



## Glossary and useful links

The definitions below are intended to help you understand the information in the Academy Property Information Notes and forms.

Most of the terms and definitions below are from the [Royal Institution of Chartered Surveyors Red Book](#).

To protect yourself and your academy trust, you should always obtain professional legal and property advice and not assume that your understanding of a term is correct.

**Arm's length transaction:** a transaction between parties that is not influenced by any relationship between them. What determines "influence" is defined within the principles set out in the [Nolan report on Standards in Public Life](#).

**Asset:** land or buildings or other tangible objects that are owned and have (or are able to produce) an economic value. See also [liability](#).

**Assignment:** the transfer of contractual or property rights to another party (the assignee). Typically this will be a transfer of the rights under a lease, but with the assignor retaining the obligations. This is different from novation. An outright sale of a property means there are no residual rights to be transferred, although some rights can be reserved within a sales contract. See also [novation](#) and [sub-letting](#).

(Also, in the normal sense of the word: a task, including in respect of a valuer's instruction to value a property.)

**Basis of value:** a statement of the fundamental measurement assumptions of a valuation.

**Break clause:** a right for either a lessor or lessee (as specified in the lease) to bring the lease to an end early. These clauses are generally subject to strict conditions that must be met to allow early termination.

**Capital:** in accounting terms, anything from which the academy trust can expect to derive a benefit for more than one year.

**Change of use of playing field land:** that means it can no longer be used for the purposes of the academy constitutes a disposal within the meaning of Schedule 1 of the Academies Act 2010.

**Charge:** a restriction on the land title registered at the Land Registry triggering notification on any disposal and normally requiring repayment (in whole or in part) within a period following the award of a grant.

**Clawback:** an agreement giving the right to receive (or obligation to pay) money or other benefit within a given time (the clawback period). The payment is made subject to certain conditions being triggered.

**Consent:** the need for prior permission of the Secretary of State for Education. You should not agree to enter into any agreement without the consent having been advised to you in writing (not email.). See also [development](#) for other consents required. If the academy holds its land from a Superior Landlord, consent may also be required under the terms of the lease.

**Consultation:** contact with parties likely to be affected or have a strong public interest in the proposal it. Consultation is required for the disposal of playing field land (including a long lease to a for-profit organisation) and for a significant increase in pupil numbers. Separately, if your proposal requires planning permission, the local authority will conduct public consultation.

You need to decide which media to use, depending on the scale or likely impact or local interest in the proposal. Media can include local press, direct contact with parties (such as staff, pupils, parents, neighbouring community, other local schools and academies and the local authorities), and/or one or meetings to which the public should be invited. You should summarise how you conducted the consultation when submitting information to the EFA.

For the disposal of land falling within the definition of playing fields, unless otherwise agreed with the EFA as an exceptional case, consultation needs to be for a minimum of 6 weeks, 4 of which are to be in term time. Consultation is also to include specific reference to what will happen to such playing field land should consent for a significant increase be approved by the Secretary of State.

Where a proposal to acquire land (or take out a lease) involves a [significant change](#) you will need to follow that guidance first, before applying for any property consents.

**Cost:** the sum a buyer has to pay in monetary terms or in kind for goods or services.

**Cost approach:** a valuation that provides an indication of value using the economic principle that a buyer will pay no more for an asset than the cost to obtain an asset of equal utility, whether by purchase or construction.

**Covenants:** the terms in leases that set out the respective duties and obligations of lessor and lessee. The detail of what the covenants state is important to understand as they will describe the use of the property, the standard of [repair, environmental](#) and other [liabilities](#) for insurance and any indemnities and the [rent](#) and [service charges](#). Obtaining professional legal advice on the entire “package” of a lease is critical – regardless of its length.

**Development:** the carrying out of building, engineering, mining or other operations in, on, over or under land. What amounts to development will depend on the determination of the local planning authority. In general a development will include extensions of existing buildings and locating mobile or temporary classrooms on land as well as demolition. Expert property advice is essential if you want to develop land that will require necessary planning consent (as well as separate consents under the building regulations).

**Dilapidations:** the lessee’s repairing obligations to hand back land or property in a specified condition or standard of repair to the lessor – normally when the lease comes to an end. The lessor may be able to recover damages against the lessee if the property is not handed back in the condition specified in the lease. In some situations, the landlord will be able to recover damages during the term of the lease, rather than waiting for it to end and may, in exceptional situations, be able to forfeit the lease (bring it to an end.) See [repairs](#).

