

# Guidance for the disposal of publicly funded land and buildings and the retention of proceeds by colleges



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## Introduction

1. This guidance applies to the disposal of land and buildings acquired, developed or maintained using public funds. It describes the arrangements which must be followed by colleges in relation to:
  - disposal of land and buildings; and
  - the use of proceeds from disposals of land and buildings.<sup>1</sup>
2. This guidance should be read in conjunction with SFC's [‘Financial Memorandum’ with the College Sector \(FM\)](#) and the [Scottish public finance manual \(SPFM\)](#).
3. There is a refutable presumption that colleges will be permitted to retain sale proceeds of up to £1m but it must be noted that this is still subject to ministerial oversight.
4. If sale proceeds are over £1m there is a presumption that, in addition to the first £1m (as per above), colleges will be permitted to retain 70% of the sale proceeds more than £1m.

## Requirements

### Notifying SFC of all disposals

5. Colleges must inform SFC of their intention to sell, lease, or transfer any land and buildings prior to marketing, even if approval is not required under this procedure. SFC must also be notified of the planned use of proceeds, which colleges should ensure is aligned with the principles of the College Infrastructure Strategy and future College Infrastructure Implementation Plan<sup>2</sup>. Notification should be by email addressed to [estates@sfc.ac.uk](mailto:estates@sfc.ac.uk).

### Regular review of colleges’ Infrastructure Strategy

6. Consistent with the SPFM, colleges are required to develop an infrastructure strategy and review it at least every five years as part of a sound approach to managing their estates, digital capability and path to net zero. Colleges are required to keep their holdings of publicly funded land and buildings under review, with the objective of rationalising and disposing of those holdings that they consider to be no longer needed or fit for purpose.
7. Although non-incorporated colleges are not subject to the SPFM, they are expected to follow the principles therein as these are regarded as best practice.

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<sup>1</sup> Land and buildings being “assets” and “capital assets” for the purpose of this note

<sup>2</sup> Regard should also be had to general principles of charity law as regards use of charitable assets (where applicable)

## Regulatory requirements and guidance on disposals

8. There is a range of requirements and guidance available to ensure land and buildings disposal option appraisals are comprehensive, appropriately accounted for and reported – see Annex A.
9. The SPFM sets out procedures and safeguards for the disposal of publicly funded land and buildings. The key points are:
  - Land and buildings holdings must be kept to the minimum required to meet current and planned needs, and present value for money for the college.
  - The decision to acquire or dispose of land and buildings must be part of an overall strategic plan for the college's needs.
  - Colleges should only consider the disposal of land and buildings at less than market value to achieve wider public benefits, consistent with the principles of Best Value. This includes considering, and giving due regard to, the acquisition of land and buildings by community bodies where appropriate.
  - Colleges have a duty to ensure that all land and buildings for which they are responsible are well managed. Colleges must also hold up-to-date records of ownership and leases.

## Governance requirements for disposals and use of proceeds

10. Prior to disposing of an asset, the college must ensure that:
  - i. its governing body, or relevant committee of the governing body where authority has been delegated, has resolved that the land and buildings are surplus to requirements.
  - ii. the disposal of the land and buildings is consistent with the college's infrastructure strategy and the disposal is in-line with the guidance and principles as outlined within SFC's College Infrastructure Strategy.
  - iii. proceeds are used to improve the college's capital infrastructure and learning environment consistent with the college's infrastructure strategy and are in line with SFC's college infrastructure investment plans for the sector. If the college, or its governing body, wishes to prioritise expenditure outwith its strategy or these plans, separate written consent will be required by SFC.
  - iv. it has obtained a valuation from a reputable property agent or the District Valuer, taking account of potential uses of the land and buildings for which planning permission could reasonably be obtained.
  - v. it seeks to achieve value for money in terms of securing the optimum expected value for the disposal. Decision on whether the best value for money for disposal of the land and buildings is through open market disposal, or some other

mechanism must be made on the advice of a reputable property agent or District Valuer and taking account of the SPFM as appropriate.

