

Revised procedure notes for the disposal of Exchequer-funded assets and the retention of proceeds

Introduction

1. These *Revised Procedure Notes* supercede the *Interim Procedure Notes* in all matters relating to the arrangements which should be followed by institutions when seeking to dispose of surplus Exchequer-funded assets and to retain the proceeds from such disposals.
2. These *Notes* should be read in conjunction with the revised *Financial Memorandum* between the Council and institutions which took effect from 1 August 1996.
3. All transactions taking effect from 1 August 1997 are covered by these *Notes* unless the Council indicates otherwise. The *Notes* do not apply retrospectively.

Review of Exchequer-funded Land and Buildings

4. The Council requires institutions to keep their holdings of Exchequer-funded land and buildings under review, with the objective of rationalising and disposing of those holdings which institutions consider, in light of their estate strategies, to be no longer needed.

Approval to Dispose and Retention of Proceeds

5. Under the terms of the revised *Financial Memorandum* between the Scottish Office Education and Industry Department and SHEFC (paragraph 8.8) Council may determine, and from time to time vary, the amount of disposal value of any land and buildings including any acquired or developed using exchequer funds at and above which the prior approval of the Council to dispose is required. These *Notes* apply to the disposal of land or buildings acquired or developed using exchequer funds as defined in the *Financial Memorandum* between the Council and institutions.
6. For the purposes of these *Notes*, reference to “proceeds of the sale” should be taken to mean Gross Sale Value.
7. For the purposes of these *Notes* the threshold at or above which prior Council approval is required, has been set at £3m. For any transaction at or above this threshold Council approval will be required prior to initiating the sale of the asset and for the retention of the proceeds of the sale.

8. Diagram 1 attached illustrates the procedures required by the Council for institutions to process successfully the disposal of an Exchequer-funded asset and, for transactions below the threshold, the reinvestment of proceeds.
9. Delegated authority to dispose of assets falling below the £3m does NOT apply in respect of the proposed disposal of property which was acquired or developed with the aid of funds provided by the Universities Funding Council, and to which the terms of paragraph 40 of the *Financial Memorandum* between the Council and institutions apply. Where such a disposal is planned the institution concerned should contact the Council.
10. The key steps in the process for disposal of Exchequer-funded assets are as follows:

Sale of the Asset

- i) where the asset is to be sold and the proceeds of the sale are likely to exceed £3m, prior Council approval of the sale and any subsequent re-investment of the proceeds, is required.
- ii) where the asset is to be sold and the proceeds of the sale are likely to be less than £3m, the institution has delegated authority to process the sale having regard to Paragraph 11 below. Reinvestment of the proceeds will be conditional upon the institution satisfying itself that the conditions set out in Annex 1 Paragraph 1 to these *Notes* have been met in full; and
- iii) in the case of ii) above, Council will, upon receipt of notification of a sale within 15 working days, request confirmation of the nature of the proposed re-investment. The institution's Designated Officer will require at that point, to confirm that the proposed re-investment conforms fully to the conditions set out in Annex 1, Paragraph 1.

Lease of the Asset

- iv) where the asset is to be leased for a period of 5 years duration or more prior Council approval is required;
- v) where the asset is to be leased for a period of less than 5 years duration the institution has delegated authority to process the lease;

- vi) in the case of v) above, subject to meeting the conditions contained in paragraph 3 of Annex 1, the institution must inform the Council within 15 working days of the signing of the lease. [The Council accepts that this procedure may be administratively burdensome for some institutions with significant numbers of small leased properties. In such circumstances, the Council may be prepared, upon application from an institution, to consider waiving this requirement and consider these applications on their individual merits in order that the most efficient and effective arrangements can be put in place.]

Transfer of Exchequer-funded assets

- vii) the Council shall ensure that institutions do not transfer the title or grant any interest or licence in land or buildings which were acquired or developed in whole or in part using Exchequer funds **unless**:
- the transfer or grant is by means of sale or lease for full value (in which case the relevant conditions apply); or
 - the transfer or grant is to a subsidiary undertaking and contains a direct covenant by the transferee with the Council that the transferee will observe the relevant Council controls, and that the covenant is guaranteed by the institution.
- viii) Where neither of the above apply, the institution should seek the prior written approval of the Council to the transfer or grant.

Processing of Sale

11. Irrespective of whether the institution has delegated authority to sell the Exchequer-funded asset, it should ensure that, for all such sales :
- i) its Governing Body has resolved that the property is surplus to requirements;
 - ii) disposal of the property and re-investment of the proceeds is consistent with a sound estate strategy for the institution;
 - iii) The institution has obtained a valuation, which takes into account of the most valuable use of the property for which planning permission

could reasonably be expected to be obtained from a reputable property agent;

- iv) throughout the disposal the institution will seek to achieve value for money in terms of securing the best price for the disposal. (Institutional discretion is necessary on whether the best value for money for disposal of an asset is through open market disposal or some other mechanism. This decision should be made acting on the advice of a reputable Property Agent. Guidance on the role of property agents is given at Annex 2 to the *Notes*.)