**Disposal:** any grant of an interest in property irrespective of value and including a leasehold, assignment, novation, sub-letting or outright sale. It will include land “swaps” but does not include a licence as this should not create any property interests. The law relating to licences is complex and expert legal advice is crucial. For academies, “disposal” of land is defined in para 22 of Schedule 1 of the Academies Act 2010 and includes any disposal of a freehold or leasehold interest in land, including: a compulsory disposal; the termination of a tenancy to which Part 2 of the Landlord and Tenancy Act 1954 applies; entering into a contract to dispose of land; and granting an option to acquire a freehold or leasehold interest in land.

**Easement:** granting rights to a party in, under or over land, for a defined period or in perpetuity – but not a lease.

**Environmental liabilities:** risk of being responsible for damage to land, water or the atmosphere. Sometimes pollution may date back many years and may not be readily apparent. Expert advice is essential if you are considering acquiring property or entering into any sort of lease so you can assess the risk to health and possible financial liability. See also [geotechnical liabilities](#).

**External valuer:** a professional who, together with any associates, has no material link with the client and who is qualified to determine the market worth of property; an agent acting on behalf of the client or the subject of the instruction.

**Fair value:** the estimated price for the transfer of an asset or liability between identified, knowledgeable and willing parties that respects the respective interests of those parties. (IVS 2011) or the price that would be received to sell an asset, or paid to transfer a liability, in an orderly transaction between market participants at the measurement date. (IFRS 13).

**Financial statements:** written statements of all asset values and cashflows of a person or corporate entity. Financial Statements provide a measure of public accountability that is developed in a regulatory framework of accounting standards and the law.

**Freehold:** the ultimate ownership of the land or property (which might be subject to various leases and restrictions which, until extinguished, limiting the use of the land).

**Geotechnical liabilities:** risk and responsibility for structural and other hazards relating to the local geology or past industrial use of the land. Sometimes it may not be readily apparent. Expert advice is essential if you are considering acquiring property or entering into any sort of lease to evaluate the risk and potential financial liabilities. See also [environmental liabilities](#).

**Goodwill:** any future economic benefit that arises from a business, from an interest in a business or from the use of a group of assets that is not separable. Note that we will generally not accept a purchase that attributes value to goodwill.

**Head lease:** the person or organisation to whom a leasehold interest is granted by a [freeholder](#). If a person or organisation is granted a lease from a leaseholder, the leaseholder becomes known as the superior lessee and the person being granted a lease becomes known as the under-lessee. In very long leases (99 years and more), there will frequently be a whole string of under-leases created none of which can expire later than the lease expiry date of the head lease at which point the leasehold expires and control of the land passes back to the freeholder. See also [assignment](#) and [sub-letting](#).

**Hope value:** value that is attributable to the future potential value of land or property rather than based on its existing condition and planning consent. Normally this relates to the hope that consent will be granted for planning consent for development or changing the existing use of the land. Note

that we will normally not accept an academy trust paying “hope value” for a property or land it wants to acquire.

**IFRS:** International Financial Reporting Standards

**Income approach:** an indication of value by converting future cash flows to a single current capital value. Note that we will favour such explicit methods of valuation.

**Inspection:** a visit to a property to examine it and obtain relevant information, in order to express a professional opinion of its value or condition.

**Intangible asset:** a non-monetary asset that manifests itself by its economic properties, such as intellectual property and goodwill. It does not have physical substance but grants rights and economic benefits to its owner. Note: we would require detailed explanation as to why this was included in a valuation or estimate of worth.

**Internal valuer:** a person who is in the employ of either the enterprise that owns the assets or the accounting firm responsible for preparing the enterprise’s financial records and/or reports. Note the restrictions referred to in the RICS Red Book on meeting the requirements for independence required under VS 1.9 in certain types of assignment.

**Investment:** land or buildings held by the owner to earn rentals or capital appreciation or both rather than for use as an operational asset or for sale in the ordinary course of business.

**IVS:** International Valuation Standard

**Land:** buildings and other structures, land covered with water and any interest in land.(as defined section 579(1) of the Education Act 1996). See also [playing fields](#).

## Leases

**Finance leases:** See [Academies Financial Handbook](#)

**Land or property leases:** the grant of an interest in land for a defined number of years but that will exclude the transfer of the freehold interest.

**Operational leases:** See [Academies Financial Handbook](#)

**Lease commencement date:** the date on which the lease starts – normally when it is signed. This may not be the same as the [rent commencement date](#) which normally coincides with a standard “quarter day” and may pre-date the lease commencement date.

**Lessee (or tenant):** the party being granted the right to occupy land or a building in return for a rent. See also [covenants](#).

**Lessor (or landlord):** the party granting a right to occupy land or buildings.

**Liability:** land, property or any tangible object that are owned and the costs/obligations, whether present or contingent, outweigh any value. See also [assets](#), [environmental liabilities](#) and [geotechnical liabilities](#).