### Transfer of land and buildings

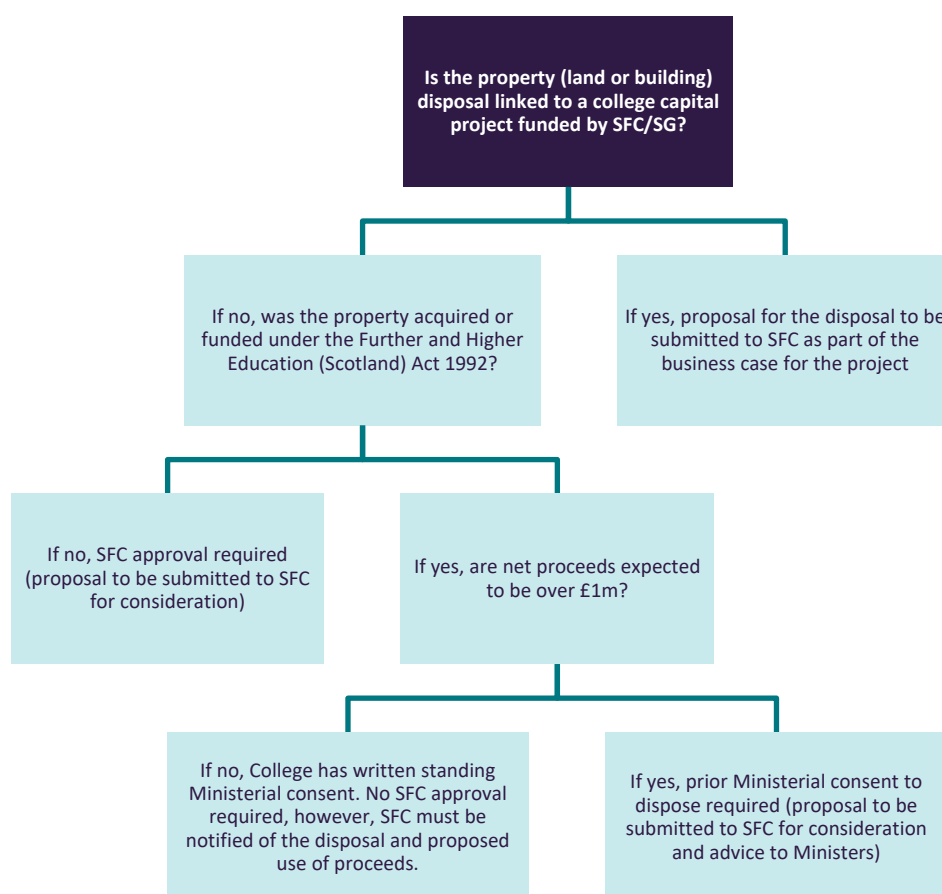
11. Institutions must **not**, without seeking SFC's or Ministers' consent (whichever is appropriate to the circumstances – see paragraphs 15 and 19), transfer the title or grant any interest or licence in land or buildings which were acquired or developed in whole or in part using public funds.
12. Where a college is considering such a transfer, it must contact SFC in the first instance.

### Leasing of land or buildings to a third party

13. SFC's requirements in relation to the leasing of publicly funded land or buildings to third parties are as follows:
  - i. where the land or building is to be leased for a period of 5 years or more, prior SFC approval is required;
  - ii. where the land or building is to be leased for a period of less than 5 years, SFC approval is not required, subject to the college meeting the conditions contained in paragraph 3 of Annex B.

