

Briefing note for CEE from Department for Education on putting solar on schools

[This informal briefing note was written by the DfE for Community Energy England and revised on 29 May 2024. Official guidance and forms are [here](#) and linked below]

Installation of solar panels at school sites

Energy efficiency

Schools are actively encouraged to look at ways in which to reduce both their energy consumption from the grid and their carbon footprint. We do not have any concerns around solar itself. We agree that solar is a good technology; a sustainable renewable energy and is one way in which schools can achieve these reductions.

We would however, like schools to take a holistic approach and look at their energy efficiency strategy across the school estate. A school's energy management plan should focus on reduction first and then, investment in technology.

Protection of the publicly funded asset

Owners of publicly funded education land require the prior consent of the Secretary of State for Education (SoS) in relation to certain land transactions. **They may also separately require consent to any borrowing. This is discussed later in this guidance.**

The DfE's policy is not to permit the disposal or change of use of land unless there is a very good reason for it. There is also a strong and long-standing public interest in the protection and preservation of playing field land and green space.

The requirement for SoS consent to a lease of land may be contained in one or more of the following:

- legislation;
- an academy's funding agreement;
- The Academies Financial Handbook;
- a restriction on the school's title register held by the Land Registry.

Legal framework

Under the legal framework there is a duty either to apply for SoS consent to, or to notify the SoS of, any disposal of school land prior to that disposal. Whether to apply for consent or to notify depends on the landowner, the type of land (playing field or non-playing field land) and who is making the disposal.

To put the legal framework into the context of solar installations, we have assumed that the installation will involve the disposal of publicly funded non-playing field land and, that the landowner will grant a lease of its roof space to the provider (and enter into a linked power purchase agreement or similar).

Local authorities

Where the freehold or leasehold interest in land is held by a local authority and the land is used wholly or mainly for the purpose of a school or a 16 to 19 Academy or, has been in the last 8 years:

Paragraph 4 of Part 1, Schedule 1 of the Academies Act 2010 prevents any disposal of school land by a local authority without the **consent** of the SoS.

A disposal includes the grant of a lease of the land to another party.

A local authority must not grant a lease without SoS consent. If a scheme is made or consent is refused then, it cannot grant the lease.

If a contract is made to dispose of land without SoS consent, the SoS can repudiate the contract. If the disposal takes place without consent, the SoS can compulsorily purchase the land.

Academy trusts or bodies that hold land for the purpose of an academy

Paragraph 17 of Part 3, Schedule 1 of the Academies Act 2010 requires the relevant body to **notify** the SoS of its intention to dispose of the land. It gives power to the SoS to direct that the land is transferred to a local authority or a person concerned with the running of an academy. The SoS also has the power to direct payment of the land value to the SoS or the local authority.

A disposal includes the grant of a lease of the land to another party.

The relevant body must not grant a lease until it has been notified by the SoS of its decision whether or not to direct the land (or otherwise). If a direction is made then, it cannot grant the lease.

An academy trust is required to enter a contract called a funding agreement with the SoS prior to the opening of an academy. The funding agreement contains land clauses which set out what the academy trust can and can't do with the land. Funding agreements generally include restrictions on dealing with the land **in addition to those under the legislation**.

The land clauses in a funding agreement require the academy trust to obtain the **consent** of the SoS prior to the disposal of the whole or any part of the school site. This includes the grant of any lease.

In addition, funding agreements typically require an academy trust (in respect of the whole or part of the school site) to obtain the **consent** of the SoS prior to:

- creating/allowing any encumbrance;
- granting any consent or licence;
- parting with or sharing possession or occupation;
- taking on any onerous or restrictive obligations.

Academy trusts **must** comply with the Academies Financial Handbook as a condition of their funding agreement. Under the Handbook, SoS **approval** is required for the following:

- disposing of a freehold interest;
- granting a lease of any land or buildings of any duration to another party;
- taking up a finance lease for any duration from another party. (See finance lease below for further details).

Governing bodies, foundation bodies or trustees of a foundation, voluntary or foundation special school

Paragraphs A1A, A7A and A13A of Schedule 22 of the School Standards and Framework Act 1998 require the relevant body to **notify** the SoS of their intention to dispose of the school land and give power to the SoS to direct that the land is transferred to a person concerned with the running of an academy. A disposal includes the grant of a lease of the land to another party.

The relevant body must not dispose of the land until it has been notified of the SoS decision to direct the land (or otherwise). If a direction is made then, it cannot grant the lease.

Charitable site trustees owning land of private charitable origin, and owners of entirely private land.

Land of private charitable origin usually falls outside of the consent/notification process because the land was not originally paid for by public funds. However, in certain circumstances, such land can have elements of public funding if it was exchanged for public land, or has received certain public funded in the past so there are exceptions to this. Entirely private land – for example peripheral land to a school owned by a business or individual which is used as entry to the school – would fall outside of the consent/notification process.

Use of a lease or licence

In practical and physical terms, the provider will have exclusive possession/occupation of a school's roof or other space during the arrangement. In our view, this third-party occupation constitutes a tenancy and, it follows that the appropriate document to use is a lease. To protect the asset, we would expect the tenancy to be excluded from the security of tenure provisions of the Landlord and Tenant Act 1954.

Key areas of concern

Financing

How schools are currently financing these deals.

The typical structure is that providers meet the capital expenditure and the school repays this cost through a tariff over the term of the agreement. This is problematic from a value for money perspective.

Finance Leases

Whether these arrangements constitute a finance lease.

Schools should consider whether their interest in the solar panels as assets and the repayment of the cost of the panels amount to a finance lease.