**Licence:** a legal agreement between two parties giving permission to the licensee to use part of a building or land and not granting any property rights. The owner or party granting the right (the licensor) does not relinquish control of the property and has a right to use the property in conjunction with the licensor. It is used to make a party’s occupation lawful so not constitute a trespass. It is different from a tenancy

which gives exclusive possession and excludes the owner from the property. Care must be taken in entering into any form of licence – particularly granting residential licences as they are easily construed to be a tenancy and recovering possession may be difficult. Legal advice is critical.

**Market rent:** the estimated value for which a property would be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.

**Market value:** the estimated remuneration or return for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.

**Novation:** the creation of a new contract, including that for a lease, replacing an existing one. This is different from an [assignment](#), in which the rights under an original contract are transferred to another party, but the obligations remain with the assignor. See also [sub-letting](#).

**Novel or contentious:** a situation or transaction in which the academy trust has no or limited experience or is outside the range of its normal business activity. A contentious transaction is one that might give rise to criticism of the trust by the public or the media. Prior consent is required to enter into transactions that the academy trust considers to be novel or contentious. The [Academies Financial Handbook](#) explains this in more detail.

**Open academy:** include sponsored academies, converter academies, Free Schools, University Technical Colleges, Studio Schools and University Teaching Schools

**Open marketing:** exposure of a property to the whole market allowing anyone with an interest to make an offer for the land or property being leased or sold. Note: we will expect land and property to have been subject to an open marketing exercise and not be an "off market" transaction.

**Overage:** an agreement between parties, normally on a sale of property that, within a specified period after the sale, the seller can share in any uplift in value – usually ignoring any increase due merely to inflation. Legal and property advice is essential as will be the need to register the overage provision against the buyer's title. There can be many types of overage, including:

- result of an intensification of assumed development;
- the grant of, or improvement in, a planning consent;
- the improvement in sales values over a value assumed at the time of the sale; or
- the grant of planning consent for a change of use that will increase the land's value.

The parties will also normally provide for which of the Buyer's expenses are to be deducted.

**Peppercorn rent:** nominal cost to use land, building or a facility. When leases were not required to be by deed (now assumed, by statute to be the case), the rent was the "consideration" required to make the contract valid. It was set at something with a nominal value and is still common practice.

**Physical education:** Curriculum activity that includes the playing of games.

**Playing fields:** land in the open air which is provided for the purposes of physical education or recreation, other than any prescribed description of land, including:

- **grass pitches and artificial surface pitches** set out for the playing of sports;

- **hard surface games courts** including multi-games courts, tennis courts, netball courts and hard paving marked out for games;
- **informal and social areas**, including grassed areas, paved areas (including playgrounds), outdoor seating and teaching areas including rest and quiet areas;
- **marginal areas**, around the edges of playing fields for run-off and to allow for the cyclical realignment of pitches;
- **habitat areas**, set aside for the formal teaching of nature or informal curriculum purposes, including meadowland, wildlife habitats (including ponds), gardens, nature trails and outdoor science areas; and
- **local authority parkland** or other open space that is used, or has been used in the last ten years, for the purposes of a maintained school.

The EFA adopts the same definition of playing fields for freehold academies and those holding their land on a lease – whether from a local authority, diocese, sponsor or other body. The final interpretation of these terms is a matter exclusively for the courts.

Land which falls under the following descriptions is not considered to be playing field land:

- land on which stands a building or other structure including indoor and outdoor swimming pools, and incidental land that is functionally linked to such buildings or structures;
- soft-landscaped or grassed areas not suitable for use for physical education or recreation purposes, such as marginal waste land outside of a school's physical boundary fencing and ornamental or other flower beds which directly surround a building or which are connected to a caretaker's house'; and
- roads, car parks, paths and hard standing areas, eg storage of waste containers.

**Price:** the value at which a purchaser and vendor (or lessor and lessee) agree to exchange an interest in property.

**Property:** a building or buildings and the land belonging to it or them; all rights, interests and benefits related to the ownership of land and/or buildings including any negative rights, interests or benefits, e.g. obligations, encumbrances or liabilities relating to the interest.

**Property transaction:** any undertaking that involves the change of ownership and/or control of land and/or buildings – including disposals, acquisitions, leases, land charges and options.

**Propriety:** the requirement that expenditure and receipts should be dealt with as Parliament intended. See the [Academies Financial Handbook](#) for greater detail including on the related term of regularity.

**Rent:** payment in exchange for the use of or right to occupy land or a building. The obligation to pay this is normally set out in dates defined in a lease. See also [peppercorn rent](#) and [market rent](#).

**Rent review:** the date on which the rent paid by the lessee may be renegotiated. The frequency of reviews is stated in the lease and the basis may be on an upward-only basis (in which however it is reviewed, the rent cannot fluctuate downwards from the rent stated at the beginning of the lease).