### Approval requirements for disposals and use of proceeds

14. The following flowchart provides a summary of the approval requirements.



## Disposal of land and buildings subject to the 1992 Act

15. The Further and Higher Education (Scotland) Act 1992 (the 1992 Act) requires that, where a college seeks to dispose of any land and buildings to which the Act applies (i.e. land and buildings acquired or improved prior to 1 August 2005), it must have the prior written consent of Scottish Ministers. Ministerial consent is also required for the use of any disposal proceeds, including for retention of a proportion of proceeds to recoup costs of disposal. Ministers may direct proceeds to another educational charity.
16. Where the net value of a disposal is reasonably anticipated to be £1m or less, net of disposal costs, Scottish Ministers have provided colleges with written standing consent to such disposals, whilst maintaining oversight, to grant consent for disposal and direct the use of proceeds. For disposals that are consented to in this way, the Scottish Ministers affirmed it will be for the Board of Management of the college to determine the appropriate use of the proceeds or value of consideration of the disposal, subject to adherence to paragraph 1 of Annex B. In these cases, no direction that proceeds need to be paid to another educational charity will be made under the 1992 Act.
17. If the net proceeds of the disposal is anticipated to be over £1m then paragraph 2 of Annex B applies.
18. Net proceeds include all relevant disposal/holding costs associated with the sale from

the point the property is vacated through to the conclusion of sale. Further details of acceptable costs are provided at Annex C.

## Disposal of land and buildings subject to the 2005 Act

19. Ministerial approval is not required for the disposal of land and buildings to which the Further and Higher Education (Scotland) Act 2005 (the 2005 Act) applies (i.e. land and buildings acquired on or after 1 August 2005).
20. When disposing of assets subject to the 2005 Act with a reasonably anticipated net value of £1m or less, colleges must inform SFC of their intention to dispose and provide details of the intended use of proceeds prior to concluding the transaction. SFC approval is also required for recouping costs related to the disposal.
21. For disposal by sale of assets with a reasonably anticipated net value of over £1m, colleges must obtain SFC written consent for disposal of all land and buildings subject to the 2005 Act. SFC approval is also required for the retention and use of any disposal proceeds, including for recouping costs relating to the disposal.
22. The proceeds of the disposal are subject to adherence to paragraphs 1 and 2 of Annex B.

## Approval arrangements

23. Paragraphs 23 through to 27 describe the approval arrangements where prior consent is required for disposals by sale of assets with a reasonably anticipated net value of over £1m.
24. Colleges must inform SFC of their intention to sell, lease, or transfer any land and buildings prior to marketing. This should include relevant details of the disposal, including any planned use of disposal proceeds and their timing.
25. Where it was not reasonably anticipated that the disposal proceeds would be over the £1m threshold defined above, but it subsequently transpires that the proceeds will be over that threshold, the college must advise SFC immediately and seek the required consents.
26. For colleges that are part of a multi-college region, the Regional Strategic Body must first consider the proposed transaction and intended use of any proceeds, aligned with the needs of its region. Once the Regional Strategic Body is satisfied with the disposal, including the intended use of the proceeds, it must inform SFC on behalf of the college and provide SFC with the relevant details of the proposed transaction.
27. Where Ministerial consent is required, SFC will, having considered the sector's capital priorities, recommend to Scottish Ministers:
  - i. whether consent to dispose should be given; and



- ii. whether the proceeds should be retained by the college or paid to another educational charity, following the guidelines set out in the following section on 'Retention of disposal proceeds'.
28. Where a disposal is linked to a major capital project that will require SFC's or Scottish Government's capital funding support, the disposal and application of proceeds, including the timing, must be included in the business case for the project. The consent to dispose and direction for the use of proceeds will be part of the SFC's business case approval process. Any subsequent conditions of grant relating to the disposal and the use of the proceeds will take precedence over this guidance.
  29. Further information on the Ministerial consent process can be found at Annex D.

## Retention of disposal proceeds

30. Where a disposal falls under the Ministerial written standing consent (net proceeds of less than £1m), the college's board of management may retain the funds from this category of disposals for agreed capital priorities, subject to paragraph 10(iii) above. Scottish Ministers retain the right to withdraw written standing consent and direct proceeds generated by asset disposals.
31. Where disposals do not fall under Ministerial standing written consent (net proceeds over £1m), there will be an initial presumption of a 70/30 split of the portion of funds generated from an asset sale over the initial net £1m, with the college retaining the first net £1m. The 70/30 presumption means that the selling college will be able to retain 70% of sale proceeds over £1m, with 30% of the sale proceeds being held for future use across the college sector.
32. In these cases, the SFC advice to Ministers will require confirmation that the 70/30 split is appropriate to the circumstances of the disposal, and provision of advice on any other relevant factors, including where an alternative split may be appropriate.