Finance leases are a form of borrowing. Both maintained schools and academies are required to get SoS approval for finance leases. Academy trusts must obtain SoS approval for borrowing.

on 1 April, the new International Financial Reporting Standard (IFRS 16 leases) came into effect. For maintained schools, IFRS16 leases ended the distinction between finance and

operational leases for accounting purposes, meaning all purchase or hire leases count as borrowing and require the consent of the Secretary of State.

Recognising that this could lead to unwelcome administrative burdens, our aim has been to introduce arrangements which, as much as possible, maintain the status quo and allow maintained schools to continue to take out necessary leases. We have therefore been able to agree with HM Treasury that certain types of borrowing through leasehold agreements should be permitted, and that the Secretary of State could provide a blanket prior consent to these types of lease, meaning schools would not need to make an actual application for consent for the **borrowing** aspect – though this does NOT remove the separate requirement for consent to the **land transaction**.

Whilst academies will not be adopting IFRS 16, as set out above they are required under their funding agreement to obtain Secretary of State consent for borrowing. So, to ensure parity across the sector, the new lease approvals approach will also apply to academies. We have published guidance on this on GOV.UK.

For maintained schools you can find it here:

<https://www.gov.uk/government/publications/leasing-for-maintained-schools> .

For academies you can find it here:

<https://www.gov.uk/government/publications/leasing-for-academy-trusts>.

Commercial

Whether schools currently have access to the best value for money arrangements and/or the best terms.

Of concern (and based on a review of several cases) is:

- The length and flexibility of the arrangement. A 20 to 25-year agreement is a long-term arrangement. During this period, technology is likely to change through innovation, but the school is effectively locked into a long-term deal.
- The starting solar tariff and what that is based on. If it is set against the price paid by the school for mains electricity, what if the school is not buying mains at a competitive rate? It is likely in this scenario that schools are not benefitting from the best discount.
- The tariff payable increases annually in line with increases in the RPI index and in upwards direction. Increases are compounded year on year. What about any downwards movement? Schools should benefit from a downwards turn.
- There is no protection for schools if grid prices drop below the solar tariff they pay during the life of the agreement.
- Schools are offered limited termination options and the consequences of termination may be costly. For example, if a school wants to terminate, it must buy the equipment or make a compensation payment at that stage.
- Schools are (in certain circumstances) required to pay penalties for interruptions to the electricity supply. Is this reasonable? (This may depend on the nature of the cause of the interruption).

Technical

Whether appropriate and detailed feasibility studies and surveys are carried out prior to installation of solar panels.

There are risks associated with the structural and maintenance impact of installing panels on the roofs of schools. Roof leaks and condition are a huge problem for schools across the school estate.

A wide range of feasibility studies should be carried out prior to any solar panel installation. We have concerns around the quality of the roof condition assessment and feasibility studies carried out prior to installation.

Is any consideration given to the validity of any existing roof guarantees? Other concerns are around responsibilities under health & safety and the CDM regulations. Design and export arrangements can also be problematic.

Procurement

Whether procurement rules are complied with.

Whilst these arrangements will be below OJEU thresholds, academies must ensure that procurement is compliant with their policies and the Academies Financial Handbook.

Operational

Whether there is any impact on the operating school including but not limited to:

- safeguarding during installation and then during access to repair, maintain etc and whether the lease contains any contractual obligations on the provider to comply with the school's safeguarding policies;
- the impact on roof repairs and any future development of the school site

Other

The points below are based on a review of several cases:

- Payment for consumption. Schools should not pay for the electricity generated; only the electricity consumed.
- Maintenance of equipment. Is there a maintenance programme, what is included and who pays for this?
- Who takes the risk on whether the panels perform as expected or last as long as expected?
- Removal of equipment during and at the end of the agreement. Who moves the panels for roof repairs and at whose cost? At the end of the agreement, who decides whether to remove the equipment and who meets the cost of this? This should be the school's decision. If it does not want to keep it, then the provider should remove it, meet the cost of doing so and make good any damage caused during removal.
- What is the cost of decommissioning and removing the equipment? Is a specialist/accredited body required to carry out this work?

Application forms and supporting documentation

Local authorities and governing bodies, foundation bodies or trustees of a foundation, voluntary or foundation special school must apply for SoS consent to the disposal/notify SoS of the disposal by completing Form SCH1F and submitting to our Land Transactions team by email (Land.TRANSACTIONS@education.gov.uk)

Academy trusts and bodies running academies should follow the same process by completing Academy Pin Form H.

Any application must be submitted together with supporting documentation including:

- Title information relating to the school. (Official copies of the register of title entries and plan held by the Land Registry);
- Copy PPA and lease;
- Copy planning permission (if applicable) or confirmation as to how the installation is authorised in planning terms;
- Evidence of landlord's consent if applicable;
- Confirmation that the transaction is at arm's length and/or whether there are any conflicts of interest;
- Details of any safeguarding issues and how these will be dealt with;
- Detailed information around the proposal to demonstrate the benefits to the school and why it offers the best value for money arrangements;
- Detailed information around the school's energy efficiency plan and what steps it is taking in terms of reduction;
- Details of the school's actual amount of playing field land in m2 and the school's minimum recommended area.

The Department's published guidance on involving the Secretary of State in land transactions is available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1021175/School_land_guidance.pdf

It will give you an indication of the level of information required during the application process. In summary, applications will be reviewed against the following parameters:

- the commercial arrangement gives reasonable benefits to the school based on the commercial offers currently available;
- the terms of the Power Purchase Agreement/lease are not unduly onerous or unusual; Note we are insisting on an excluded lease and not a licence
- the terms do not expose the school to unmanageable financial or operational risks;
- applicants can evidence their efforts to secure public funding in preference to these financing arrangements and demonstrate the benefits of their deal; and
- applicants can demonstrate that they have a comprehensive energy saving and reduction strategy in place.