

## **FREQUENTLY ASKED QUESTIONS IN RELATION TO THE NEW SCHOOL LEASE (“LEASE”) IN RESPECT OF MINISTER OWNED POST PRIMARY PROPERTIES.**

Please note that this document is not a legal document and is provided for guidance purposes only by the Department of Education & Skills (“the Department”). Not all of the clauses in the Lease are referred to in this document and any queries which arise in relation to the terms of the Lease will be determined by the actual wording of the Lease.

This is a dynamic document and may be updated from time to time where schools request further information or clarifications.

### **1. What is the School Lease?**

The School Lease is a written agreement between the Minister, the owner, and the Patron, who leases the property for the purpose of operating a primary or post-primary school, which sets out the obligations of both in relation to the property, both buildings and land.

### **2. Who are the signatories to the Lease?**

The Minister for Education & Skills, the owner, and the Patron of the school.

### **3. Who is the Patron of a school?**

It is the person who is recognised by the Minister as the Patron of the school as provided for under Section 8 of the Education Act, 1998. The term Patron may include two or more persons.

### **4. How long does the Lease run for?**

The term of the Lease is 40 years from the date of occupation of the site.

### **5. What happens to the school after 40 years?**

It is anticipated that, in advance of the lease’s expiration, the Minister in conjunction with the Patron may conduct an assessment on the continued use of the property by the school having due regard to the efficient and economic use of publicly funded resources. In such considerations it is important to understand that the school exists independently of the property in which it is operating. The continuing operation of a school is not necessarily limited by the term of the lease.

### **6. Is the Lease relevant to Boards of Management/Staff of the School?**

Yes, as the Boards of Management manage the school on behalf of the Patron it is important that they are aware of the Patron’s obligations under the Lease and ensure that no breach of the Patron’s obligations arise in the day to day running of the school.

In addition, Boards of Management should be aware of the Patron’s obligation in relation to repairs and insurance when managing grant funding.

Notwithstanding this, it is not anticipated that the terms of the Lease will impact, in an additional manner, on the day to day running of the school as the obligations, for the most part, are ones which are standard in most operative schools.

**7. Does the Lease allow the premises to be used for recreational, educational and community property.**

Any request to use the premises during school hours will require the Minister's prior written consent.

However, the Lease permits the Patron to licence the premises outside of school hours for recreational, educational & community purposes. The Department has issued guidelines on the use of school buildings outside of school hours which sets out guidance to schools when a request is made. The guidelines are available on the Department's website at the following link:-

<https://www.education.ie/en/Publications/Policy-Reports/guidelines-on-the-use-of-school-buildings-outside-of-school-hours.pdf>

**8. What obligations are placed on the Patron under the Lease?**

The Lease places obligations in relation to repairs and insurance on Patrons and these are set out further below.

In addition, a number of standard clauses are outlined in the Lease which are common in every Landlord/Tenant Lease including:-

Rent/Taxes/Bills

- To pay rent if requested by the Minister.
- To pay any rates/taxes/charges etc on the property.
- To pay all utility bills.
- To pay stamp duty (if any) on the Lease.

Permit Minister's agents, official or other persons authorised by the Minister to enter the property

- To allow the Minister's agents, officials or other persons authorised by the Minister to enter the property either for examination of the property or any other purpose connected with the Minister's interest.
- To allow the Minister's agents, officials or other persons authorised by the Minister to carry out works on the property.
- To permit Inspectors duly authorised by the Minister at any time and without the provision of any notice to enter the property in connection with the discharge by them of functions assigned to them by the Minister.

Use and security of the Property

- Property is to be used only for a specific purpose. (In this case a School).
- Not to use the property for any dangerous, noxious or offensive trade, business or occupation whatsoever nor for any illegal or immoral purpose.

- To ensure the property is adequately secured from vandalism, theft or unlawful occupation.

Compliance with Legislation (including Environmental Legislation)

- To comply with all legal requirements/acts/regulations.
- Not to do anything which would contravene statutory requirements including planning acts or public health acts.
- To notify the Minister if the Patron is served with a notice/order/proposal under the Planning Acts or the Public Health Acts and to comply with any such notice.
- Not to discharge into the sewers, drains or watercourses any substance which may cause obstruction or may become a source of danger or injure the sewers, drains, watercourses.