## Retention of disposal costs

33. Colleges will be allowed to recoup disposal costs/expenses from the gross disposal proceeds.
34. Eligible costs will be either those costs agreed in advance with SFC, or those costs assessed as being an eligible expense by an independent third party, such as the Scottish Futures Trust.
35. Annex C provides details of eligible expenses associated with asset disposals.

## Ministerial directions on use of disposal proceeds

36. For disposals of over £1m, or where Ministerial consent is required, the SFC will provide advice on use of receipts to Scottish Ministers and the Ministers will consult with the board of management of the college before agreeing the retention and use of proceeds.

37. Where the proceeds are to be redirected to another institution, any payments will be made direct and in a timeous manner following completion of sale, and as directed by Ministers/SFC.

## Definitions

38. For the purposes of this procedure, reference to “proceeds of disposal” should be taken to mean Net Sale Value.

## Summary of guidance

39. All proposed sales, regardless of the level of anticipated receipt, must be notified to SFC who may direct how the proceeds are to be utilised.
40. There is a presumption that colleges will be permitted to retain sale proceeds of £1m or less, (subject to an overriding right of SFC to direct alternative use of those proceeds). In this instance, it will be for the Board of Management of the college to determine the appropriate use of the proceeds or value of consideration of the disposal.
41. If sale proceeds are more than £1m there is a presumption that, in addition to the first £1m (as per above), colleges will be permitted to retain 70% of the sale proceeds over £1m.
42. Scottish Ministers retain the right to withdraw written standing consent and direct proceeds generated by assets disposals.

## Annex A: Further guidance

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[Financial Memorandum with the College Sector](#)

[Scottish Public Finance Manual](#)

Scottish Futures Trust (SFT): [A Guide to Property Asset Strategy in the Scottish Public Sector](#)

[Scottish Government: Infrastructure Investment Plan](#)

[SFC: College Infrastructure Strategy](#)

[SFC Capital Project Decision Point Guidance](#) (NB: this guidance is soon to be replaced with Scottish Capital Investment Manual as part of the work being done on College Infrastructure Delivery Plan)

SFC: College Infrastructure Investment Plan (CIIP) Progress Report (link to be added following publication)

### **SFT: College sector case studies:**

- [City of Glasgow College](#)
- [Inverness College](#)

## Annex B: Disposal conditions to be applied

### Disposal of publicly funded land and buildings: conditions to be applied

#### Use of proceeds from sale of land and buildings with a net value of £1m or less

1. In all cases and where a college has disposed of an asset by sale under the Ministerial standing written consent<sup>3</sup>, the following conditions for the application of the disposal proceeds apply:
  - all colleges will be required to notify SFC of their intention to dispose of assets of a forecast value of £1m or less and provide information on their proposed use of the proceeds.
  - where expenditure is on an estates project, this should conform with the college's infrastructure strategy and deliver against a business/project plan that has been agreed with SFC;
  - proceeds should be used to improve the college's capital infrastructure and learning environment consistent with the SFC's College Infrastructure Strategy principles and align to the college infrastructure investment plan for the sector. If the college Board of Management wishes to prioritise an item outwith these principles, the SFC should be consulted and will provide advice to Ministers as appropriate.
  - the college adheres to other requirements issued from time to time by the SFC on infrastructure-related matters.

#### Use of proceeds from sale of land and buildings with a net value over £1m

2. In all cases where a college has obtained consent to dispose of land and buildings and retain the proceeds (100% £1m or less and 70% over £1m - as noted earlier in this guidance), the following conditions for the application of the disposal proceeds apply:
  - where expenditure is on an estates project, this should conform with the college's infrastructure strategy and deliver against a business/project plan that has been agreed with SFC.
  - the proceeds are used in full for investment in the college's infrastructure and written confirmation of this is submitted to the SFC for approval. The SFC will, in turn, inform the Scottish Government as appropriate.

