** taken place in accordance with those paragraphs it will be assumed that the Occupier wishes to renew the MOTO for a further Prescribed Term. Within reason, existing terms will be carried forward save for those dealing with Prescribed Term, dates, Licence Payment (rent), in which cases the appropriate entries will be substituted (see *paragraph 2.8*).

CHANGE IN STATUS OF CROWN BODIES AND TRANSFER OF PORTFOLIO TO NON-CROWN BODIES

Termination of MOTO

3.37 It would normally be expected that a non-Crown body's occupation would be covered by a commercial lease. Therefore, when a Crown body changes status and becomes a non-Crown body, for example a Non-Departmental Public Body (NDPB), the MOTO will terminate. This applies where a Holder or Occupier ceases to be a Government Department, Ministry, Agency or other public body whose functions, and those of its officers and servants, are legally defined as being performed on behalf of the Crown.

Change in status of the holder

3.38 If the Holder has become a non-Crown body with landholding powers then it is possible the property may pass to that new body and therefore cease to be on the Civil Estate. The Occupiers may choose to vacate within six months to avoid a commercial tenancy with a non-Government owner, or, they may decide to take a commercial tenancy from the new non-Crown body.

3.39 Where a change of status is anticipated, the Holder will take the following steps:

- (i) give the earliest possible written notification to the Occupier of its proposed change in status. Although political decisions may impose time constraints, wherever possible, the Holder will give at least one full financial year's notice and consult with Occupiers as early as possible to discuss timing, implications and the various options available. Reasonable time targets should be agreed for all processes involved so that the Occupiers can make appropriate provision in their financial planning cycles. The notification will be made at local level and it will be an Occupier's responsibility to notify its Head Office if appropriate; and
- (ii) similarly, the Holder will notify OGC to alert them to a possible relocation need. OGC should also be involved in the discussions at an early stage with the aim of reaching an agreed strategy for the way forward.

3.40 If a Holder changes its status the Occupiers are required to choose between the options set out in paragraphs 3.38 and 3.42. Where the Occupiers can show that the Holder's change of status will cause them additional extra costs that can not be recovered or provided for within the financial planning process, the following financial assistance will be available from the Holder subject to Occupiers' demonstrable need on a case by case basis:

- (i) reimbursement of reasonable removal costs;
- (ii) funding of reasonable in-going works to the same standard as the existing space;
- (iii) where the rental cost of alternative space exceeds the rental cost of the existing space, the Holder should be prepared to provide appropriate 'top up' funding at least until the start of the financial year following the next estimates round of the financial planning cycle; or

(iv) where a new commercial tenancy is agreed, the Holder will compensate the Occupiers for any financial loss caused by the change from MOTO to commercial lease.

How the occupier should respond

- 3.41 Occupiers have a clear responsibility to co-operate with the Holder wherever possible and to deal with occupancy matters in a positive and constructive way, for example, by agreeing to reduce notice times where the Holder is subject to unexpected and urgent pressures that could not be foreseen in planning.
- 3.42 After being notified of an anticipated change of status there are a number of options that Occupiers can explore in conjunction with the other Occupiers, the Holder and OGC. These are:
- (i) to decide whether or not there is a continuing operational need for their presence in that location;
 - (ii) to consider finding suitable alternative space, by consulting OGC on available vacant space on the Civil Estate, and if necessary via a new acquisition; and
 - (iii) to explore the possibility of agreeing a commercial lease with the new non-Crown body.
- 3.43 Occupiers should exercise restraint in the costs they seek to recover from the Holder and should not seek to gain financial advantage because of the Holder's change in status.

Change in status of an occupier

- 3.44 The parent Crown body of a former Occupier will assume responsibility for the space and will decide with the other occupants whether the new non-Crown body can be permitted to occupy under a commercial lease/sub-lease, where legally possible, or a financial memorandum between the parent and the NDPB where commercial arrangements are not practicable. In England, Wales and Northern Ireland, if an Occupier changes status the Holder may require it to vacate within six months to avoid creating a secure tenancy under the Landlord and Tenant Act 1954.

