

To All IW Schools, Chair of Governors  
From John Brocklehurst  
Telephone extension 01983 821000 x 6439  
Email [john.brocklehurst@iow.gov.uk](mailto:john.brocklehurst@iow.gov.uk)  
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Subject School Assets

# Memo

## **Making arrangements for the use of school premises by others**

### **Purpose of document**

Encouraging wider community use of school premises has been a feature of LEA and Government policy for many years, and the lettings advice provided for schools previously in the "Scheme for the Financing of Schools Manual of Guidance" (the LMS Manual) reflects this. Nevertheless, recent developments, such as the drive to remove surplus school places, have given this added prominence. The Education Act 2006 has also made it easier for governing bodies to promote the extended use of school premises to provide a range of activities and services, often beyond the school day, to help meet the needs of pupils, their families and the wider community.

As a consequence, initiatives to increase longer-term community/third party use of accommodation are now being pursued much more actively by many schools.

Unfortunately, the process of putting in place appropriate arrangements for such use is beset with hidden pitfalls that can:

- Leave governing bodies in the position of having acted unlawfully
- Result in school capacity being increased
- Confer unintended legal rights that are difficult to terminate
- Create unforeseen management and financial problems that are detrimental to the school's ongoing operations

Various statutory approvals may also need to be obtained. These often have inflexible timescales associated with them, which, unless planned for and run in parallel with other aspects of the arrangements, may result in lengthy delays.

The Authority is keen to help schools expand the use of premises and avoid such problems. This document has therefore been produced to draw together advice for schools on the key issues to be considered. In so doing, it also updates and replaces the previous "lettings" advice contained in the Premises Management section of the LMS Manual.

### **Summary of content**

The main subject areas covered are listed below, with an indication of some of the key principles highlighted under each of them. You can, if you wish, click on

a subject title to access more detailed information about a particular area of interest, but reading the whole document will obviously give you a better understanding of the issues involved and the way they inter-relate.

A summary flowchart mapping key stages and considerations in the process, with links to relevant guidance notes, is also provided and can be used in the same way.

*Subject Areas:*

- **The control and ownership of school land and buildings**

- The Council owns community schools, and usually any playing field areas at voluntary aided schools
- Governing bodies control the day-to-day use of school premises
- Governing bodies have a duty to consult their LEA (and others) about proposals to provide facilities or services to the community
- Schools can grant licences for the occasional use of facilities by others, and the “Occasional/sessional lettings” section of this guidance contains relevant advice and a recommended proforma for use in such circumstances. Schools must be alert, however, to the danger of these arrangements converting themselves, through operation of law, (even without changes to the arrangement having been consciously made) to full business tenancies
- Schools cannot grant leases/tenancies without obtaining specific consent

- **Legal Requirements**

- Governing bodies can provide facilities or services that “further any charitable purpose for the benefit of pupils at the school or their families or people who live or work in the locality in which the school is located”.
- They must, however, ensure that the provision of such facilities or services does not interfere with the delivery of education to pupils
- There is a legal obligation for governing bodies to consult the LEA, school staff, pupils and parents (and anyone else they feel appropriate) before providing community facilities or services
- In proceeding with such arrangements operational accommodation and school funds must be safeguarded
- Schools cannot enter into a transfer of control agreement without the LEA’s consent

- **Financial Considerations**

- Community uses must be self-financing, and the school’s budget must not be allowed to subsidise them in any way – profit from one letting can be used to offset costs on another, but there must be an overall balance or profit
- Where shared facilities are involved and there is no extra cost to the school, the user must still pay a fair apportionment of the school’s costs attributable to the facilities and services involved
- Non-school uses may generate charges for which the school is not currently liable
- In considering ongoing/longer-term arrangements, regard needs to be had to the user’s ability to meet future costs
- It is important to ensure that VAT is charged and accounted for correctly. Furthermore, the use of school premises for non-school use may have an impact on the Council’s VAT recovery position

- **Practical issues**

- The suitability of the premises for the uses proposed and the potential for conflict with the operation of the school will need to be considered
- Risk assessments should be undertaken to help decide whether the proposals present any specific problems that might require the introduction of revised management arrangements or adjustments to the premises – areas for consideration will typically include traffic management, school security and child protection issues, fire safety and asbestos management

- “Reasonable adjustments” may be needed to the premises or the way they are managed to comply with the Disability Discrimination Act 1995
- As soon as the need for any works to the premises is confirmed, schools should immediately consult with the Council’s Estates Division (and/or the relevant diocesan Authority in the case of VA schools) for confirmation that the works are feasible, and to identify any special requirements that may be needed to safeguard the premises – “premises” includes the school grounds and any trees growing on them, and “works” includes proposals to prune, fell or plant trees
- Community uses will have an effect on the school’s running costs, and may give rise to charges for which the school would otherwise have no liability – changes to insurance requirements and the basis of assessment for rates will often be involved
- In addition to physical and financial changes, introducing new uses may bring responsibility for complying with specific statutory requirements and regulations

- **Effect on school capacity**

- Net Capacity is calculated using a formula, which quantifies “workplaces”, based on the number, size and type of spaces available for use by the school.
- The formula is based on the *potential* use to which each space can be put, so a decision to use a space for some other purpose will not reduce the school’s capacity unless the LEA has deemed the space to have an established non-school or support function.
- The LEA cannot remove surplus places by the inappropriate labelling of spaces as community facilities – to qualify the spaces must be maintained from specialist/non-school sources and must not be available for use by the school.
- Even non-maintained accommodation must be included in the assessment if it is available for school use during 80% of the week or more.
- The capacity must be updated whenever physical changes are made to the usable space.
- *It is essential therefore for school to consult the LEA as soon as any proposals are identified that will affect the size, configuration, type or use of space.*

- **Occasional/sessional lettings**

- Schools can grant licences for the occasional/sessional use of facilities by others, including arrangements for shared use of facilities or for use by others at certain times of the day with the school using them at other times
- *Schools must, however, be alert to the danger of these arrangements converting themselves, through operation of law, to full business tenancies* – users should not be allowed ongoing, exclusive occupation of any school accommodation. Calling a letting a “licence” will not prevent it from being deemed by the courts to amount to a tenancy/lease, making it difficult to regain possession of the accommodation involved – and even where this can be achieved, it may be costly
- Schools should seek written applications from prospective hirers and should use an approved, standard form of permit to make such lettings – a suggested model for use is attached as Appendix 1
- The LEA operates a policy of free and concessionary use for registered youth and adult organisations respectively - budget compensation will be paid to affected schools, as appropriate

- **Process Flowchart**

- A “decision-making flowchart” summarising key stages in the process, with links to the relevant sections of this guidance

# Process flowchart

