

Paper 6

The Schools' Estate

1.0 INTRODUCTION

1.1 The planning, procurement and delivery of the schools estate is an important element of the overall RPA programme. The objectives are to:

- Set out the position in relation of the ownership of the schools' estate and other related educational buildings;
- Define responsibilities for strategic planning of the estate;
- Identify how operational responsibilities of the Education & Library Boards (ELBs), Voluntary Grammar Schools (VGS), the Council for Catholic Maintained Schools (CCMS), the Northern Ireland Council for Integrated Education (NICIE) and Comhairle Na Gaelscolaiochta (CnaG) for estates-related and development planning functions can best be integrated into the Education and Skills Authority;
- Develop proposals on the legislative requirements arising from the schools' estate planning, procurement and delivery changes.

This particular workstream is being managed as part of the implementation of the new Planning, Procurement and Delivery arrangements for the Schools' Estate referred to as "the NI Schools' Modernisation Programme".

This paper outlines the key policy issues and legislative areas that will need to be addressed as part of the RPA policy agenda to establish the Education and Skills Authority (ESA), which will have a number of key estates-related functions in relation to estate planning and management.

2.0 OWNERSHIP, VESTING & LAND ACQUISITION

CURRENT ARRANGEMENTS

Education and Library Boards

2.1 The five Education and Library Boards own both buildings and land including the controlled schools estate and other facilities such as Youth Service buildings, Outdoor Education Centres, Schools of Music and office buildings. The ELBs can acquire, hold or dispose of land but only with the approval of the Department. This power was given to the ELBs in The Education and Libraries (Northern Ireland) Order 1986, Article 106.

Voluntary Grammar and Maintained Schools

2.2 Voluntary and maintained schools are owned by Trustees. For DE to pay capital grants to a voluntary school, the school premises must be 'vested' in the names of Trustees and DE. Only schools recognised for grant-aid are eligible for capital grant and vesting will only be required if the new school is being constructed on a brand new or extended site. However, in some instances parts of the school site will not have been vested, for example, preparatory departments and boarding departments in voluntary grammar schools. Where a school is being remodelled or an extension is being provided, any non-vested areas required for the development will have to be vested to qualify for grant-aid. DE is joined as a party to the deed to secure the grant aid and to indicate that it is satisfied with the content of the documentation. This also means that the premises cannot be disposed of without the Department's consent. It is similar to the Department having a charge or mortgage on the lands. When land is vested, it actually refers to the land and premises built on that land. This is particularly relevant as regards green field sites – grant aid is given for both the purchase of the land but also in respect of the building works.

Grant Maintained Integrated Schools

2.3 To qualify for capital grant a newly established grant maintained integrated school would have to first prove its longer term viability, usually over a period of at least 3 years. With the agreement of the Department, the Integrated Education Fund (IEF)

and the Northern Ireland Council for Integrated Education (NICIE) set up an arrangement with three Northern Ireland Banks which required the IEF to place on deposit £1m against which it could borrow up to £10m to finance the capital costs of new Grant Maintained Integrated schools. The facility could be increased to £2m if necessary. At the end of the 3-year period, if the school meets the viability criterion set down by the Department, the school would receive recognition for capital grant-aid. The vesting process is usually carried out between the Department's solicitor and solicitors acting on behalf of NICIE and the school. Once vesting is completed, any approved capital expenditure incurred is reimbursed. Once the viability criterion have been met and the reimbursement of expenditure is made, the Club Bank arrangement does not provide any further funding. The school Trustees have to meet the cost of any further work initially and then claim retrospective grant-aid from the Department, in the same way as other voluntary and maintained schools.