Monitoring of Rental Income

- 12. Each institution's Director of Finance or equivalent officer will complete and submit to the Council an annual return by 31 October each year, showing the total level of rental income in respect of leased Exchequer funded land and buildings received for the immediately preceding year to 31 July.
- 13. Council retains the discretion to review the levels of rental income received from this source. Should the level be deemed excessive an institution may be required to provide further commentary to the Council demonstrating that it is actively reviewing its holding of such property with the objective of rationalising and disposing of surplus property in a manner consistent with its estate strategy.
- 14. Council retains the discretion to clawback rental income from an institution in the event that it is unable to comply with the requirement set out in paragraph 13.
- 15. In the case of leases or licences of Exchequer-funded assets, the Council considers the letting of property as a form of disposal differing only in the degree of permanency. As such the Council expects an institution, within the context of its estate strategy, to dispose of any surplus land or buildings as soon as practicable.

Delegated Responsibility

- 16. The Council is encouraging institutions, through these revised *Notes*, to assume greater responsibility for the disposal of assets developed or acquired with Exchequer funding and for managing the application of proceeds. In doing so, institutions will require to adhere to the existing *Procedure Notes for Capital Projects and Equipment* covering the

management of capital projects issued by the Council, irrespective of whether responsibility is delegated to them.

17. A full list of conditions which institutions should satisfy themselves will be met fully depending upon the nature of the disposal and irrespective of whether the institution has delegated authority is listed at Annex 1 to the *Notes*.

DISPOSAL OF EXCHEQUER FUNDED ASSETS

Conditions to be applied

Sale of the Exchequer-funded asset and retention of the proceeds

1. The institution may retain the proceeds of the sale provided that the following conditions are met:
 - i) the institution informs the Council using Form 1 of the sale of the asset within 15 working days of the exchange of missives for that sale;
 - ii) the proceeds are used for the development of the institution's estate or for the procurement of equipment, that are used for teaching, research and related activities as defined in sub-section 40(2)(a) and (b) of the Further and Higher Education Act 1992 but excluding expenditure on facilities that are used primarily for research contracts, residences, catering and conferences and services to external customers, including consultancy, UNELSS the asset being sold is also such a facility.
 - iii) where expenditure is on an estates project, it conforms with the institution's estate strategy;
 - iv) the institution adheres to the *Procedure Notes* issued from time to time by the Council on estate and equipment related matters;
 - v) the proceeds are reinvested in full within 3 years and written confirmation of this is required by the Council.
2. Where the conditions set out above are not met, the Council may require institutions to pay to the Council
 - i) in cases where the property or interest was acquired or developed wholly with the aid of Exchequer funds, all the proceeds of the transaction (including any element in respect of intangible assets disposed of as part of the transaction) after deduction of the expenses of the transaction;

- ii) in cases where an outstanding debt was repaid or interest thereon paid wholly or in part with the aid of Exchequer funds that proportion of the proceeds (after deduction of the expenses of the transaction) which corresponds to the proportion of the sum of the Exchequer interest to the aggregate cost of acquisition or development of the property;
- iii) in cases where neither 2(i) or 2(ii) above apply, that proportion of the proceeds (after deduction of the expenses of the transaction) which corresponds to the value of Exchequer funds as a percentage of costs of acquisition or development of the land or buildings at the date of acquisition or development;
- iv) where only part of the proceeds is reinvested in line with paragraph 1ii) but all other conditions in that sub section are met, the institution may be required to repay that part of the proceeds that is not reinvested in line with paragraph 1ii) subject to sub paragraphs i)-iii) above;
- v) where the proceeds are only partly reinvested within 3 years but all other conditions in Section 1 above are met, the institution may be required to repay that part of the proceeds not reinvested within 3 years subject to sub-paragraphs i) to iii) above.

Lease or Licence of an Exchequer-funded Asset

3. The Council may permit institutions to retain the rental income, in full or in the appropriate proportion, after the deduction of any ground rents or other charges, administration costs and any expenditure necessary to keep the property in a state fit to command that rent, provided:
 - i) the rental income is to be used for the development of the institution's estate or for the procurement of equipment, that are used for teaching, research and related activities defined in sub-sections 40 (2)(a) and (b) of the Act, but excluding expenditure on facilities but are used primarily for research contracts, residences, catering and conferences and services to external customers, including consultancy, unless the rental income is also derived from such a facility;
 - ii) the institution will inform the Council, using Form 2 within 15 working days of the granting of all leases or licences, over land and buildings

acquired or developed whether wholly or in part, with Exchequer funds;

- iii) the institution will take professional advice on the terms and conditions of the lease or licence and will be satisfied that these represent value for money;
- iv) where part or all of the consideration for the granting of such a lease or licence is the payment of a premium, that premium shall be treated as sale proceeds and section 1 shall apply to its use.