Transfer of portfolio

- 3.45 When a Holder intends to transfer its property portfolio to a non-Crown body, for example PRIME arrangements, it must consult with the Occupiers of the affected properties at the appropriate levels as soon as that intention becomes known and, in any event, before the requirement is advertised.
- 3.46 When a portfolio transfer is being considered, any Occupier in an affected property should have the opportunity to become the new Holder of the property if all occupants so resolve. In coming to a resolution about the future ownership of the property the Holder and Occupiers should have appraised all possible options at the appropriate level within their organisations and be satisfied that the chosen option offers the maximum Exchequer benefit having regard to investment appraisal including business case.

'CONTRACTED-OUT' GOVERNMENT FUNCTIONS

'Contracting-out'

- 3.47 During the duration of the MOTO Government functions may be 'contracted-out' to a private sector contractor employed to perform the Holder's or Occupier's functions.

Occupiers 'contracting-out'

- 3.48 Where an Occupier is considering 'contracting-out' its functions to the private sector it will discuss its plans with the Holder and other Occupiers and, where appropriate, ensure that commercial subletting is permitted by the terms of the Holder's lease. The private sector contractor's sub-lease will be with the Holder.
- 3.49 Where an Occupier 'contracts-out' its functions and the private sector contractor takes up occupation under a commercial lease/sub-lease (with the Holder) for a term less than the Prescribed Term, the former Occupier's

MOTO will be placed in abeyance. The Holder will reactivate it if the space becomes vacant on lease/sub-lease expiry. The MOTO will remain the responsibility of the former Occupier or its parent department (*see paragraph 3.18*).

Holders 'contracting-out'

3.50 Where a Holder 'contracts-out' its functions by leasing or subleasing its space to a private sector contractor it will discuss its plans with the Occupiers and, where appropriate, ensure that commercial subletting is permitted by the terms of the lease. The Holder will remain responsible for the space its contractor occupies and will maintain its MOTOs with the Occupiers in accordance with this Agreement.

CLEANLINESS AND MAINTENANCE AT VACATION

Cleanliness and maintenance at vacation

3.51 When a Holder vacates it should ensure that the space is left in a clean and tenantable condition, cleared of any rubbish and surplus furniture etc. Failure to do this may result in rectification charges being claimed by the new Holder against the former Holder.

3.52 The duties and responsibilities of Occupiers in respect of outstanding maintenance and works are set out in paragraphs 6.9 to 6.11.

Dealings with landlords

- 4.1 All dealings with the commercial landlord will be the responsibility of the Holder except where agreed otherwise in connection with lease renewals (*see paragraph 2.7*). In conducting these dealings, the Holder will act in the general interests of all occupants.

Information available to occupiers

- 4.2 Occupiers will have the right of access by request through the House Committee to any documentation related to the management and maintenance of the property.

HOUSE COMMITTEES

Purpose of the house committee

- 4.3 In accordance with paragraph 1.3 the Holder will establish House Committees, or equivalent arrangements, with representation from each Occupier. The Holder will ensure that the Committee meets at least once a year.
- 4.4 To provide a basis for joint planning the Committee will discuss and agree the appropriateness, standard and cost of the services that are being provided. It will also provide the means to ensure that the Holder does not act purely in its own self-interest.

Duties and responsibilities

- 4.5 Although the following list is not exhaustive the Committee will be the forum for:

Health and Safety

(i) Discussing health and safety, fire, security and business continuity matters. The Holder will take lead responsibility here, including responsibility for risk assessments relating to the structure and safety of the building, and to areas, services and facilities in common use. Since the primary responsibility for safeguarding the health and safety of employees rests with the employing Occupier, Occupiers will wish to satisfy themselves via the House Committee that all appropriate measures are being taken; There may be occasions when Occupiers wish to satisfy themselves by seeing the appropriate maintenance documentation;