Irish-Medium Schools

- 2.4 Maintained Irish-medium schools are dealt with in a similar way as grant maintained integrated schools. Vesting of new Irish-medium schools is initiated once the school meets the viability criterion, subject to departmental approval. In the case of Irish-medium schools this is normally based on actual enrolments for 2 consecutive years, plus satisfactory evidence of the expected intake for the 3rd year, usually based on attendances at feeder Irish-medium nursery/pre-schools settings.
- 2.5 The introduction of a Club Bank arrangement similar to the grant maintained integrated sector is planned for the Irish Medium sector. The procedures for the Irish medium sector's use of Club Bank are still being drawn up. It is envisaged that Iontaobhas na Gaelscolaíochta (InaG) will underwrite the cost of the new school's capital development during the viability period in the same way as the IEF and Comhairle na Gaelscolaíochta will operate the scheme in the same way as NICIE.

Current Legislation:

Maintained and voluntary grammar schools

- Education (NI) Order 1998 Article 68
- Voluntary Schools Building Grant Regulations (NI) 1993 - 5(1) (a) and (b) and 5(2)(SR&O 1993 No 457).

Integrated Schools

-Education Reform (NI) Order 1989 Article 77 (paras 8-11 apply)

-Education (Grant-Maintained Integrated Schools Regulations)(Capital Grant Northern Ireland) 1993

General

Education & Libraries (NI) Order 1986 Articles 37; 105; 106; 128

Future Arrangements

2.6 The ownership of the controlled estate is being addressed in a separate paper [paper 20]. Responsibility for all libraries will transfer from the ELBs to a new regional Library Authority – the policy is being addressed separately by DCAL. ESA would need to be given powers to purchase land and buildings for educational and other uses approved by the Department. Ownership of the maintained, grant maintained integrated, voluntary grammar schools and maintained Irish-medium schools would not change under the proposed arrangements. Land acquisition and vesting for all sectors would be administered by ESA, although it may still be appropriate for ESA to vest the school in the name of the Department with departmental consent. Current legislation gives the Education and Library Boards the powers to compulsory vest. This legislation would need to be replicated to give ESA these powers. ESA should hold all deeds/land titles.

There will be a requirement to develop procedures to inform ESA of historic capital grant aid paid by DE so that ESA take account of this when determining future payments due to suppliers for individual schemes and so that they have a record of this when dealing with the proceeds from disposals.

3.0 STRATEGIC PLANNING OF THE ESTATE

Current Arrangements

3.1 Planning of the estate and the prioritisation of future investment requirements is based on three key criterion:

- 1 the sufficiency of pupil places relative to local need;
- 2 the condition of the school buildings; and
- 3 the suitability of school buildings for delivering the curriculum.

The current planning process is complex and requires significant involvement from both the education authorities and the Department of Education including the Education and Training Inspectorate (ETI).

3.2 There are currently 7 key phases of the planning process:-

- 1 Identification of potential schemes;
- 2 Completion of feasibility studies and economic appraisals;
- 3 Determination of capital and other resources available;
- 4 Prioritisation of schemes to determine which will receive funding;
- 5 Selection of procurement route;
- 6 Announcement of capital funding allocations; and
- 7 Design of capital schemes and approval of stages.

Note: DFP have approval roles for economic appraisals and capital allocations.

3.3 There are inefficiencies in the current planning process. The principal concerns which have been identified are:

- the lack of integration, co-ordination and consistency between the planning activities of the education authorities;
- the lack of robust and consistent information on the condition and suitability of the schools' estate;
- the differences between sectors as to how planning and development matters are resourced and delivered;
- the timescales taken to complete economic appraisals and approval process;
- the variable quality and reliability of deliverables submitted to DE;
- the duplication of activity; and
- the complicated processes for taking forward minor works in the Catholic Maintained Sector.

- 3.4 The objective of the estate planning process must be to provide the right mix of schools, of the right size and quality, in the right location. At present this objective is not being achieved – there is significant surplus capacity, struggling schools with falling rolls and no integration of planning across the different sectors.