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<sup>3</sup> Scottish Ministers retain the right to withdraw standing consent and direct proceeds generated by asset disposals.

- proceeds should be used to improve the college's capital infrastructure and learning environment and be consistent with the SFC's College Infrastructure Strategy principles and aligned to the college infrastructure investment plan for the sector.
- the college informs the SFC in writing of the sale of the land and buildings within 15 working days of the exchange of missives for that sale (the SFC will, in turn, advise the Scottish Government of the disposal).
- the college adheres to other requirements issued from time to time by the SFC on infrastructure-related matters.

### Lease or licence of publicly funded land and buildings

3. The college must:

- inform SFC in writing 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 public funds.
- take professional advice on the terms and conditions of the lease or licence and be satisfied that these represent value for money.
- where part or all the consideration for the granting of such a lease or licence is the payment of a premium, treat that premium as sale proceeds and paragraph 1 of this annex shall apply to its use.

## Annex C: Key headings for disposal/holding costs

### Key headings for disposal/holding costs

1. The following headings, as defined by the Scottish Futures Trust, will be considered eligible costs in relation to the disposal/holding buildings and land.

#### Fees/consultancy

- Legal advice/legal work on the disposal transaction
- Planning/other advice
- Agency advice/sale fee
- Marketing costs (advertising/boards/website etc.)
- Relevant survey work to support the disposal/data room (e.g. site investigations, topo survey, tree survey, flood survey, transportation study etc.)
- Title work/information

#### Recurring costs (from point of property being vacated through to sale – start and finish dates to be provided)

- Utilities
- Security
- Insurance

#### Other/one off costs to enable the sale

- Demolition (though unlikely to be funded up front by the college)
  - Minor repairs/Health and Safety compliance issues
  - Wider estate adaptation costs to support the disposal
  - Additional staffing costs incurred to facilitate disposal
2. The inclusion of costs incurred against headings not listed in this Annex will be subject to SFC/Ministers' approval and will require full disclosure.
  3. Colleges should also disclose details of any income received during the same period which could help to reduce costs (e.g. from telecommunications kit or short-term use of the site for parking, etc.).

## Annex D: College asset disposal consent process

### Stage 1 – disposal

1. Once the college has identified the preferred bidder for the asset being disposed of, the following information should be provided to SFC to allow it to undertake a Value for Money assessment:
  - High level details of all bids received, including the conditional nature of all offers, such as abnormal costs, planning requirements, phased receipts, etc., at closing date.
  - Professional advisors view/recommendation of all bids and preferred bidder.
  - The College's Board of Management and/or project board's considerations of the preferred bidder.
2. On receipt of this information, SFC will consider all the information provided and thereafter provide a view to Ministers on the suitability of the preferred bidder and make a recommendation on the approval to provide consent to sell/dispose of the asset.
3. Once the college has received Ministers' consent it can proceed with the legal process to conclude the sale. The college's conveyancing solicitors will require a letter of consent to complete the transaction.

### Stage 2 – use of proceeds

4. Consent is also required for the use of the disposal proceeds, including the retention of a proportion of the proceeds to recoup the costs of selling the asset, e.g. marketing, conveyancing, holding costs etc.
5. The college should provide SFC with information on the costs incurred that it wants to claim from the receipts. This will leave the net receipt.
6. Where the asset sale is linked to a major capital project and the net receipt is subject to specific conditions in relation to any grant funding the college has received for the project, these conditions should be followed.
7. In all other circumstances the college will be invited to make a case for the retention of all or any of the net receipts. The case should provide details of how the receipt will be used and should be linked to the college's infrastructure strategy and be aligned with the SFC's College Infrastructure Strategy.
8. Once SFC has received this information it will assess the validity of the college's requested use of the receipts and thereafter make a recommendation to Ministers. This will in turn trigger the Scottish Government to start a short consultation process with the college's Board of Management on the use of the receipt, which will subsequently be used to inform Ministers' direction/consent on the use of the funds.