Repair and maintenance

(ii) Ensuring that the property is maintained in an efficient, clean, environmentally friendly and energy efficient manner;

(iii) Discussing and agreeing the programming of future works and maintenance to enable Occupiers to plan within their internal financial planning cycle. Responsibility for deciding on the programme for common areas will rest with the Holder; Inspection, maintenance and works responsibilities are set out in paragraphs 6.1 to 6.11;

(iv) Reviewing the respective maintenance responsibilities of the Holder and Occupiers whenever a maintenance contract needs to be re-let;

Service charges

(v) Resolving any disputes over the level and method of apportionment of charge for all out-goings;

Holder's rules

(vi) Reviewing the Holder's rules and regulations governing occupation of the property (*see paragraph 6.6*);

Estate strategy and changing needs

(vii) Discussing the Holder's and Occupiers' PFI proposals, property interests and estate strategies, and interests in any forthcoming or ongoing negotiations with the landlord;

(viii) Ensuring that the Holder/Occupiers are aware of a Committee member's requirement for space changes in the building, including a need for additional space (*see paragraphs 3.34 to 3.36*);

(ix) Considering options for vacant space including space which is not capable of independent occupation, for example, rationalisation of pockets of vacant space to produce a unit which is capable of independent occupation (*see paragraphs 3.14 to 3.19*); and

Rating

(x) Formulating a Rating Agreement in which all arrangements for apportionment and reimbursement of rates are agreed. The Rating Agreement will formalise the procedures by which the Crown occupants in a shared property can liaise with the ratepayer and by which queries regarding the bill or assessment can be raised. In the absence of other agreements the Holder will be responsible for all discussions with the Billing Authority/Council or Valuation Office/Assessor. Unless otherwise agreed, where the Occupier is the ratepayer the Holder will act as its authorised representative in all rating matters.

RATING AGREEMENTS**Rating agreements**

- 4.6 Where a Rateable Value (RV) is attributed to a Crown property comprising more than one legal interest, for example the Holder's lease together with one or more other leases held by other Crown bodies, the House Committee should co-operate with the other Crown occupants to draw up a Rating Agreement collectively that will ensure that the ratepayer will be reimbursed.

ACCOUNTING FOR EXPENDITURE AND INCOME

General

- 5.1 The main elements of expenditure are Licence Payments (rent), rates, Annual Service Charge (ASC), services provided by the Holder's in-house staff, ad hoc major maintenance and new works.

Invoice, payment and reconciliation timetable

- 5.2 Licence payments will be demanded and paid in accordance with paragraph 5.10 and 5.11. Reconciliation will take place at the end of the financial year.
- 5.3 Ad-hoc major maintenance and new works expenditure will be demanded and paid in accordance with paragraphs 5.31 and 5.33. Reconciliation will take place at the end of the financial year.
- 5.4 In the absence of other agreed arrangements, rates, Annual Service Charge (ASC) and services provided by the Holder's in-house staff will be invoiced and paid for in accordance with the following timetable. The Holder will demand payment from the Occupier quarterly in advance for the first three quarters of the financial year (April, July, October) based on the quarterly proportions of the agreed forward estimates of the annual expenditure. At the end of the third quarter an in-year reconciliation will take place comparing actual expenditure with the estimated expenditure apportioned to the first three quarters of the financial year. This reconciliation process will provide the basis for fourth quarter expenditure estimates. In January the Holder will demand, in advance, payments for the fourth quarter based on the revised estimates and adjusted to account for under or over payment during the earlier part of the year. At the end of the fourth quarter an end-of-year reconciliation will take place.
- 5.5 It will be the Occupier's responsibility to pay the Holder's invoices promptly and in full. The Holder will deal with any queries within 30 days **after** payment **in full** has been made.
- 5.6 At the end of the financial year a Reconciliation Statement will be provided showing the Occupier's proportion of actual expenditure for the year, the amount received from the Occupier, and a request for a supplementary payment or refund if necessary. Paragraphs 5.25 and 5.26 contain special provisions relating to reconciliation of ASC. A sample Reconciliation Statement is provided at Appendix 5

On checking of invoices presented by supplying departments, Government Accounting says that:

"The other department(s) should satisfy itself that it has received the goods and services (except in cases where it has been agreed that supplies will be "checked in" by the lead department). It should also check that charges are consistent with the catalogue prices or quotations, taking into account the guidance on selective checking in Annex 4.5 (*GA Chapter 4*), and should pay their bills promptly, observing the terms and conditions set out in the relevant agreement." (*GA 14.5.9*).

