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# Disposal of assets by foundation and voluntary schools



## Guidance

Guidance document no: 128/2014

Date of issue: March 2014

# Disposal of assets by foundation and voluntary schools

<b>Audience</b>	Foundation and governing bodies of foundation and voluntary schools; local authorities.
<b>Overview</b>	This guidance explains how foundation and governing bodies of foundation and voluntary schools can dispose of land or premises that have been provided or enhanced at public expense. This guidance may also be used when an application has been made under paragraph 32 of the School Standards and Organisation (Wales) Act 2013 for the Welsh Ministers to direct that land should be excluded from a transfer.
<b>Action required</b>	Foundation and governing bodies should adhere to this guidance when disposing of land or premises that have been provided or enhanced at public expense.
<b>Further information</b>	Enquiries about this document should be directed to: Capital Funding Branch Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ Tel: 029 2082 5568 e-mail: <a href="mailto:infrastructureunit@wales.gsi.gov.uk">infrastructureunit@wales.gsi.gov.uk</a>
<b>Additional copies</b>	This document can be accessed from the Welsh Government's website at <a href="http://www.wales.gov.uk/educationandskills">www.wales.gov.uk/educationandskills</a>
<b>Related documents</b>	<i>Guidance on Disposal of Assets for Governors and Head Teachers of Grant Maintained Schools</i> (1996) which is replaced by this document.

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# **1. Introduction**

## **1.1 The disposal of school land by foundation and voluntary schools**

1.1.1 This guidance explains how foundation and governing bodies of foundation and voluntary schools can dispose of land or premises that have been provided or enhanced at public expense. Primarily the funds will have been provided by either the local authority or Welsh Government to cover refurbishment, extension and landscaping enhancement. The guidance does not include funds raised through school activities. It is not an authoritative legal interpretation of the relevant legislation, as that is a matter for the courts. Foundation and governing bodies must satisfy themselves that they have complied with all the legal requirements.

1.1.2 The School Standards and Framework Act 1998 (“the 1998 Act”) covers the disposal of land (including buildings) by foundation and governing bodies of foundation and voluntary schools.

1.1.3 Schedule 22 to the 1998 Act, as amended by the School Standards and Organisation Act 2013 (“the 2013 Act”), details who needs to seek the Welsh Ministers’ consent before disposing of land. It also gives guidance on when the consent should be sought. Schedule 22 to the 1998 Act can be accessed here. <http://www.legislation.gov.uk/ukpga/1998/31/schedule/22>

1.1.4 This guidance may also be used when an application has been made under paragraph 32 of the 2013 Act for the Welsh Ministers to direct that land should be excluded from a transfer.

## **2. How to apply for the Welsh Ministers' consent**

### **2.1 Application**

2.1.1 When you need the Welsh Ministers' consent to sell or lease land, the Chair of Governors should make a formal application by completing one of the forms attached at Annexes C or D. Because complex issues are involved, and in some cases may not be resolved quickly, please allow as much time as possible for your application to be considered. The completed form and supporting information should be sent to:

Capital Funding Branch  
Department for Education and Skills  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

2.1.2 The following notes explain what information the Welsh Ministers will need when considering your application. Please read these notes in conjunction with the appropriate application form.

### **2.2 Sale of land**

#### **2.2.1 Guidance for completion of the form at Annex C**

##### **A description of the land to be sold**

Please include a plan of the area so that the Department can confirm that the land is vested in your governing body.

##### **Details of how the land was acquired; whether any improvements have been made to the land and, if so, how these were funded**

This information may affect your share of any proceeds from the sale.

##### **Whether there is a dual use arrangement affecting the land**

If so, please state:

- the views of the dual use partner;
- whether any measures are being taken to protect the interests of the dual use partner; and
- if the dual use partner is entitled to any financial claim which might affect the sale.

##### **An estimate of the current market value of the land**

The Welsh Ministers need a District Valuer's report. It is in your interest to have such a report should any question arise about the market value of the land.

**Details of the prospective buyer, the offer, and if available, the proposed use of the land**

This will enable the Welsh Ministers to determine the likely effect of the sale on the running of the school

**Details of what measures you will take to safeguard pupils**

Please state if there are any safety or security issues arising from the sale of the land and if so, how will you overcome them e.g. isolating the sold premises from the school grounds.

**Details of any planning permission**

Include details of planning permission sought or obtained, and whether this has affected the value of the land.

**Details of any restricted covenants or trusts** that relate to the land as these may affect the propriety of the sale.

**A statement that the governing body is satisfied that the land is surplus to the school's requirements**

This should include both now and in the foreseeable future. The statement should take account of the minimum playing field areas of the Education (School Premises) Regulations 1999 (S.I.1999/2 refers) to ensure that the disposal does not result in a breach of legislation.