**Rent commencement date:** the date on which rent becomes payable. This may be before or after the [lease commencement date](#) and is, commonly, at a defined quarterly or annual frequency.

**Repairs:** maintenance and remedial works to maintain the property to the standard specified in the lease. Depending on the wording of the repairing covenant, it can extend to renewal and rebuilding and the [Yield up](#) covenant will also be important to understand the extent of the duty. The duty to

repair a property or land can have significant implications on the cost the lessee will need to plan for over the lifetime of the lease. See also [dilapidations](#).

**Restrictive covenant:** an undertaking by a purchaser not to do something with the land being sold by a party who is retaining adjoining land. There are specific rules to adhere to so it is essential to obtain expert legal advice to make sure they “run with the land”, i.e. they bind successive owners.

**Right to renew:** ability to extend a lease. The Landlord and Tenant Act, 1954 provides a lessee with an automatic right to renew an existing lease on the same terms other than for rent. The lessor (the party granting the lease) has limited reasons to refuse the renewal. If parties do not want the statutory right to renew a lease to apply, they have to agree before entering into the original lease that the provisions of the 1954 Act are excluded. This involves a legal process and you need to take legal advice before agreeing any lease, whether it is one you are granting or one you are entering, so you understand this. A lease from the local authority to an academy is normally “contracted out” of the 1954 Act, so does not have a right to renew at the end of it.

**Service charge:** payments for services, such as security, caretaking, cleaning, lighting and gardening, usually as defined in a lease or joint use agreement. Insurance can be part of a service charge or is often expressed as an “insurance rent”.

**Sports pitch:** an area of land that forms part of a school’s playing fields that is:

- open grassed land that is capable of forming at least a small pitch which is equal to or larger than the Football Association’s recommended area for games played by under-10’s, i.e. 2,000m<sup>2</sup>. It should also have a configuration and topography making it suitable for a sports pitch, whether it is laid out or not, or
- synthetic or artificial playing surface, or dedicated hard games court set out for team games.

**Sub-letting:** the granting of a lease of part of the land or buildings held by another leaseholder. A sub-lease is different from [assignment](#) and [novation](#) as it does not displace the rights and responsibilities of the leaseholder and there is no relationship between the superior leaseholder and the sub-tenant. In assignment, the assignee has a direct relationship although the original liabilities of the assignor will still remain in place.

**Superior landlord or superior leaseholder:** any party with a right to occupy land or buildings that expires later than the lessee’s. For example, a party may hold a lease that expires on 31 December 2050. If he grants an under-lease to another party, that second lease must expire earlier than 31 December 2050 – even by just one day. By granting the lease, he will become the superior landlord to the lessee.

**Term:** the length of a lease. See also [break clauses](#) and right to renew.

**Transaction:** any transfer of the legal or equitable interest in, under or over land held by an academy trust including any change in the control over the land or imposing a potential liability such as easements and land charges.

**Under-lease:** a lease from a superior or head lessee.

**Valuation:** the estimate of the price at which an interest in land or property will transact at a particular time and reflecting any terms of the contract. The EFA uses the definitions of “Fair Value” set out in [the RICS Red Book](#). The EFA expects the academy trust to adhere to the Valuation Standards set out and that the valuer is to be an “External Valuer” as defined in the Red Book.

**Value for money:** achieving the best possible educational and wider societal outcomes through the economic, efficient and effective use of all the resources in the trust's charge, the avoidance of waste and extravagance, and prudent and economic administration. A key objective is to achieve value for money for the academy trust and for taxpayers generally.

**Worth:** the value to the owner (or prospective owner) of land or property for operational (or investment) purposes.

**Yield up:** an old-fashioned way of saying "giving back" a lease to the lessor. It is especially important in connection with the repairing covenant and [dilapidations](#) when it will describe the condition in which a lessee will need to hand the property back to the landlord or, potentially, face a liability for damages.

## Useful links

### DfE reference information

- [Academies Act 2010](#)
- [Academies Financial Handbook](#)
- [Building Design information](#)
- [Space modelling and utilisation](#)

### Associated resources (external links)

- Department for Environment, Food and Rural Affairs: [procurement practice](#)
- Charities Commission: [Statement of Recommended Practice](#)
- Chartered Institute of Public Finance and Accountancy: [Valuation Practice](#)
- Health and Safety Executive: [Education](#)
- HM Treasury: [Green Book - Appraisal and Evaluation in Central Government](#)
- HM Treasury: [Managing Public Money](#)
- [Official Journal of the European Union \(OJEU\)](#)
- [Nolan report](#) on Standards in Public Life
- Royal Institution of Chartered Surveyors: the [Red Book](#)