LICENCE PAYMENTS

Licence payments

- 5.7 Where the Holder pays a rent to the landlord, the Occupier's share (the Licence Payment) will be proportionate to the space it occupies. Licence Payment reviews will be as dictated by the Holder's lease.
- 5.8 The Licence Payment will not be included in the ASC other than in exceptional circumstances where consideration may be given to an inclusive ASC, eg a short term of, say, 6 months or less and/or de minimus occupation of, say, 40m² or less.
- 5.9 In the first year of the Prescribed Term and in each subsequent year the Holder will provide the Occupier with an estimate of the Licence Payment together with a forward estimate of the next year's charge.

- 5.10 The Holder will invoice the Occupier for the Licence Payment due. Payment will be demanded in accordance with the rent payment pattern in the lease (usually quarterly in advance-Reconciliation will take place in accordance with paragraph 5.2.
- 5.11 It is the Occupier's responsibility to pay the Holder's Licence Payment invoice(s) promptly and in full. The Holder will deal with any queries within 30 days **after** payment **in full** has been made.

RATES

Rates

- 5.12 Where the Holder or one of the Crown occupants other than the Occupier is responsible for payment of rates, the Holder will invoice the Occupier for its share, in proportion to the space it occupies. The Holder will provide the Occupier with an estimate in advance of its share of the annual rates amount. In the absence of other agreed arrangements rates payments will be demanded and paid in accordance with the timetable set out at paragraph 5.4. Rates should not be included in the ASC.
- 5.13 Where the Occupier is responsible for payment of rates, in the absence of other agreed arrangements, the Occupier will pass the bill to the Holder for payment. The Holder should make payment within the period specified by the Billing Authority/Council. The Holder will invoice the Occupiers for their appropriate shares of the rates in accordance with the timetable set out at paragraph 5.4.
- 5.14 It is the recipient's responsibility to pay rates invoices promptly and in full. The Holder will deal with any queries within 30 days **after** payment **in full** has been made.

ANNUAL SERVICE CHARGE (ASC)

Annual service charge (ASC)

- 5.15 The ASC refers **only** to those services indicated as "Yes" in Column 4 Part A of the First Schedule of the MOTO. The Part A standard list may be added to, eg to include canteen usage, by agreement between the parties **provided always** that government accounting requirements are satisfied.
- 5.16 The Holder should **not** charge its in-house administration costs related to the Part A services to the Occupier.
- 5.17 At the beginning of the financial year the Holder will determine the ASC for the premises. This will be an informed calculation based on historical costs and known future commitments.
- 5.18 The estimated ASC will then be divided by the total area available for occupation within the premises, usually measured in terms of Net internal Area (NIA), to determine a **unitary charge per square metre**.
- 5.19 The unitary charge will be multiplied by the space allocated to each Occupier in their MOTO to determine the Occupier's share of the ASC in proportion to the space occupied.

