

DBULLETIN

Church of England Academies

Following the 2010 General Election, the Coalition Government announced legislation to promote new academies. The Academies Act 2010 streamlines the process for schools converting to academy status and has led to a significant number of new academies being established in the last year.

This briefing paper outlines the steps in the conversion process that are expected to be completed by Church of England schools. The length of this process will depend on the level of expertise and preparedness of individual schools and also the level of complexity of individual projects. Nevertheless new academies are expected to open in April or September 2011. Devonshires has a highly experienced Education Team who can provide a fast and responsive service advising schools on completing all legal matters to establish an academy. It is important to be aware that there are additional issues that must be considered and addressed by Church of England Schools to ensure the schools religious designation and private land owned by trustees are both protected.

What is an Academy?

Academies are publicly funded independent schools free from local authority control. Academies are funded and maintained by the Department for Education (DfE) at a level equivalent to maintained schools. However, in addition, the academy can retain the Local Authority Central Spend Equivalent part of its budget that is currently top sliced by the local authority. This usually amounts to 10% of the school's budget.

Key freedoms granted to academies include setting their own pay and conditions for staff, freedom from following the national curriculum, and the ability to change the length of their terms and school days.

The Academies Act expands the academies programme allowing primary, secondary and specialist schools to apply to become academies. Governing bodies for schools that have been rated outstanding by OFSTED can apply to become academies, as can schools which have been assessed as good with one or more outstanding features. Unlike earlier academies, no external sponsor will be required for these schools.

Any school regardless of its OFSTED ratings can apply to join an existing Academy Trust. Also any group of schools can apply in partnership as long as at least one of the schools is rated outstanding or good with one or more outstanding features. The Secretary of State will only approve those applications where he is satisfied that there are appropriate accountability mechanisms in place to support the weaker schools to improve. Legal advice must be taken if a school with a religious character forms part of the application process for a group of schools. This would not usually be appropriate unless a separate Academy Trust is established to maintain the ethos and governance of the school.

How to become an Academy?

1. Registration

The head teacher or chair of governors at the school must complete and submit an on-line registration form and the school will subsequently be assigned a named contact with the DfE who will support the school through the conversion process.

Church of England Academies

Consulting interested parties

The governing bodies of schools that wish to convert to become academies are required to carry out a consultation with appropriate stakeholders. It will be for the governing body of the school to determine who should be consulted. Schools should consider consulting parents, pupils, staff, other local schools and the local authority. For Church of England schools, the local diocesan board should also be consulted.

There is no specified length of time for the consultation, although a usual period seems to be between four to eight weeks. It is important that interested stakeholders have a fair chance to respond. Schools can consult in a number of different ways:

- information on the school or local council's website
- a letter to all parents
- holding public meetings
- discussions with students at an assembly.

2. Application to Convert

The governing body will need to complete an Application to Convert form and email it to the school's named DfE contact. If the school is a foundation or voluntary school with a foundation, the governing body will need to obtain support from the school's trustees and those entitled to appoint foundation governors before making the application. Trustees must take into account their duty to maintain the purposes of their trust under charity law. Applications for conversion from schools with a religious character will need the approval of the local diocese to ensure the religious ethos of the school is protected. When submitting the application to convert the school should send signed copies of the minutes of the governors meeting at which the resolution in favour of academy status was passed.

Informing Staff

The employer (the local authority for voluntary controlled and community schools and the governing body for voluntary aided and foundation schools) should start formal discussions with staff as soon as the governing body has approved the proposal to convert to academy status. In all cases there will be an obligation to provide written information about the transfer to employee representatives. This should detail the implications of the transfer for employees and the measures the employer envisages it will take in connection with the transfer that will affect staff or their working conditions. Where the employer envisages taking measures in connection with the transfer there will be a legal obligation to consult under TUPE. It is envisaged that the staffing structure and terms and conditions of employment will remain unchanged for existing staff at least initially.

Support to help another school raise standards

The DfE expects outstanding schools and schools with one or more outstanding features who wish to convert to academy status to support at least one weaker school. It is for the proposed academy to decide which school to support and the support may involve helping a weaker school become an academy.

Criminal Records Bureau

The Independent School Standards Regulations place a duty on academies to ensure that members of staff have received an enhanced CRB check. New checks should take place unless the member of staff has worked in an educational setting within the previous few months as will be the case for existing staff. Checks must also be undertaken on the governors if they have not already had a CRB check carried out. It is important to note that where a check on a chair of a governing body is required it must be sought through the DfE and countersigned by the Secretary of State.

Church of England Academies

Approval of the application

The Secretary of State will confirm whether he approves the governing body's application. If he does so, he will make an Academy Order that will enable the school to convert to become an academy.

Conversion Expenses

Schools will incur costs in the process involved in becoming an academy and so can claim a grant of £25,000. Schools will need to complete a claim form available from the DfE as soon as their application has been approved by the Secretary of State.

3. Obtaining Funding Agreement

There is model documentation available from the DfE that must be used by Church of England schools.

Memorandum and Articles of Association

Schools will need to obtain legal advice on completing a memorandum and articles of association in order to establish an academy trust (a charitable company limited by guarantee). The memorandum contains the names and signatures of the subscribers who will be the academy's first members. The articles of association give details of the company's internal management affairs. The religious character of the school must be reflected in the objects clause of the articles of association.