**Details of the governing body's proposed use of any proceeds of sale**

You should use any proceeds for capital projects. Please include details of such projects in your application.

**The proposed date of disposal**

**The expected date when any capital project would need to be paid for**

The timing of the sale should not cause any financial difficulties for the school.

## **2.3 Lease of land**

**A description of the land to be leased**

Please include a plan of the area.

**Details of how the land was acquired, any improvements, and if so, how these were funded**

This information may affect your share of the proceeds from the lease.

**Whether there is a dual use arrangement affecting the land**

If so please state:

- the views of the dual use partner;
- whether any measures are being taken to protect the interest of the dual use partner;
- if the dual use partner is entitled to any financial claim which might affect the sale.

**Whether the lease is being arranged to promote the dual use of the land by the school and a partner**

This might include where a private company proposes to build sports accommodation on the school's land for use by the school and the local community. In such circumstances the company may well wish to take out a long term lease on the land to protect their investment in the school.

**Details of any planning permission**

Include details of planning permission sought or obtained, and whether this has affected the value of the land.

**Details of any restrictive covenants or trusts** that relate to the land as these may affect the propriety of the disposal.

**A copy of the proposed lease**

Please include the proposed period of the lease; whether you intend it to be renewable and the amount of rent and/or premium payable. The terms of the lease should prohibit assignment and subletting, and restrict the use to which the land may be put. If Part II of the Landlord and Tenant Act 1954 applies to the lease, you may say whether you intend to apply for a court order excluding the provisions of Sections 24 to 28 of that Act.

**Details, if available, of the prospective lessee, and the proposed use of the premises**

**Details of what measures you will take to safeguard pupils**

Please say whether there are any safety or security issues arising from leasing the land and if so, how these will be managed e.g. fencing off telecommunication masts, isolating the let premises from the school.

**A statement that the governing body is satisfied that the land is surplus to the school's requirements for the term of the lease, but not surplus in the long term**

You should take into account the requirement for minimum playing field areas of the Education (School Premises) Regulations. The lease must represent sensible management of school property. Premises that are surplus in the long term should usually be sold rather than leased. However, if you propose to lease premises for dual use, or as part of a Private Finance Initiative project, the premises will not be surplus to requirements.

**The proposed date of granting the lease**

**Details of the proposed use of any proceeds from the lease**

You should use any proceeds from a lease premium for capital projects.

**The expected date when any capital project that is funded by the income from the lease would need to be paid for**

The timing of the release should not cause any financial difficulties for the school.

### **3. How will the Welsh Ministers decide whether to approve the disposal?**

3.1 The Welsh Ministers will consider your application for consent carefully. They may, in certain cases, consider whether or not to order the return of the land to the former maintaining authority or its successor. Schedule 22 of the School Standards and Framework Act 1998 gives the Welsh Ministers the power to decide on any division of the proceeds from the sale or lease. They may also direct how the sale proceeds are to be used.

#### **Premises transferred from a former maintaining authority**

3.2 If you apply to sell premises which were:

- Transferred to you by a local authority
- Acquired wholly or partly from the proceeds of sale that transferred land

the Welsh Ministers may instruct you to return some or all of the premises to the former maintaining authority or the successor body.

3.3 They will:

- check that they have all the relevant information. If not, you will be notified;
- investigate the ownership of any land;
- take into account the views of the maintaining authorities or their predecessors where the proposed sale affects premises transferred from that authority or its successor to the governing body; and
- take into account the views of any dual use partners.

## **4. What will happen to the proceeds of the sale?**

### **Proceeds from the Disposal of Land**

4.1 The Welsh Ministers have powers and may, in certain cases, consider whether or not to order the return of the land to the maintaining authority. Schedule 22 to the 1998 Act also gives the Welsh Ministers the power to decide on any decision of the proceeds from the sale or lease of land.

### **Sale of Land: Land transferred to a governing body from a former maintaining authority**

4.2 If you apply to sell land which was:

- transferred to you from a former maintaining authority under Section 38(1)(a) of the 1993 Education Act; or
- acquired wholly or partly from the proceeds of sale of that transferred land

the Welsh Ministers may instruct you to return some or all of the land to the former authority, or its successor body.

4.3 In making this decision, the Welsh Ministers will take into account the possible educational and community benefits of transferring the land to the authority. For example, if you wanted to sell playing fields, but there was a shortage of playing fields at other schools in the area, the Welsh Ministers might decide that the land should transfer to the authority.

4.4 In such cases the Welsh Ministers may, after taking into account your views and those of the authority, instruct the authority to pay you an appropriate sum.