In summary, the Occupier's ASC calculation is:

$$\frac{\text{Total ASC for the premises} \times \text{Occupier's Space (NIA)}}{\text{Total letting area of the premises (NIA)}}$$

Total letting area of the premises (NIA)

- 5.20 Having carried out this calculation the Holder will provide the Occupier with an estimate of the Occupier's ASC for the first year of occupation plus a forward estimate of next year's ASC. The Holder will agree the estimated ASC with the Occupier and invoice the Occupier accordingly.
- 5.21 In the absence of other agreed arrangements the Holder will invoice the Occupier for ASC in accordance with the timetable set out at paragraph 5.4.
- 5.22 The Holder must keep Occupiers informed of likely expenditure against estimates as the year progresses and inform them immediately if any significant or unexpected payments materialise later in the financial year. A reconciliation should be carried out at the end of the third quarter in accordance with paragraph 5.4.
- 5.23 It is the Occupier's responsibility to pay the Holder's ASC invoices promptly and in full. The Holder will deal with any queries within 30 days **after** payment **in full** has been made. Copy invoices for the individual service costs supporting the ASC will **not** be provided without the agreement of the House Committee (*see paragraph 4.2*) or the Occupier raising a formal dispute under the CEOA (*see Chapter 7*).
- 5.24 At the end of the financial year the Holder will undertake a comparison between the actual annual costs and the ASC in accordance with paragraphs 5.4 and 5.6. The Reconciliation Statement will show the Occupier's proportion of the actual expenditure paid that year, the amount received from the Occupier and a request for a supplementary payment or refund if necessary. (*see paragraphs 5.25 and 5.26*). A sample Reconciliation Statement is provided at Appendix 5.
- 5.25 If the actual costs are greater / less than the ASC, but they fall **within** the **acceptable variance** (+/- 10% of ASC up to a maximum of £5,000), no further action will be taken, i. e. an additional payment / refund **will not** be necessary.
- 5.26 In the event that actual costs are greater / less than the ASC, and the difference falls **outside** the **acceptable variance**, then an appropriate adjustment will be made, i.e. an additional payment / refund **will** be necessary. No special procedures are required to properly disclose the position under resource accounting.

SERVICES PROVIDED BY THE HOLDER'S IN-HOUSE STAFF

Services provided by the holder's in-house staff

- 5.27 Services that are provided by the Holder's in-house staff e.g. office services must **not** be included in the ASC.
- 5.28 These services should be listed in Part B of the First Schedule of the MOTO together with the number of staff benefiting from them.
- 5.29 The Holder will invoice the Occupier for the appropriate proportion of the cost of services and payment will be demanded in accordance with the timetable set out at paragraph 5.4. Apportionment will normally be made pro-rata to the numbers of staff benefiting from them. Reconciliation will take place in accordance with paragraphs 5.4 and 5.6.
- 5.30 It is the Occupier's responsibility to pay the Holder's services invoice promptly and in full. The Holder will deal with any queries within 30 days **after** payment **in full** has been made.

AD-HOC MAJOR MAINTENANCE AND NEW WORKS EXPENDITURE

Ad-hoc major maintenance and new works expenditure

- 5.31 Any ad-hoc major maintenance or **new works** expenditure on the premises which is **classified as current expenditure** and has been agreed by the House Committee as **not** being appropriate for inclusion in the ASC will be shared with the Occupiers by the Holder in proportion to the space occupied. Such expenditure will be invoiced to the Occupier in arrear (see paragraph 6.8 for a definition of **new works**). (see paragraph 4.5 for House Committee responsibilities).
- 5.32 Any ad-hoc major maintenance or new works expenditure carried out by the Holder for the exclusive benefit of the Occupier which is not to be included in the ASC will be invoiced to the Occupier in arrear. Reconciliation will take place in accordance with paragraph 5.3.
- 5.33 It is the responsibility of the Occupier to pay the Holder's ad-hoc major maintenance or new works invoice promptly and in full. The Holder will deal with any queries within 30 days **after** payment **in full** has been made.

VALUE ADDED TAX (VAT)

VAT

- 5.34 It is a basic principle of VAT that only the person who receives the supply is able to reclaim VAT.
- 5.35 Invoices which attract deductible and recoverable VAT will, therefore, be paid in full by the Holder who will then apply for the appropriate refund from HM Customs & Excise as part of its own VAT Return. HM Treasury's PES(99)23 states that:
- "... recoverable VAT payments where the major occupier (*Holder*) has taken a lease should not be passed on by the major occupier (*Holder*) to minor occupiers (*Occupiers*) under a Memorandum of Terms of Occupation (MOTO). The major occupier (*Holder*) is responsible for all VAT payments on the lease and any subsequent recovery of VAT, even where leased accommodation and services are shared by a minor occupier (*Occupier*)."
- 5.36 Invoices for ASCs, ad-hoc major maintenance and new works expenditure will, therefore, be made **net** of reclaimable VAT.