The Secretary of State will need to approve the memorandum and articles of association and then they must be filed at Companies House. Academy trusts are deemed to be exempt charities under the Academies Act 2010 so there is no need for academy trusts to be registered with the Charity Commission.

It is for the members of the converting school's governing body in consultation with any foundation

to decide who should be the members of the academy trust and who should be the governors. Church of England schools must use the model documentation otherwise diocese will be giving away their school to a company that will be dominated by non-Church of England members. The model documentation secures the membership in the hands of Church of England corporate bodies (for example: the Diocesan Board of Education, the Area Dean in his corporate capacity, the trustees if they are a corporate body or the local incumbent in his corporate capacity) in the majority model (for VA and Foundation majority converters). In the minority model (for VC and Foundation minority converters) the position of Church of England bodies as foundation members and foundation governors secures as far as possible the powers that are required to protect the ethos of the school.

There is scope for flexibility on the composition of the board of governors but there are certain minimum requirements concerning the number of parent governors and a restriction on the proportion of governors who can also be academy employees. For VC/Foundation conversions where a church governor majority is not permitted by the DfE it is essential to use the model that provides for foundation governors whose role is to protect the foundation and religious character of the academy.

Funding Agreement

The governing body of the school must satisfy itself that consultation has taken place and that it has considered the views expressed before signing the Funding Agreement with the Secretary of State. There is no obligation to comply with the views expressed in the consultation process, so the local authority no longer has a power of veto. The Funding Agreement provides the framework in which the academy will operate. The DfE will pay the academy's capital and recurrent funding

Church of England Academies

provided the academy acts in accordance with the Admissions, Exclusions and Special Educational Needs Codes of Practice.

The Funding Agreement contains a requirement for daily acts of worship and the teaching of RE. The Secretary of State may take action where the terms of the Agreement in this respect are deliberately flouted.

Church of England schools must also enter into a Supplemental Agreement with the Secretary of State. This Agreement gives Diocesan Boards of Education essential powers to request the Secretary of State to use his powers of intervention if the academy drops two SIAS grade over a five year period or fails a SIAS or if the Diocesan Board believes that the academy is being conducted in a way that puts its religious character at risk.

Land

Devonshires is able to advice schools on the legal arrangements for the transfer of land to the academy. Appropriate searches will need to take place and a report on title will need to be drawn up that identifies the land currently held for the purposes of the converting school.

Where the school is sited on private land it will be for the private land owner to reach an agreement on the continued use of the land for the purposes of the academy. If the land is held by Trustees it is important to consider whether the existing trust allows for a transfer of land to an academy. An application to the Secretary of State can be made for changes to the trust deed. For publicly funded land owned by the local authority (often the school playing field) the transfer to the academy will usually be by way of 125 year lease. For land where the Trustee value has been enhanced by public expenditure, the Secretary of State may make a direction for a transfer or grant of a lease. The DfE has indicated that neither VA capital grant nor BSF

constitute public enhancement of trustee land.

Other Property of the Trustees

School trustees may hold property other than the school site. This may include charitable investments. Nothing is said in the Academies Act as to how this property is to be treated with the consequence that it remains in our view in the ownership of the existing trustees who will continue to apply any proceeds to the purposes set out in their trust.

Commercial Transfer Agreement

It is important to ensure that details of any assets or contracts that will transfer to the academy trust are included in the commercial transfer agreement. It will also include information on all the staff that are transferring to the academy. It is desirable for this agreement to be signed prior to the Funding Agreement.

For Church of England schools it will be important to consider ways of purchasing services currently dealt with by the local authority. Dioceses may well be in a position to provide services or negotiate for them cost effectively.

Setting up a bank account

It will be necessary for the academy trust to open a new bank account because it will be a new legal entity. This will enable the academy trust to receive a general annual grant from the Young People's Learning Agency which funds academies. This is likely to be taken over by the Education Funding Agency. As soon as the academy trust has been established a new bank account can be opened.

Schools will need to appoint an accounting officer who must be the principal of the academy. A responsible officer also needs to be appointed to check the academy's financial management.

Church of England Academies

Pension Registrations

As soon as the academy trust has been established it will be responsible for the pension arrangements for staff employed by the academy. For existing staff who are members of the Local Government Pension Scheme (LGPS) or the Teachers Pension Scheme (TPS) that membership will continue and after conversion any new staff will also be eligible to join the LGPS or the TPS.

Insurance

Academy trusts are responsible for making arrangements for the insurance of the school. It is imperative that the academy is insured from midnight of the date of conversion so that there is continuity of cover.

4. Pre-Opening

Academy Registrations

The governors will need to contact that the National Centre Number Register for examination bodies to let them know about the academy's change of status.

The governors will also need to notify the Information Commissioners Office that the academy is opening and will be responsible for processing personnel and pupil data. This is critical for the new academy as failure to do so is a criminal offence.

The education team at Devonshires has acted for numerous old style and new academies and is well-placed to assist Church of England schools interested in converting to academy status.

Devonshires can also advise on any ongoing educational matters.

Anyone with specific queries or those wishing to commence the formal process for converting to an academy are welcome to contact us for advice.

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