Future Arrangements

- 3.5 The Department would be responsible for providing guidance to the ESA and would have ultimate responsibility for approval of appraisals, development proposals, the area planning and investment plans. The ESA, in consultation with sectors, would determine the number, size, composition and location of schools needed in each area. The Education and Skills Authority will be responsible for maintaining and updating asset management plans for the whole schools and youth estate, taking account of the guidance provided or approved by DE and based on surveys of the condition and suitability of the estate. The ESA will have a key role in the strategic planning of the schools' estate on behalf of and within guidance provided by the Department of Education. Each of the school sectors will contribute to the overall strategic planning process and the ESA would need to take account of the anticipated needs of all sectors. In performing its strategic planning role, ESA will need to act within equality provisions of existing Northern Ireland legislation. The Department and the ESA in consultation with key stakeholders (including representatives of the various school sectors) would develop the parameters within which strategic planning of the estate should take place. Existing District Council areas could form a basis for such plans but with the flexibility to review this at a later date. ESA would also need to co-ordinate local strategic planning arrangements for the youth and schools' estate, which would also need to take account of cross-boundary travel by pupils. The ESA would be responsible for co-ordinating work on the evaluation of investment/rationalisation options and for preparing a long-term Strategic Investment Plan (SIP) for each local area.

- 3.6 Some potential implications are worth noting:

1. There may be concerns about the potential for conflict of interest arising from ESA owning the controlled estate and also being responsible for strategic planning of the whole estate. The ESA governance arrangements and the arrangements for managing the strategic planning process will need to address

this concern. The existing equality provisions in Section 75 of the Northern Ireland Act (1998) should provide protection. In addition, legislation should include a mechanism for identifying need on a demand led and/or population count basis using terms such as those contained in Article 6 of the Education and Libraries (Northern Ireland) 1986. Paper 20 outlines further proposals on the ownership of publicly-owned schools which will seek to address this issue.

2. Since the ESA will be accountable for the recurrent budget of the education service, it should have control over the number of schools being provided in an area. Boards of Governors, Trustees or others would need to make decisions informed by advice/direction from ESA on the need for cost-effective and value for money provision eg: Number of schools, number of staff employed. Effectively, this means that ESA needs to have an approval role in regard to decisions by others that involve spending resources for which ESA is accountable. However, it is important to ensure that the sectors have representation to ensure that their views are made known.

Current Legislation: Education & Libraries (NI) Order 1986 Articles 18; 44; 45
Education (NI) Order 1997 Article 9

4.0 DEVELOPMENT PROPOSALS

Current Arrangements

- 4.1 The main purpose of the development proposal procedure is to ensure that all interested parties are informed about proposed changes to schools and have an opportunity to comment on any proposed development that may affect them, before decisions are taken.
- 4.2 ELBs have a statutory requirement to consult with all schools affected by the proposal, including the school that is the subject of the proposal. In addition, there is also a requirement to consult with Board of Governors, parents and teachers of existing schools, prior to the publication of a Development Proposal. For maintained schools this function is carried out by the CCMS, for controlled schools by the ELBs and for schools in other sectors, by the proposer of the development proposal. All

comments are submitted to the ELBs and it is their responsibility to keep a record of all views expressed during the consultation process. ELBs must then pass all views along with its own view on the proposal, to the Department. The publication of the Development Proposal initiates a 2-month period during which representations including objections can be made to the Department. All objections and comments received during the 2-month period will be reflected in the Department's submission to the Minister, who will make the final decision a Development Proposal.

Future Arrangements

- 4.3 As part of its responsibilities for strategic planning of the schools and youth estate, ESA will produce area-based plans. These area plans will include schemes requiring the publication of a Development Proposal. Publication of Development Proposals for an individual school or group of schools within the area plan should only take place if they are consistent with the ESA's area plans. If a proposer of a change cannot agree with the ESA on how to meet the potential need, the matter would be referred to DE for a decision on whether or not a development proposal could be published. School closures should be costed and the Development Proposal should be accompanied by an appraisal detailing expected costs and savings due to closure and the financial impact on the school(s) to which the pupils transfer. Amalgamations requiring capital investment should always be supported by a full economic appraisal which will aid the decision making process. It should be noted that the ELBs and CCMS currently operate this way. In regard to the Irish-Medium and Integrated sectors neither have to date been involved in amalgamations and had they been and capital expenditure was required both sectors would have been dealt with in the same way. In future, a key part of the decision making process on Development Proposals will include consideration of the appraisal of options and the financial and educational consequences of each option.