Right to inspect

6.1 This Agreement does not confer on the Occupier the right to exclude the Holder or any authorised person from the space it occupies. In order to meet their own maintenance obligations the Holder and Holder's landlord or their agents will, on giving reasonable notice, have the right to inspect the Occupier's space.

Acceptable maintenance and allocation of responsibilities

6.2 The Holder and the Occupier will discharge their respective maintenance responsibilities in accordance with an agreed allocation of each of the responsibilities set out in Part A of the First Schedule of the MOTO.

6.3 An example of the allocation of maintenance and building services responsibilities is given in Appendix 3. Unless other agreement is reached Appendix 3 will form the basis of the allocation of responsibilities. However, there will be some responsibilities that can only be decided on the basis of local circumstances. General guidance on acceptable maintenance condition is given at Appendix 4.

6.4 Holders and Occupiers must bear in mind that it is their responsibility under statutory legislation including Health and Safety, to ensure that all responsibilities are allocated clearly.

Internal maintenance

6.5 The Occupier will keep the interior of its space together with the fixtures and fittings in good repair and condition and leave them so on vacation (see paragraphs 6.9 to 6.11. See also paragraph 3.51).

Compliance with general rules and regulations

6.6 The Occupier will abide by such reasonable rules and regulations as may be introduced from time to time by the Holder for the benefit of the occupants of the property. All such rules and regulations will be consistent with the terms of this Agreement.

Alterations and new works

6.7 The Occupier will not make alterations in or additions to its space or remove any fixtures or fittings without the previous written consent of the Holder. To inform its decision, the Holder may request plans and specifications for any proposed works, and may need to obtain landlord's consent. When the Occupier undertakes any works, it will be its responsibility to ensure compliance with all statutory and lease requirements and, on completion, to supply the Holder with any relevant certificates and updated drawings.

6.8 The Occupier is prohibited from undertaking new works without specific agreement in writing from the Holder. Where the Holder grants consent, which should be in writing, the Occupier will meet all associated costs, including Holder's costs such as those involved in obtaining landlord's consent. The Holder may require reinstatement of the space at the end of the Prescribed Term as a condition of granting consent for the new works. In order to be able to make provision in its accounts for this future cost the Occupier may, at any time during its occupation, request the Holder to provide a statement of the reinstatement that would be required and an estimate of cost. **New works** in this context are works that will generally result in significant improvements or enhancements to the building such as the construction of small new buildings, extensions or alterations to existing buildings, or the provision of new plant or other facilities within existing buildings. Where capital expenditure is involved, these works will generally need to be accounted for on the Holder's balance sheet; hence it is the Holder who should make the decision as to whether work is deemed new works or maintenance. Any disagreement will be subject to the dispute procedure in Chapter 7.