4.5 If the Welsh Ministers decide that you do not have to return any land to the authority, they may decide, after taking into account the authority's views, that you should give some or all the proceeds from the sale or lease to the authority or its successor. Although you would normally keep all the proceeds, each case will be considered individually.

4.6 If the Welsh Ministers instruct you to return the premises to the authority, you are bound to act in accordance with that instruction.

### **Payments 'in kind' and Land Exchanges**

4.7 If you sell the land transferred to you from the local authority and the receipts include the provision of any goods or services, the Welsh Ministers may take the payment 'in kind' into account when determining the division of the proceeds.

4.8 If you apply to exchange land or premises transferred to you from the local authority for other land or premises, the Welsh Ministers may instruct you to pay all or part of the value of land exchanged to the authority.

4.9 This will impact upon Foundation schools more than Voluntary Aided schools and will have occurred when a number of Grant Maintained schools became Foundation schools and land was transferred into their ownership.

4.10 If you exchange land for land of equal value, or for land to be used for the same purpose, the Welsh Ministers may decide not to ask you to make a payment to the local authority at the initial exchange. However if you decide to sell the replacement land or premises later on, the Welsh Ministers may instruct you to give some or all of the proceeds from the second disposal to the local authority. You will be expected to get good value for money in any land exchange.

4.11 You should ensure that the conveyance for an exchange is worded as follows: "Site A (your site)" is transferred in consideration of £x, being its valuation by the District Valuer, and site B (the new site) is similarly and simultaneously transferred to the school in exchange."

### **Land acquired from other sources**

4.12 If you apply to sell land or lease land acquired with the assistance of capital or special purpose grant, you should comply with any conditions that were attached to the grant in the first place. This may mean that you may have to repay some of the proceeds, up to the value of the grant, to the Welsh Government.

- 4.13 If you wish to sell land that was not
- transferred to you from a local authority;
  - funded by a special purpose or capital grant; or
  - bought with the proceeds of sale of such land

you may keep the proceeds unless there are recovery provisions attached by a private donor. Such land may have been acquired through money saved from your annual maintenance grant or given as a gift.

### **Leases of land**

4.14 Whether you receive rent or a premium payment for the lease of land transferred to you from a former maintaining authority, the Welsh Ministers regard these as the "proceeds of disposal". The Welsh Ministers, therefore, would be required to take a decision on the division of the proceeds.

4.15 If the Welsh Ministers decide that you may lease land provided by the Welsh Government, they may instruct you to pay all or part of any premium from the lease to the Welsh Government. You will usually be allowed to keep the proceeds of the rent.

### **Equipment**

4.16 You should discuss the sale of equipment with the maintaining authority or Welsh Government, as appropriate. The conditions of grant may require you to repay all or part of the proceeds to the maintaining authority/Welsh Government.

## **5. What can schools do with the retained proceeds?**

5.1 In considering applications to dispose of land the Welsh Ministers take into account how the proceeds of sale are to be used. They will expect such proceeds to be used for capital projects. You will need to decide whether such projects should be free-standing. If a project requires any additional funding, you will need to liaise with the relevant local authority in relation to the 21<sup>st</sup> Century Schools Programme of investment for the area. In all cases the local authority should be notified of any impending changes.

5.2 You will also need to consider the timing of your application for consent to dispose so that, should the Welsh Ministers agree to the disposal, the proceeds will be available when you need them.

5.3 Proceeds from the sale of assets other than land may be used for any purpose.

## **Annex A: Definitions**

“Land” is defined in Section 579(1) of the Education Act 1996 to include as well as land, any buildings and other structures, land covered with water and any interest in land.

“disposal” is defined in section 142(6) of the 1998 Act.

“proceeds of disposal” means the compensation or purchase money paid in respect of the acquisition from the governing body of the premises.

## **Annex B: Obtaining a valuation of land and advice on its disposal**

Each application to dispose of land or buildings must be accompanied by a District Valuer's report, giving the current market value of the property to be disposed of. Local District Valuer's Offices carry out valuations for schools. You should contact your local office as soon as possible.

Please supply your local Valuation Office with the following information:

- the location and size of the land or building and plan of the area;
- tenure of the land;
- any existing restrictions, covenants or tenancies affecting the land;
- the current use of the land, what it is designated as in the local plan and any existing planning permissions;
- any restrictive covenants or conditions to be attached to the disposal, e.g. access rights to the retained land and rights of access to the land for connecting, maintaining and renewing services.