Current Legislation: Education & Libraries (NI) Order 1986 Articles 14-17

Education and Libraries (NI) Order 2003 Article 24

Education Reform (NI) 1989 Articles 64-99

Education (NI) Order 1996 Article 37

Education (NI) Order 1998 Article 89 (3)

5.0 CONTRACTING POWERS FOR CAPITAL SCHEMES

5.1 Current Arrangements

Controlled Schools: The Education and Library Boards are currently the contracting authorities

Catholic Maintained Schools: The Trustees are currently the contracting authorities

Voluntary Grammar Schools: The Boards of Governors of each school are currently the contracting authorities

Grant Maintained Integrated Schools Currently, NICIE fulfils the role of contracting authority in the provision of accommodation to formally establish a new school. The role of contracting authority for capital projects and services then transfers to the school's Board of Governors once the viability of the school is established and it qualifies for capital funding from DE.

Irish-Medium Schools: Comhairle na Gaelscolaíochta currently fulfils the role of contracting authority in the provision of accommodation to formally establish the school, and the role of contracting authority for capital projects and services then transfers to the school's Board of Governors when the school is recognised for capital funding. Capital costs are then funded directly by DE through grant aid.

Future Arrangements

5.2 In line with Office of Government Commerce guidance on construction procurement best practice, it is planned to implement long-term contractual relationships with

fewer suppliers for all capital development and for maintenance. Initially, Framework Agreements will be introduced (from around mid 2007), and longer-term strategic partnering arrangements may be considered for 2008/09 or 2009/10 once the ESA is fully established. Under the planned new procurement and delivery arrangements, the Education and Skills Authority would have responsibility on behalf of the Department of Education for the procurement of suppliers for all capital schemes. As a result, the ESA would need to be given powers to enter into capital development contracts on behalf of **all** schools. The ESA would become a recognised Centre of Procurement Expertise (COPE) on behalf of the education service and would establish and maintain best practice contractual arrangements with suppliers, with the various school sectors being able to “call off” suppliers as required, assisted by ESA. This will enable the education service to achieve optimum value for money when procuring capital schemes and comply with Office of Government Commerce (OGC) guidance. It also allows all capital schemes, which in many cases are funded 100% by DE, to be subject to a consistent contract management regime and to continuous improvement approaches that are envisaged under the new longer-term relationships with suppliers. It will be necessary for agreement to be reached with the school owners to ensure that this work can take place.

6.0 PAYMENTS TO SUPPLIERS FOR CAPITAL SCHEMES

- 6.1 The existing arrangements whereby voluntary and maintained schools have to raise the funding to pay for capital development, which is then refunded through capital grant paid by the Department of Education, would cease. ESA would be responsible for meeting the costs of all capital schemes approved and funded by the Department for schools and other facilities that are recognised by the Department for capital funding. This is because the current arrangements do not provide a robust basis for ESA to enter into long-term contractual arrangements with suppliers, if it had to rely on third parties to raise funding to pay the bills. The existing arrangements for voluntary and maintained schemes are overly bureaucratic and involve a very circuitous route to achieve the simple aim of paying suppliers for the capital development of approved schemes, most of which are grant aided at 100% by the Department. Where some voluntary schools do not qualify for 100% capital funding, the ESA would still be responsible for paying the bills to suppliers. Prior to the award of the contract for capital schemes in those voluntary schools that do not qualify for

100% grant aid, an agreement would need to be reached between the ESA and the voluntary school concerned on the arrangements for the school to pay its share of the costs to ESA. Transitional procedures will be required for any funding of those voluntary/maintained schemes that are initiated prior to April 2008 (the effective date for the establishment of ESA) but continue after that date. In order to avoid potential problems of operating two separate systems for the funding of schemes that span April 2008, it could be beneficial to begin paying for such schemes using new funding procedures, if this could be achieved and the legislation allowed this to happen.