Vacation by the occupier – repair, reinstatement and dilapidations

- 6.9 The Holder may inspect the space from time to time and will do so on receipt of the Occupier's notice of intention to vacate or when serving its own notice to quit to ensure that the Occupier's obligations under the MOTO have been fulfilled. Where there is a want of repair and/or reinstatement that is required as a condition of the Holder's consent to new works the Occupier will be required to carry out the necessary repair and/or reinstatement before vacation. Where the Occupier fails to carry out such repair and/or reinstatement to the satisfaction of the Holder before vacation the Holder will recover the cost of any such repair and/or reinstatement from the Occupier. The Holder will require any payments due to be made within the financial year in which vacation occurs.
- 6.10 The Holder may, at its discretion, agree to waive all or part of the Occupier's costs for repair and/or reinstatement in return for the Occupier's agreement to accept liability for future payments in the event of a successful dilapidations claim. In such circumstances the Holder and Occupier will, prior to vacation, record the Occupier's acceptance of liability for its proportion of the settlement, as and when the claim is settled. The Holder should keep the Occupier informed of progress at least twice each financial year and when settlement of the claim is in sight will give reasonable notice and request payment. Where the Holder and Occupier have **not** agreed to waive the Occupier's costs for repair and/or reinstatement in return for acceptance of liability for future payments the Holder will require the Occupier to carry out the works, or, will recover those costs in accordance with paragraph 6.9. Thereafter the Holder will be responsible for meeting all costs arising from a dilapidations settlement. In circumstances where the Holder's landlord has waived a dilapidations claim, for example because of plans to refurbish or demolish, the Holder will also waive such repair and/or reinstatement from the Occupier.
- 6.11 Therefore, at the end of the occupation, the Holder will, at its discretion, require from the Occupier:
- (i) payment for the cost of repairs to the property and/or reinstatement of any alterations or adaptations carried out in the Occupier's space where this reinstatement was a condition of the original consent;
 - (ii) payment for the cost of repair of any wanton damage caused or permitted by the Occupier; and/or
 - (i) agreement to accept liability for a fair proportion of a future dilapidations settlement. Since dilapidations negotiations are frequently protracted and the outcome uncertain the Holder will keep the Occupier informed of progress in accordance with paragraph 6.10.

Dilapidations claims and payments

- 6.12 In accordance with paragraph 6.10 where:
- (i) the Occupier has accepted liability for any future dilapidations claim; and
 - (ii) the Holder has kept the former Occupier informed of any developments in the progress of the dilapidations claim,
 - (iii) the Holder and former Occupier will take account the possibility of any future dilapidations costs and budget accordingly.
- 6.13 The accounting, invoicing and settlement procedures for dilapidations are the same as those for Licence Payments, except that payment is delayed until the settlement is known. Under resource accounting, Holders and Occupiers may need to make provisions for liabilities arising from dilapidations. On subsequent settlement of the claim:
- (i) the Holder will invoice its former Occupiers for the appropriate share of the dilapidations claim having given reasonable notice of intent to request payment;

- (ii) the former Occupier(s) will arrange payment of the Holder's invoice(s) promptly and in full; and
- (ii) the Holder will deal with any queries within 30 days after payment in full has been made.

Nuisance and risks

6.14 The Occupier will neither:

- (i) cause nor permit any nuisance or annoyance to the other occupants of the property nor use its space in any way likely to increase the normal Health and Safety and fire risks nor, if a lease requirement, the fire insurance premium and will take all proper precautions to minimise the risk of fire or damage by frost including any precautions reasonably required by the Holder; nor

- (ii) store, nor bring upon the property any materials or liquid of a specially combustible, inflammable, dangerous or noxious nature as defined in the most recent version of the Control of Substances Hazardous to Health Regulations (COSHH).

6.15 The Occupier will be responsible for and pay for any damage caused to the property or any persons by any act, default or negligence of its servants, agents, licensees or visitors.

6.16 In the event of accidental damage of the kind which would usually be covered by insurance but where the Crown has chosen to accept the risk itself, the Occupier will repair or reinstate at its own expense to the satisfaction of the Holder, or, will reimburse the Holder's costs where the Holder chooses to carry out the work itself. In the event of substantial destruction of the property the Occupiers and Holder will apportion the costs on the basis of NIA, or some other agreed method of apportionment.

- 7.1 Each party should report any cases where agreement cannot be reached locally to their respective Head Offices. The report will be signed at least at Grade 7 or equivalent level, should give a full account of the case, and include the following:
- (i) the nature of the problem;
 - (ii) the steps taken to resolve the problem; and
 - (iii) the reasons for continuing disagreement.
- 7.2 Head Offices will discuss and decide on a way forward. In the unlikely event of failure to agree, the matter may be referred to their respective Ministers.



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