GUIDANCE ON THE ROLE OF A PROPERTY AGENT

1. The Council's *Revised Procedures Notes for the Disposal of Exchequer-funded Assets and the Retention of Proceeds* at paragraph 11 require that throughout the disposal the institution should seek and act upon the advice of a reputable property agent. This annex describes the role of a property agent in the context of the *Revised Procedure Notes*.
2. Property agents have differing expertise and care should be taken in appointing to ensure that one is chosen with experience in the specific type of building or property involved. The geographic coverage offered by particular firms should be considered also since local knowledge can be important in achieving the best possible sale price.
3. An appointment by competitive tender should be considered in order to obtain the best value for money. The Council acknowledges, however, it may not always be appropriate to appoint a property agent through a competitive tendering process, for example, where the estimated value of the property is small or where property agents have a proven track record in dealing with institutions. In any case, institutions should take steps to ensure that the best possible sale price is obtained.
4. A property agent may be appointed to:
 - carry out a full appraisal of the property, investigate and advise upon the most valuable use of the property for which planning permission could be expected to be obtained, analyse the appropriate markets and advise on the type, extent and cost of advertising required;
 - draw up marketing particulars to send to interested parties;
 - arrange for the property to be advertised;
 - handle contracts with potential purchasers;
 - arrange a closing date for receipt of formal offers;
 - receive and assess offers and provide advice on which offer should be accepted;

- advise the institution on the need for a *claw-back* provision where the property could have a development potential beyond that envisaged in the valuation. In such circumstances, institutions should consider, as a condition of the contract of sale, a requirement on the purchaser, for a specified duration, to pay a substantial part of any increase in value of the property attributable to any future grant of planning permission. Further payment by the purchaser would be triggered if planning consent was subsequently granted or other stated occurrences, for example the re-sale of the property within a specified period, were to happen.

**SALE OF AN EXCHEQUER-FUNDED ASSET WHERE INSTITUTIONS HAVE
DELEGATED AUTHORITY TO PROCEED**

Where the proceeds of sale of an Exchequer-funded asset are likely to be less than £3M, institutions have delegated authority under the terms of the *Revised Procedure Notes for the Disposal of Exchequer-Funded Assets and the Retention of Proceeds* to proceed with the sale of the asset without prior reference to the Council. Institutions may retain the proceeds of sale provided that the conditions set out in paragraph 1 of Annex 1 of the *Revised Procedure Notes* have been/will be met.

Institutions are also required to submit the following information to the Council in writing within 15 working days of the exchange of contracts for the sale of the Exchequer-funded asset. This information should be authorised by the Designated Officer.

a)	Identification of the Exchequer-funded asset sold
b)	Date of the exchange of missives for the sale of the above Exchequer-funded asset
c)	The gross proceeds of the disposal
d)	The net proceeds of the disposal

e)	Confirmation that the conditions set out in paragraph 1 of Annex 1 have been/will be met ¹
f)	An explanation of the nature, cost and timing of the projects to which the proceeds of the disposal are to be applied ²

Designated Officer: _____ Date : _____

¹ When appropriate institutions should confirm in writing that the proceeds have been reinvested in full within three years or earlier

² Institutions should confirm this when notifying the Council of point e) above.

**LEASE OR LICENSE OF AN EXCHEQUER-FUNDED ASSET WHERE INSTITUTIONS
HAVE DELEGATED AUTHORITY TO PROCEED**

Institutions have delegated authority to process the lease(s) of Exchequer-funded assets where the asset is to be leased is for a period of less than 5 years duration. Institutions should ensure that the conditions set out in paragraph 3 of Annex 1 of the *Revised Procedure Notes* have been/will be met.

Institutions are also required to submit the following information to the Council in writing within 15 working days of the signing of the lease. This information should be authorised by the Designated Officer.

<p>a) Identification and valuation of the Exchequer-funded asset over which a lease or licence has been granted</p>
<p>b) Date of the exchange of contracts for the lease or licence of the Exchequer-funded asset</p>
<p>c) The gross annual rental income</p>
<p>d) The net annual rental income</p>

e) Confirmation that the conditions set out in paragraph 3 of Annex 1 have been/will be met
f) The intended use of the annual rental income

Designated Officer: _____ Date : _____

TRANSFER OF AN EXCHEQUER-FUNDED ASSET WHERE INSTITUTIONS HAVE DELEGATED AUTHORITY TO PROCEED

Institutions have delegated authority to process the transfer of Exchequer-funded assets where the asset is to be transferred to a subsidiary undertaking and the transfer or grant contains a direct covenant by the transferee with the Council that the transferee will observe the relevant Council controls and that the covenant is guaranteed by the institution.

Institutions are also required to submit the following information to the Council in writing within 15 working days of the transfer. This information should be authorised by the Designated Officer.

<p>a) Identification and valuation of the Exchequer-funded asset transferred</p>
<p>b) Date of the exchange of contracts for the transfer of the Exchequer-funded asset</p>
<p>c) Confirmation that the transfer is to a subsidiary undertaking and the name of that subsidiary undertaking</p>
<p>d) Confirmation that the transfer contains the covenant and guarantee required</p>

Designated Officer: _____ Date : _____

DISPOSAL OF AN EXCHEQUER-FUNDED ASSET