Not to build/make alterations or place certain signs on the property

- Not to build/make alterations to the property without the Minister's consent in writing & in this connection there is also an obligation to remove any unauthorised structures where requested by the Minister.
- Not to place signs/placards/posters/signboard/or other advertisements on any part of the premises that can be seen from the outside of the building/property with the exception of signs as consented in Appendix A to this document.
- Not to do any act which may be considered a nuisance or cause damage to the Minister's property or that of the adjoining properties.

Ensure the property is held by the Patron only.

- Not to mortgage or sublet/transfer/assign the property or do anything which could allow any of these to happen without the Minister's consent in writing.

Rectify any breach of the Terms of the Lease

- To comply with any Notice from the Minister to rectify any breach of the terms of the Lease within 30 days from receipt of the Notice.

Upon termination of the Lease to return the property to the Minister in a good state of repair.

- To return the premises to the Minister in a good state of repairs in accordance with the terms of the Lease.

## REPAIR

### 9. What are the obligations placed on the Minister in relation to the repair/upkeep of the property?

The Minister's obligations in relation to repair/upkeep are as follows:-

- To keep in good repair and condition the structural elements of the buildings funded by the Minister. This includes the roof structure, foundations, walls, timbers, joists and beams of floors and ceilings and chimney stacks.

### 10. What are the obligations placed on the Patron in relation to the repair/upkeep of the property?

The Patron's obligations in relation to repairs and upkeep are as follows:-

- To keep clean and tidy and in good order the buildings and boundary fences on the premises and the conduits.<sup>1</sup>
- To maintain, repair and (where necessary) renew and replace, reinstate and keep in good working order the conduits, the central heating plant, the sprinkler system, the gutters, doors, locks, plate glass and other windows, fixtures, fittings, fastenings, wires waste, water drains and other pipes, drains and sanitary and water apparatus.
- To keep all parts of the property which are not built on in a good and clean condition and adequately surfaced.
- Not to deposit rubbish on the property other than in the proper bins.
- Not to burn rubbish on the property.
- To report to the Minister via the Planning & Building Unit of the Department of Education & Skills, Portlaoise Road, Tullamore, Co. Offaly in writing any structural faults or defects on the buildings funded by the Minister which come to the Patron's attention. *A template notification form is appended to this document at Appendix B.*

The Patron is not obliged to repair in some exceptional cases i.e. where the damage was caused by fire, explosion, lightning, impact by any road vehicle, aircraft and other aerial device, earthquake, flood storm and tempest, riot and civil commission, terrorism and malicious damage or bursting or overflowing of water tanks, apparatus and pipes.

In respect of the Patron's obligations for Repairs these should be met from within the school's own resources (including capitation and ancillary services grants such as caretaking allowances etc). Where repairs cannot reasonably be met from within the school's resources, the Lease requires the Patron, to apply in writing to the Minister as soon as is reasonably practicable for grant funding for the purpose of executing repairs and to keep a record in writing of all applications made for grant funding during the Term of the Lease . Notwithstanding any delay to repairs being

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<sup>1</sup> Conduits are sewers, drains, ditches, soakaways, pipes, gullies, gutters, ducts, mains, watercourse, channels, subways, wires, cables, shafts, flues and other transmission or conducting media and installations of whatsoever nature or kind or any of them for the utilities of the school

carried out, as in all cases where any risk arises to the safety of pupils or employees the onus is on the Board of Management to immediately take steps to prevent any injuries.

**11. If the Patron is not required to repair in cases of malicious damage, how does the school arrange for repairs, in such cases, to be carried out?**

It is not intended that there will be a separate claims mechanism or grant scheme for schools which operate on Minister owned sites. It is open to the school authorities to apply for funding schemes in common with, and on the same basis as, those schools operating on non-state owned premises.

In relation to malicious damages, the pragmatic approach, in general, is that such damages, if small in extent, would be covered within the school's own resources.

Notwithstanding this, the Department recognises that malicious damage is specifically referred to as an exclusion in the lease. Therefore, in cases where the extent of the damages is such that the incident is reported to the Gardaí and where the costs of repairs cannot reasonably be met from within the school's current resources, a claim can be made to the Department of Education and Skills (Planning and Building Unit) under the *Emergency Works Grant scheme*.