Current Legislation: Education Reform (NI) Order 1989 Article 77 (GMI sector)
Education & Libraries (NI) Order 1993 Art 28 (Vol & Maintained sector)
Education (NI) Order 1998 Article 68 (Vol & Maintained sector)
Education (NI) Order 1998 Article 69 (GMI sector)
Education & Libraries (NI) Order 2003 Article 11 (Controlled sector)

7.0 ROLES AND RESPONSIBILITIES FOR CAPITAL SCHEMES

7.1 The approval, design and delivery of capital schemes will involve the Department of Education, the Education and Skills Authority, the owners of school buildings and suppliers. Office of Government Commerce (OGC) guidance¹ outlines a number of key roles and responsibilities for the successful procurement and delivery of capital schemes. The implementation of new procurement and delivery arrangements will need to formalise these roles, which are:-

- Investment Decision Maker (IDM);
- Senior Responsible Owner (SRO);
- Project Sponsor (PS); and
- Project Manager (PM);

¹ Achieving Excellence in Construction Procurement: Procurement Guide 02 – Project Organisation Roles and Responsibilities

7.2 The allocation of these roles and responsibilities is unlikely to have legislative implications but may have an impact on the overall accountability and policy arrangements. As a result, a summary of the proposed roles and responsibilities has been included in Table 1 below for completeness. Further details can be found in the OGC guide – see

http://www.ogc.gov.uk/sdtoolkit/reference/ogc_library/achievingexcellence/index.html .

Table 1: Roles and Responsibilities for Capital Schemes

OGC Defined Role	Definition of Responsibility	Allocation of Role Within the New Arrangements
Investment Decision Maker (IDM)	The IDM takes the investment decision on the use of resources following an appraisal of options to meet a business need, an assessment of risks and clarity on the whole-life costs and value for money of the project.	The Department of Education.
Senior Responsible Owner (SRO)	The SRO is appointed by the IDM and is accountable to the IDM for the delivery of the project and its budget. The SRO defines the scope of the project to deliver the business benefits; oversees the preparation of the business case and budget for the project; and ensures that the proposals are realistic and meet business objectives. The SRO must have the authority and status to provide the necessary leadership and clear accountability for delivering the project outcome.	Senior assigned official within the Education and Skills Authority for all capital schemes across all sectors.
Project Sponsor (PS)	The PS is the client’s representative, acting as a single focal point for the day-to-day management of the client’s interests in the project and securing its development and delivery. The PS ensures that stakeholders,	Representative nominated by the relevant school sector. It has been assumed that the Project Sponsorship

	including user representatives, provide appropriate input at the required time. S/he must understand the culture and business of the client's organisation in order to articulate client needs. They should always report to the SRO, have formal terms of appointment, be empowered to take decisions within clearly defined delegations and have appropriate resources to deliver the project.	role would be provided from resources provided by DE to support sectors in their advice giving roles under the new arrangements – there are implications here for the extent of the resources made available.
Project Manager (PM)	The PM leads, manages and co-ordinates the project team on a day-to-day basis and provides the interface between the Project Sponsor and the supplier members of the project team. In some instance the Project Sponsor can also act as Project Manager providing s/he has appropriate construction-related skills and experience. Under the proposed Framework/ Partnering arrangements, the Project Management responsibilities would shift largely from the ESA PM to the supplier PM once a contract for the delivery of the scheme is awarded to a supplier.	Appointed by the Education and Skills Authority in consultation with the relevant school sector.

8.0 GROUNDS AND BUILDINGS MAINTENANCE

Current Arrangements

8.1 The Education & Library Boards (ELBs) have a statutory responsibility to equip, maintain and meet the running costs of controlled and maintained schools. The Trustees as owners of the Catholic maintained schools are responsible for the planning, design and construction. As neither the ELBs nor the Trustees have sole responsibility for the schools, this can lead to confusion about specific roles and responsibilities.

- 8.2 Funding for maintenance work in controlled and maintained schools is split between the Schools and the Boards. Schools are responsible for tenant maintenance (eg internal decoration, floor coverings and minor repairs) and the Boards are responsible for Landlord maintenance (eg fabric and structure of the facilities). In the maintained sector, major and minor works are the responsibility of the Trustees and in the controlled sector, the responsibility of the ELBs. The level of funding for maintenance is based on a number of factors for example the area of the school building and the number of pupils. However, when funding is allocated, factors such as condition or age of the school are not taken into consideration. Concerns have been expressed that funding for maintenance is diverted and used for other purposes with the result that schools do not meet their maintenance responsibilities; this can result in a tenant maintenance problem becoming a landlord maintenance problem. It should be noted that Health & Safety is the responsibility of both the schools and the ELBs. In addition, because responsibility for maintenance is split, this can cause problems in the planning and refurbishment works at a school as different aspects of the work may be funded by different parties and they may not be able to co-ordinate maintenance requirements at the same time. Within the controlled sector, it is the responsibility of the Maintenance Officer of the ELB to ensure that any maintenance work carried out is delivered in a co-ordinated and timely manner. Several Boards procure tenant maintenance works on behalf of their schools. So while they have no control over the expenditure or the type of tenant maintenance carried out, they can ensure that the work carried out is of the required standard in both maintained and controlled sectors.
- 8.3 Boards should typically be spending 70% of their maintenance budgets on planned maintenance and 30% on response maintenance. This does not currently happen due to a backlog of maintenance requirements and budgetary pressures on ELBs. There was a high priority maintenance backlog of £155m at 31 March 2006.
- 8.4 In voluntary grammar and grant maintained integrated schools responsibility for both tenant and landlord maintenance rests with the Board of Governors at each school.
- 8.5 Planning of maintenance is not currently integrated with the planning of major and minor works. Capital schemes are confirmed on an annual basis rather than on an

investment programme basis covering a number of years. Consequently, current practices do not enable capital and maintenance expenditure to be optimised over the asset lifecycle, albeit that this is improving due to better co-ordination and improved communications.

Future Arrangements

8.6 The new arrangements, it will be essential to put in place more long-term arrangements for estate maintenance. Asset Management Plans (AMPs) are being developed for the schools' estate, based on condition and suitability surveys carried out by the Education and Library Boards. These AMPs will help determine capital investment priorities and maintenance investment plans. A Framework Agreement is also being proposed to handle maintenance for the whole schools' estate. It is expected that maintenance in most schools would be procured through this Agreement. Separate arrangements would need to demonstrate that they can achieve better overall value for money (not just lowest cost) to maintain their buildings and any such arrangements would have to follow public procurement rules, be approved by the ESA and be subject to audit by ESA. It is planned that the Framework Agreements will result in improved longer-term relationships with fewer suppliers and better overall value for money. It is envisaged that the procurement service within ESA would be the owner of the enabling Framework Contract and, therefore, the ESA will need powers to enter into such contracts on behalf of all schools. The first Framework Agreement for maintenance is likely to be established before ESA is set up and, therefore, it will need to be agreed how they should be handled in the transitional period.

Key Issues

8.7 A key consideration is whether to delegate more responsibility for maintenance to schools. As there are currently no asset management plans in place, it is considered that this approach would not be feasible currently as the system of asset management and estate maintenance is not sufficiently mature to support such an approach. It would be very difficult to develop a suitably robust and defensible method of delegating all maintenance responsibility to schools, as there are many factors to be taken into consideration such as maintenance history of the school, the age of the school, the type of construction, the large monetary cost of some maintenance issues. Individual schools might not be able to respond to particular

maintenance issues from their own budgets As a result, at this stage, it is not recommended that responsibility for all maintenance be delegated to schools unless maintenance monies allocated to schools could be ring fenced for that purpose and maintenance issues above a certain monetary value were to be the responsibility of ESA.

- 8.8 Under the new procurement and delivery arrangements, it would be highly desirable to ring fence maintenance funding (matched to maintenance investment plans) so that it can only be spent on maintenance, otherwise the quality of buildings will deteriorate and the life of schools buildings, even new buildings, will be considerably reduced.
- 8.9 The maintenance issues outlined above may not need to be included in primary legislation. They do, nonetheless, require further investigation and resolution prior to the setting up of ESA so that the arrangements for maintenance of the estate can be put on a sound footing.

Current Legislation: The Education and Libraries (NI) Order 1986 Articles 7; 8; 18; 28
The Education Reform Order 1989 Article 77
The Education and Libraries (NI) Order 1993 Articles 4; 38
The Education (NI) Order 1997 Article 25
The Education (NI) Order 1998 Articles 61; 62; 63; 64; 88; 89
The Education & Libraries (NI) Order 2003 Article 14

9.0 CAPITAL CHARGES IN VOLUNTARY GRAMMAR SCHOOLS

Current Arrangements

- 9.1 Voluntary Grammar Schools are owned by Trustees and managed by Boards of Governors. The Boards of Governors are currently the contracting authority for capital projects. There are currently 52 voluntary grammar schools and of these, 2 (Campbell College and Royal Belfast Academical Institution) are referred to as "Group B". As Group B schools they receive no grant aid on capital projects with the exception of School Meals Accommodation and Furniture & Equipment associated with capital works which are funded at 65% by the Department. The decision to

remain a Group B school rests with the individual school and its Board of Governors. As a result they are not required to have any public representation on their Board of Governors and can remain independent. They are however allowed to charge a “parental contribution” which they themselves determine to meet the cost of building works. The remaining 50 are referred to as Group A1 and fall into two categories:

- those schools which have entered into an agreement under Schedule 6 of the Education and Libraries (Northern Ireland) Order 1986 thereby entitling them to 100% grant on building projects (of which there are 35); and
- those schools which receive 85% grant on capital projects (of which there are 15).

This latter group are permitted by regulation to charge a maximum annual fee of £120, as specified by the Grammar Schools (Charges) Regulations (Northern Ireland) 1992, as amended by the Grammar Schools (Charges) (Amendment) Regulations (Northern Ireland) 2005 No 361, to meet their share of the cost of capital projects.

Under Article 132 (A) of the 1989 Reform Order as substituted by Article 48 of the 1993 Education Order, those schools which opted for 100% funding may charge a capital if they had loans outstanding before entering into a schedule 6 agreement with the Department. The level of and the period during which they may continue to charge a capital fee is determined by the Department in order to allow them to pay off any historic debt incurred prior to the agreement being signed.

Any capital charge made by voluntary grammar schools should exclude premises used wholly or mainly for boarding purposes and prep departments.

Future Arrangements

9.2 As ESA will not have ownership of the Voluntary Grammar Schools, it is envisaged that the existing arrangements will continue.

Current Legislation The Education Reform Order 1989 Articles 132; 132A
Statutory Rules 2005 No 361

10.0 DISPOSAL OF ASSETS

Current Arrangements – Controlled Sector

10.1 It is the responsibility of the 5 Education and Library Boards (ELB) to identify surplus land and seek approval for disposal from the Department of Education (DE). The ELBs will notify the Central Advisory Unit of surplus assets. This unit is based within the Valuation and Lands Agency. The Central Advisory Unit is responsible for advising government departments on land transaction matters and issuing relevant guidelines. Once the Central Advisory Unit has been notified of surplus land, they will, where appropriate, trawl government departments and non-departmental public bodies to see if any of the departments wish to retain the land within the public sector. If a department or NDPB identifies a use, a case must be put forward and approval obtained from their minister for acquisition. If approval is given for acquisition, DE will do a similar submission to the minister supporting the request for acquisition detailing the open market price. However, if the land is not required by any of the departments, DE will normally approve a Board's proposal to dispose of it on the open market. The ELB will engage an Estate Agent and the land will be sold. The money from the sale will be returned to DE's bank account via the ELBs and be considered for reallocation as appropriation-in-aid. An arrangement exists whereby the donor ELB is permitted to retain the first £200k from any sale plus 50% of the residue of proceeds. The remainder of the money is then allocated to the other 4 ELBs in order to provide for a more widespread use of receipts throughout the 5 ELBs.