You may consider using a professional advisor to help you obtain this information and to get the best price for the land. The District Valuer, or your school's own professional advisers, can advise on considerations such as:

- the planning position affecting the land, i.e. its current status in the local plan, any existing permissions and the likelihood of future permissions being granted for this and adjoining sites;
- where there is likelihood of planning permission being granted, the advantages of obtaining permission before the land is offered for disposal to maximise the value of the land;
- ground conditions affecting the site and the existence of any mineral value;
- rights that should be reserved in the terms of the disposal to safeguard the value and potential of any retained land;
- possible potential development gains e.g. getting the buyer to provide a new access to the retained land;
- the marketing of land, including advice on the best way of selling the land and whether there are any special buyers.

The Welsh Ministers' consent is usually based on the District Valuer's recommendation. If you do not think that the sale will realise the sum identified, you should inform the Welsh Ministers, saying why this is the case. If during the marketing process you realise that you are unlikely to realise the sum recommended, you might wish to contact the District Valuer again for a revised report if circumstances have changed sufficiently.

## Annex C: Application form – sales

Department for Education and Skills



Llywodraeth Cymru  
Welsh Government

### **Application for the Welsh Ministers' Consent to the Disposal of Land**

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**School name:**

**School number:**

## Part A – Sales

1. Please describe the land to be sold. Attach a plan showing the area in question.

2. Was the land acquired by the governing body by:

- transfer from the local authority on incorporation or implementation, or
- provided by or bought with a grant from the Welsh Government, or
- another method?

Please give details.

3. Has the land subsequently been improved by using a capital grant or other funds? Please give details.

4. Is there a dual arrangement affecting the land? If so please set out the dual partner's views and any measures being taken to protect their interests.

5. What is the estimated value of the land? (Please send District Valuer's Report.)

6. Is there a prospective buyer for the land? Please give details, including details of any sum offered.

7. What provisions will be made to ensure the safety of pupils?

8. Has planning permission been sought or obtained on the land to be sold? Please give details, including any known details of developments proposed for the site.

9. Please give details of any existing restrictive covenants or trusts relating to the land.

10. Is the land surplus to the school's requirements, bearing in mind the requirements for a minimum playing field area as specified in the Education (School Premises) Regulations?

11. If the land to be sold forms part of an existing school playing field or recreation area please state:

- a) the area of playing field that will be retained after the sale .....
- b) the area of land and soft recreation areas that will be retained after the sale; and .....
- c) the number of pupils on the school role .....

12. Is the governing body satisfied that the school will not need the land in the longer term?

13. How will the governing body use the proceeds from the sale? Please give details of the capital project and/or any related capital bid or any Private Finance Initiative proposals.

14. When does the governing body hope to sell the land?

15. When would the capital project need to be paid for?

*I hereby certify that the above information is correct to the best of my knowledge.*

Signed  
and date

*(Chair of Governors)*

Name in BLOCK LETTERS

Telephone Number

## Annex D: Application form – leases

Department for Education and Skills



Llywodraeth Cymru  
Welsh Government

### **Application for the Welsh Ministers' Consent to the Disposal of Land**

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**School name:**

**School number:**

## Part B – Leases

1. Please describe the land to be leased and attach a plan showing the area in question.

2. Was the land acquired by the governing body by:
  - a. transfer from the local authority on incorporation or implementation, or
  - b. provided by or bought with a grant from the Welsh Government, or
  - c. another method?

Please give details.

3. Has the land subsequently been improved by using a capital grant or other funds? Please give details.

4. Is there a dual arrangement affecting the land? If so please set out the dual partner's views and any measures being taken to protect their interests.

5. Will the leased land be for dual use (e.g. for use by the school and a partner?)

6. Has planning permission been sought or obtained? Please give details, including any known details of developments proposed for the site.

7. Please give details of any restrictive covenants or trusts.

8. What is the proposed period of the lease? Please state whether you intend to apply for exemption from the sections of the Landlord and Tenant Act 1954 relating to the continuation and renewal of tenancies. (Please attach a copy of the proposed lease.)

9. a. What premium payment/rent would be payable under the proposed lease?

b. Please state the reasons for selecting either a premium or a rental agreement.

10. To whom do the governing body propose to grant a lease? How will the land be used? Please give details.

11. What provisions will be made to ensure the safety of pupils?

12. Is the land surplus to the school's requirements for the period of the lease, bearing in mind the requirements for a minimum playing field area as specified in the Education (School, Premises) Regulations? (This is not relevant when the lease is for dual use.)

13. Will the school require the land in the longer term? Please give details.

14. When does the governing body hope to grant the lease on the land?

15. How will the governing body use the proceeds from the lease? In the case of a leasehold premium, please give details of any capital project and/or any related capital bid, or any Private Finance Initiative projects.

16. When would the project need to be paid for?

*I hereby certify that the above information is correct to the best of my knowledge.*

Signed  
and date

*(Chair of Governors)*

Name in BLOCK LETTERS

Telephone Number