In addition to applying for the *Emergency Works Grant*, Schools will be required to notify the Department in writing in such instances, stating that the building is in the ownership of the Minister, and provide the following details:

- Date of the Incident
- Date of Garda Report
- Contact Details for Relevant Garda Station/Officer
- Photos of Damage caused
- Estimate of Damages and cost of reinstatement/repairs
- Where applicable details of possible measures to reduce the possibility of reoccurrence (e.g. suggested improvements in security arrangements)

It is a matter for each individual Board of Management on behalf of the Patron to consider if the malicious damage can reasonably be met from within the school's own resources. It is not proposed that a threshold will apply but schools will be expected to adopt a pragmatic approach in this regard. The Department will not be reviewing the school's resources on an individual basis (although reserves the right to do so in exceptional cases). The approach which will be adopted by the Department is the same as is currently in force in relation to the *Emergency Works Grant Scheme*, that in making an application the Board of Management confirms that the use of school resources to cover these repairs would undermine their ability to complete any anticipated works or other preventative maintenance.

*A template notification form to accompany an Emergency Works Application in relation to malicious damage is appended to this document at Appendix C.*

It is the responsibility of the Board of Management of a primary school to have a safety statement in place in its school and to ensure as far as is reasonably practicable, the safety, health and welfare at work of its employees and those who are in anyway affected by the work activities of the school. The safety statement should identify potential hazards, assess the risks to health and safety and put appropriate provision in place to safeguard the safety and health of employees and pupils

As in all cases where any risk arises to the safety of pupils or employees the onus is on the Board of Management to immediately take steps to prevent any injuries.

## **12. Who is obliged to repair where the Minister does not fund the building/development?**

Firstly, the Lease provides that nothing may be built on Minister owned land without the prior written consent of the Minister.

In addition, as requests for additional accommodation etc. which are approved by the Department are funded by the Department it is not envisaged that there will be many situations where this will arise.

There may be cases where, for example, the Patron applies to the Minister for consent to allow works to take place on Minister owned land for the purposes of improving sporting facilities which are funded via a sports grant. In such cases, where consent is granted, the Minister will not be obliged to repair or provide for the upkeep of any such facility. It follows, therefore, that if any such facility is a building it would be a matter for the school to take out their own buildings insurance on that building.

It is important for Patrons and schools to be aware that any alterations/buildings which are built on the Minister's land, **regardless of who funded them**, will revert to the Minister's ownership upon termination of the Lease.

## INSURANCE

### **13. What insurance is the Patron required to hold under the Lease?**

School authorities are required to have the following cover in place:-

- Public Liability Insurance
- Employer's Liability Insurance
- Contents insurance - This should be taken out in respect of all contents regardless of whether the items were funded by the Department or any other party.

There is no requirement to take out buildings insurance on buildings which have been funded by the Department of Education & Skills ("the Department").

### **14. If building insurance is not required by the Patron how, in practice, will the school seek repairs to the structure of the building?**

In relation to the Minister's repair obligations under the Lease, the main form of funding for repairs to buildings funded by the Department will be via the current grant schemes for schools. Details of the relevant grant schemes are available on the Department's website. <https://www.education.ie/en/Schools-Colleges/Services/Grants-and-Additional-Support/>

The Lease requires the Patron to notify the Minister of any structural faults or defects that may come to the Patron's attention and a template notification form is attached at Appendix B to this document.

### **15. The School's previous insurance policy covered consequential loss. In the event that interim accommodation is required following a major incident, will the Department provide the funds for temporary accommodation.**

When the Department provides funds for a building project and when it is necessary for a school to relocate pending repairs or refurbishment of the school building, the Department funds the cost of temporary accommodation, subject to approval being granted at the time by the Department. The same criteria would therefore apply if a school building is damaged to the extent that it cannot be occupied pending completion of repairs.

However loss of rent or other consequential expenses which are not directly related to the provision of temporary or permanent accommodation would not be covered by the Department.

### **16. What is meant by State Indemnity & what is the role of the State Claims Agency.**

It is important to note that the State Claims Agency does not deal directly with schools in relation to any claims.

Under the National Treasury Management (Amendment) Act 2000, the management of personal injury and third party property damage claims against the Minister for Education and Skills was delegated to the National Treasury Management Association (NTMA). When performing these functions the NTMA is known as the State Claims Agency.

State Indemnity, as operated by the State Claims Agency indemnifies *the Minister for Education and Skills, its servants and/or agents* in respect of any claims for personal injury and/or third party damage, *arising from the negligence of the Minister, its servants and/or agents*.