Current Arrangements – Maintained Sector/VGS/GMI's

10.2 DE pay out grants to maintained schools that are owned by Trustees in accordance with Article 116 of the Education & Libraries (NI) Order 1986 (as amended). These grants are normally 100% of the costs. When premises of a maintained school are being disposed of, the amount recovered by DE will depend on the date the premises were built. If premises were built prior to 8 August 1978, then the amount of grant recovered can only be a maximum amount of the grants paid out (ie this refers to the actual amount paid out and not the percentage). However, if the premises were built after 8 August 1978, DE would recover a percentage of the

current market value. If the school was entirely 100% grant aided, then DE would recover all of the proceeds of the sale. In the case where a closure is the outcome and the trustees own the land and can prove that they own the land, then DE would not normally recover any of the proceeds of the sale, instead the proceeds will go to the trustees for use in alternative educational purposes. In a case of replacement where two schools are being amalgamated and a new school is being built and grant-aided at 100%, DE will be able to recover 100% of the proceeds of the sale up to the cost of the new school. In the case where the 2 schools being closed exceed the cost of the new school, the trustees will retain the surplus funds for use in alternative educational projects. If the school was entirely grant aided at 85%, DE will recover 85% and the remaining 15% would be returned to the Trustees for use in other educational purposes in accordance with Article 39 of the Education (NI) Order 1996. Charities Branch (Department for Social Development) or possibly the High Courts if it is above the Unit's remit will be required to give Power of Sale.

Generally voluntary schools are registered as charities and the Trustees will be required to liaise closely with the Voluntary & Community Unit (Dept for Social Development) which is a central group that handles matters relating to charities. When a voluntary school is applying for grant aid, the school has to be 'vested' in trustees. A lease will be drawn up (normally 900/999 years) in relation to the premises and land on which the school sits. The lease will normally consist of 3 parties: DE, the Lessors (ie in some instances the Church or any other body) and the trustees. The lease will hold the site for school purposes for the entire period and can only be sold with the consent of DE. This is normally dealt with by means of a Deed of Surrender and thus inter alia DE's rights of recovery are fully protected.

- 10.3 If the school premises are to be replaced, the proceeds from the replaced premises are set against the cost of the replacement property. DE will then determine what amount would have been recovered if the school had been closed and not replaced. The difference between the sum recovered under "Replacement" legislation and "closure" is calculated and taken forward as an increased equity in the new school premises. Accordingly, the trustees' interest in the original school will be taken forward as a percentage equity in the replacement premises and if the replacement school closes at a future date the trustees will be entitled to a share of the proceeds.

- Current Legislation:**
- Education & Libraries (NI) Order 1986 Article 105
 - Education & Libraries (NI) Order 1986 Article 106
 - Education & Libraries (NI) Order 1986 Article 116 amended by Article 28 of the Education & Libraries (NI) Order 1993 and Article 68 of the Education (NI) Order 1998.
 - Education Reform (NI) Order 1989 Articles 80-84
 - Voluntary Schools Building Grant Regulations (Northern Ireland) 1993 Statutory Rules 1993 No 457
 - Education (NI) Order 1996 Article 39

Future Arrangements

10.4 It is envisaged that the existing statutory rules on disposal of assets would continue. The ESA will take over the current role of the ELBs and the Department in relation to handling the disposal of property and the distribution of proceeds raised, and consistent with current and future Departmental and DFP policies on this.

Development and Infrastructure Division
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