State Indemnity applies to all school properties which are deemed to be Minister owned. In that respect State Indemnity will apply to personal injury and third party property damage risk that arise from the negligent acts or omissions of the Minister. State indemnity extends to cover only the negligence of the Minister and does not extend to indemnify any third party (Board of Management or Patron etc.), its servants and/or agents concerning any negligent act or omission by the latter, hence the requirement for the school to have their own insurance to cover their liabilities/risks.

In relation to the Minister's liabilities, the State Claims Agency will manage any personal injury and third party property damage claims that were deemed to have been caused by the negligent acts or omissions of the Minister. Public liability claims against the Board of Management would fall to be dealt with by the Board's insurer.

**17. Are there any other clauses which may impact on the property occupied by the School?**

In a minority cases where the property is not being used to its full capacity by the school for educational and school related purposes, the Minister may upon notice to the Patron make arrangements for the use and occupancy of the property by additional parties for educational purposes or such other purposes as he may specify. This may, for example, be a situation where the Minister requires the use of part of the property as a temporary location for another school.

In addition, where the property or part of it is required by the Minister the Lease provides that the Patron may be requested to surrender the required part. This may, for example, be a situation where the Minister wishes to build an additional school on the Land forming part of the Lease.

**18. What is the address to be used for contact or notification purposes in respect of the lease by the Patron?**

Department of Education and Skills, Planning and Building Unit, Portlaoise Road, Tullamore, Co. Offaly, R35 Y2N5.



## Appendix A

### **Re: Consent re Signs on Minister Owned School Properties**

In respect of clause 3.12 of the New School Lease The Department of Education & Skills hereby consents to the following signs being erected on Minister-owned school properties:-

- A. Signs giving directions which are not subject to planning permission.
- B. Temporary signs for enrolments and school events which are not subject to planning permission and which are not erected on common areas of shared campuses.
- C. Temporary signs for enrolments and school events which are not subject to planning permission and which are erected on common areas of shared campuses provided all schools on the campus have consented to the erection and location of same.

Please note that the Department will not provide consent re signage on an individual basis to schools and this document is to be taken as the necessary consent under the Lease where any of the above criteria are met.

Appendix B

**Notification Form in respect of Structural Faults or Defects on Minister owned schools**

To: Planning & Building Unit, Department of Education & Skills, Portlaoise Road, Tullamore,  
Co. Offaly.

I wish to notify you of the following Structural Faults/Defects which have come to the School's attention:-

School Name and Address:	
Contact Person(s)	
School Roll No	
Contact Telephone No	
Patron details	
Outline of structural fault/defect	
Location of structural fault/defect	
Date when structural fault/defect came to School/Patron's attention	
Steps that have been taken by the School to protect safety of pupils/staff/public from the structural fault defect.	
Confirm Photo's showing damage have been attached, if available	

**Declaration (to be completed by the school)**

I confirm that all information provided on this form is accurate to the best of my knowledge. I acknowledge that I have enclosed all relevant documentation in relation to this notification.

Signed: \_\_\_\_\_

Print Name:

Status:

Appendix C

**Notification Form for Repairs in respect of the Minister's obligations in relation to Malicious Damage on Minister Owned Schools\***

*\*This form is not for use by schools under the management of the Educational Training Board or for Community & Comprehensive Schools*

*\*The Department provides funding to Schools. Prior to seeking repairs, from the Department Of Education and Skills, schools should consider whether the cost of any repair can be met from the school's current resources.*

To: Planning & Building Unit, Department of Education & Skills, Portlaoise Road, Tullamore, Co. Offaly.

I wish to notify you of the following incident and our request for repairs in relation to same.

School Name and Address:	
Contact Person(s):	
School Roll No:	
Contact Telephone No:	
Patron details:	
Outline of incident/damage caused:-	
Date of Incident:	
Date matter reported to Gardai:	
Contact details for Relevant Garda Station/Officer:	
Confirm photos of damage are attached.	
Estimate of damages and cost of reinstatement repairs.	

**Declaration (to be completed by the school)**

I confirm that all information provided on this form is accurate to the best of my knowledge. I acknowledge that I have enclosed all relevant documentation in relation to this notification. I confirm that the cost of the proposed repairs cannot reasonably be met from within the school's current resources.

Signed: \_\_\_\_\_  
 Print Name:  
 Status: