

NATIONAL SOCIETY GUIDANCE

Becoming an Academy

SECTION 1: WHAT SHOULD WE DO FIRST?

Schools, dioceses and trustees must approach the possibility of conversion *together* to avoid the risk of confrontation and disagreement. Read everything available and consult informally and openly about the possible details at an early stage.

Technical and legal advice will be required as the issues involved in conversion for Church of England schools are not straightforward and are closely tied to the individual circumstances of each school. General guidance is not sufficient for making firm or detailed decisions.

1. How do academies under the Academies Act differ from previous academies?

Academies converted under the Academies Act 2010 are in important respects different from academies under previous legislation. Outstanding schools converting do not need sponsors and in effect form a company to own the academy. This aspect is likely to be the same for all converting schools except where a failing school is forced to convert with sponsors.

In addition, the result of the “as is” doctrine means that, whereas under the previous model the diocese (as sponsor) would normally be at the heart of academy membership and governance, this will not now be so for VC converters. The model documents are drafted to mitigate this as far as possible. It is for that reason that they are essential and should be used as a package with only minimal local changes. Otherwise dioceses are in effect giving their school away to a company which will be dominated by non-Church of England members.

SECTION 2: WHAT IS A MAINTAINED SCHOOL?

2. What does it mean to be maintained?

All Community, Foundation and Voluntary schools are maintained schools. They are maintained by the relevant Local Authority under the provisions of the School Standards and Framework Act 1998. This is not particularly to do with buildings but means that the school is funded, supported, advised and resourced by the LA.

3. What is the Local Authority’s duty to maintain and what does that mean for the school?

The LA’s duty to maintain the school is at the heart of the school’s present existence. Even if an LA is in some respects poor at its job, it is still the body where the buck stops. For example, it must stand behind the GB if legal or employment problems arise and has a range of duties to fund, advise and support Voluntary and Foundation schools in the same way as it advises and supports Community schools.

4. What replaces the LA’s duty to maintain for an academy?

When a school becomes an academy the buck stops at the academy company. It is responsible for every aspect of the academy both as an educational establishment and as a business. It is Independent. An academy has no automatic back up body unless it has agreed (and funded) back up from its diocese or from other agencies.

However, in some respects the DfE replaces the LA. It controls both revenue and capital funding. Also, the DfE may impose conditions on academies which it is not generally able to impose on other independent schools. These conditions are normally incorporated into the Funding Agreement, the contract between the Secretary of State and the Academy

Company under which the academy is run. However, the DfE has no duty to maintain. It has a contract with the academy which it can enforce or terminate in accordance with the terms of the Funding Agreement. The DfE's only duty to the academy is to pay it: the duties of the academy to the DfE in return are considerable and go beyond the normal duties of an independent school.

The ultimate responsibilities and powers of an academy company lie not with the staff or the governors (even though the latter are the directors of the academy company and have responsibility for the day to day running of the school). The buck stops with the members of the academy company who must be prepared to accept this responsibility. Because of this, the membership of the company is treated in detail in the Model Documents and it is why the Supplemental Agreement is an essential element for all Church of England converters, especially for VC and Foundation Minority ones.

5. What is a designated religious character and may it be removed?

Church of England schools were designated under the School Standards and Framework Act 1998. A school can acquire or remove a religious designation only by closing and re-opening as a new school. When a school converts into an academy it is not closing and re-opening and may not acquire or remove a designation in the process. It would have to apply to the Secretary of State to become an additional school under sections 9 and 10 of the Academies Act 2010 if it wished to become a new academy and gain or remove a religious designation. No Church of England school may lose its designated character without also losing its site and buildings.

An independent school can in theory remove or acquire a religious designation without closing. However, the model documents are so drawn as to make removal impossible. This both protects the religious character of the school into the future and protects the trusts on which the existing trustees own the school site. There seems to be nothing to prevent an academy acquiring a religious character subsequent to conversion. It is uncertain at this stage how the DfE would react to such a proposal, but it must in principle be possible. Any ordinary independent school could certainly make this change.

SECTION 3: WHAT IS A VOLUNTARY SCHOOL?

6. Who owns a voluntary school?

The trustees own a Voluntary school and may not be removed by the school, but the trustees have the legal power to remove the school from their site and buildings and appear not to have to give a reason. Trustees would have a duty to consider such a step if the school were being run in such a way as to contravene the trusts upon which the trustees held the site, for example if it ceased to conduct acts of Christian worship or to be prepared to teach denominational RE or in general was demonstrably flouting or disregarding its Church of England character.

7. Who runs it?

The governing body runs a Voluntary school, not the trustees. The trustees may not (in Church of England situations) appoint governors. That role is usually undertaken by the local PCC, the DBE or the Deanery. They act as a kind of proxy for the trustees in this regard. An ex-officio governor (especially the local Incumbent) may also be a trustee in his corporate capacity, together with the churchwardens.

8. Do the trustees have any control over the governing body?

Other than the power to remove them from their site in extreme situations, the trustees do not have any general control over the governing body. However, the agreement of the trustees is required for building maintenance and development and hence was built into the

documentation for Building Schools for the Future. Also the trustees' agreement is needed for licences for temporary access to their site. In practice much of this is exercised by the DBE on behalf of the trustees in VA schools (and probably not exercised at all in VC ones!). The trustees are the owners of the site so academy conversion cannot go forward without their agreement.

9. Does the DBE have any control over the governing body?

The DBE has limited powers over the governing body, especially over VA governing bodies. These are set out in the DBE Measure 1991 (as amended). These powers relate mainly to the maintenance and improvement of the school site in VA schools but there are some powers of direction in extreme situations for all categories of Church of England school, including academies.

10. Does the DBE have any control over the trustees?

The DBE also has limited powers to direct trustees under the Measure and trustees of all categories of Church of England school must consult the DBE about making their site available for an academy. In extreme circumstances the DBE may be within its rights (and has the theoretical power) to direct them not to do so. This would apply even where the DBF was trustee if the DBE believed (for example) that the DBF was handing its site over to an academy company that was incapable of sustaining the designated religious character of the school or where model documents had been varied so as to remove the provisions protecting character.

SECTION 4: WHAT IS A FOUNDATION SCHOOL?

11. How is a foundation school different from a voluntary school?

The foundation of a foundation school is set up by the governing body and may be disbanded by it. This is not possible in voluntary schools. In foundation schools the school owns the foundation, not the foundation the school - foundation schools without foundations, where the governing body itself owns the site.

A Church of England foundation school may have previously been a voluntary school. In this case it will still have its historic trust and trustees.

12. Who owns it?

Technically the foundation (if one exists) owns the site but the governing body could remove the foundation and own the site itself. In reality ownership is with the governing body. This is also true in group foundations, as an individual school may withdraw.

13. Who runs it?

The governing body runs the school. Foundation schools are very governing body-centred. This will inform the government's approach to academy conversion – which is at the behest of the governing body.

14. Does the foundation have any control over the governing body?

Other than by appointing foundation governors, the foundation of a foundation school does not have any control over the governing body. It has no real existence independent of the governing body, whereas the trustees of a voluntary school continue in existence if the school closes and could promote a new school. Foundations that act for groups of Foundation schools have a continuing existence and may have a higher profile in practice in the life of the schools they own.

15. Does the DBE have any control over the governing body?

DBE powers over Church of England foundation schools are also contained in the DBE Measure and are the same as those obtaining for VC schools.

16. Does the DBE have any control over the foundation?

The DBE has the same powers as it has over the trustees of voluntary schools.

SECTION 5: WHAT IS AN ACADEMY?

17. What does the government intend by this new academy programme?

The government provides the opportunity for large numbers of schools to convert into academies, thereby gaining greater autonomy (freedoms) in respect of finance, curriculum, employment and the organisation of the school day, week and year. An academy has no necessary relationship to its Local Authority and is not maintained by it. It is bound by the terms of its Funding Agreement to collaborate with the LA (e.g. over admissions and the care of pupils with special educational needs).

18. What does it mean to be an Independent School?

An Independent school is separate and independent from the state, run by a private company, or trust (perhaps also charitable) that delivers an education service that parents wish to buy.

The legal framework of independent schools is found in the Independent Schools Regulations which depend on the Education Act 2002. It is much slighter than that obtaining for maintained schools.

19. Is an academy just like all other independent schools?

An academy is different to other independent schools. Its contract is with the government, not the parents, and the government can impose conditions through the Funding Agreement which are not imposed upon other independent schools. However, an academy is like other independent schools: it is the academy company that is responsible, just as though it were the owner of a commercial educational enterprise.

20. Is an academy a business?

An academy is not run for profit, but otherwise it does need to be run as a business with a single customer - the government. This is very different from ordinary independent schools, where the customer is the individual parent. An academy therefore needs a business plan (as indeed does a maintained school) but not be the same kind of business plan as an ordinary independent school, except to the extent that the number of parents wishing to send their children to it will dictate its income. This contractual relationship to government with a practical relationship to local parents contains some very real potential tensions.

21. So who owns the business?

The academy company owns the business and the members own the academy company. This is more like the trustee ownership model than the foundation school with a foundation ownership model. Note that the government presumes that the governing body members of a converting community school would (each individually) become the company members. In the Church of England context there is a real tension here between concepts and models which can spill over into governing body/diocesan relationships if the process of potential conversion is not handled openly and carefully by all parties. The model documents are set up to prevent the companies of Church of England academies being comprised of individual persons (e.g. the previous governing body members) who themselves appoint their successors without the involvement of the school trustees or their Church proxies. We advise that, in order to safeguard the Church of England character of the school and the

trusts on which the sites are held, the companies of Church of England academies must be based around Church of England corporate bodies. These become the core owners and are given powers in the models to protect the school's character and ethos into the future.

22. Who runs the business?

The governors in a single academy run the business. However, in a Multi-Academy model it is the directors who do so, with local governing bodies which may have substantial delegated powers subject to those powers being removed at will by the directors. This is a requirement of the Charity Commission. Also, as noted above, the members are responsible for their company. They appoint most of the directors (in the multi-academy model) and most of the governors (in the single academy model). The members can remove and replace directors/governors at will without the procedures that surround the removal of governors in maintained schools. Hence, the members have much greater powers of intervention than do the trustees of maintained schools. The model documents are set up to secure this power firmly in the hands of Church of England corporate bodies 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 character and ethos of the school – worship, RE, employment and the various powers of the DBE either under the Measure or (as in the case of admissions for example) under other legislation.

23. Does becoming an academy mean leaving the family of Church of England schools?

No. Indeed it could be the way to closer and stronger relationships, especially for VC and Foundation schools. It is essential to approach conversion with this continued and close relationship in mind. Dioceses will in turn need to consider how they can offer support (under various sorts of service level agreements) to their academies. They will need a range of these. Dioceses could also broker (and manage?) mutual self-help services between academies or themselves group together to provide strong regional services where this seems appropriate. There may be a role for some national services (school standards perhaps) and the National Society will discuss such possibilities with dioceses and schools.

24. Does it mean leaving the Local Authority family?

Yes. An academy cannot be considered part of the LA family, but it could still work in partnership with the LA and collaborate with it whenever possible. An academy may well find it helpful to buy in services (eg payroll) from its LA at least initially if the LA is willing to provide them.

25. What are the academy freedoms?

Academies are not actually as free as might be supposed, and are significantly less free than other independent schools. However, they are not bound by (a) the school teachers national terms and conditions (b) the same for non-teaching staff (c) the National Curriculum (d) the Basic Curriculum (e) the school day week or year except in so far as elements are imposed by the Funding Agreement. Academies are also not covered by the extensive laws and Regulations that govern much of the detail of the life of maintained schools – again except in so far as these are imposed in the Funding Agreement and its annexes. Academies are bound by the Admissions Code but not by Maintained Schools Staffing Regulations. Mapping out this new framework of freedoms is a considerable task and we advise that schools should be cautious but also be aware that they can be more experimental and creative than in the very highly regulated maintained sector.

26. What are the revenue consequences of converting?

On the one hand the school will have 100% of its revenue budget without any LA top-slicing. The latter can be a significant element in some areas. On the other hand, the school has to buy in services it currently gains from the LA out of the top slice. It also needs to budget for unexpected demands. The costs of a major court case for example may not all be recoverable from insurance. So the extra revenue is not all gain. However, the academy has power to be able to use its full budget as it wishes. If an academy develops a deficit it will have to cut expenditure to recover the position, even if the deficit has been caused by circumstances outside its control.

27. What are the capital consequences of converting?

This is uncertain. However, there will be capital that the academy will get anyway (but we presume it will be free to spend on non-capital if it wishes). That capital will always come at 100%, so the 10% VA governors' contribution disappears. How larger capital grants will be made available and prioritised is not yet clear, much less what scale of capital is likely to be available in the near to medium future. Academies will always get their fair share worked out in some way and their plans and aspirations will be entirely in their own hands (subject to the consent of the trustees).

SECTION 7: WHAT DO YOU WANT TO ACHIEVE?

28. What relationship do school and diocese want for the future?

Dioceses and schools will work constructively with schools on this issue. Approaches range from total support, come what may, through to dioceses considering single diocesan companies for academies with consequent substantial economies of scale for back-up and administrative services and (since this would result in a single budget) greater flexibility and ability to face emergencies together.

Care must be taken with technical issues like consolidation of academy and DBE accounts in such models. Dioceses with existing Service Level Agreements appear to be looking to build on these. Dioceses without SLAs (or with minimal ones) seem less certain and their schools may not have much concept of buying services from the diocese. Regionalisation of services and cross-border academy companies are being talked of and are possible. This will become an area for major local and national discussion.

29. What relationship do we want with the Local Authority?

This is inevitably a political question and schools must be alert to the difficult position their DBE and DDE might be in caught between the demands of the school and the LA. Regional political differences may well be marked on this issue. It appears that significant numbers of schools are converting and the government is determined to encourage conversion. Dioceses and schools must look seriously at the LA relationship and attempt to act as a bridge if possible. Some LAs will welcome that.

30. Do we want to convert on our own or in a group?

This should be discussed at diocesan and school level now. If there is a delay, it is possible that (a) other people will develop groups and entice Church schools into them with consequent difficulties for ensuring ethos and character (b) schools will not think of groups as a serious possibility unless they are offered one or are already in one such as a Federation. This is a good time to look seriously at groups, amongst other reasons in order to protect small rural primary schools which could flourish in carefully constructed groups.

31. What kinds of groups are possible?

Groups do not have to be under a single academy company. Several academy companies (perhaps with overlapping membership) could contract to work together. This would

resemble Collaboration Regulations, though the actual Regulations would not apply. The academy companies could agree to work together much as they wished. This kind of group can work for situations where some academies are Church of England, some without designation and some perhaps with other religious characters. Joint Academies are possible with a single joint company such as already exist.

Groups can be cross-phase or single phase. There might be real possibilities for groups of Church of England Primary schools converting together so that economies of scale and mutual support are maximised. The model will also allow for a non-church school to join such a group, either with a company of its own, or accepting that the church company will look after it. This would be a bit like affiliated schools and could be a very positive development. There are community secondary schools wanting to become Church of England academies (as a number have done in the past). This requires the school to close and re-open before becoming an academy, but could be achieved post-conversion by the inclusion of such a school in a Church of England multi-academy company. There is a version of the Memorandum and Articles that allows for this.

32. How do we protect the religious ethos of our school in mixed groups?

This can be done most easily by the academy company having a majority of Church of England members as described above. Otherwise protections need to be built into the Academy Memorandum and Articles. This is possible but needs to be negotiated individually as local circumstances and wishes differ so much. It is not possible to safeguard ethos and designation at the level of the so-called Local Governing Body in multi-academy companies, as the directors of the academy company will always be able to over-ride. It is easy to safeguard them if the church school has its own company and agrees to collaborate with the others as described above. That is our preferred model if Church schools want to join a group but will be in the minority.

33. What about existing federations or collaborations?

Existing federations, but not collaborations, may apply to convert as one body. If a Church of England school is a member of the Federation it must ensure its own identity. This may require it formally to withdraw temporarily from the Federation in order to re-join the consequent academy group but with its own company. If the other schools with which a church school is collaborating are seeking to convert together, the church school may set up its own company and continue to collaborate. These mechanisms protect the identity of the church school, protect its character and ethos and would not breach the trusts on which the school site is held. All these consequences are possible if other solutions are chosen and dioceses and schools must take legal advice about any possibility of Church of England schools being run by multi-academy companies that do not have a church majority membership.

34. What models for groups of academies are there?

A model has been developed for a Church of England Multi-Academy Company. As noted above, this could also be a suitable company for academies without any religious designation provided that they were willing to accept the Church majority members and directors.

No model has been developed for multi-academy groups with a majority of non-church academies, as it is the view both of the National Society and the DfE that such companies would need to be developed and agreed on a one-off basis to reflect local wishes and circumstances. Schools thinking of joining such a group must consult their dioceses and legal advisers before agreeing any detailed arrangements.

There is the possibility noted above of several academies, each with their own company (or at least with more than one company) agreeing formally to work together as a single group

as though they were schools collaborating. Such structures would also need to be individually worked out but the principles have been developed between the Society's legal advisers and the DfE. The National Society recommends this model for serious consideration where Church of England academies are in the minority in a proposed group.

35. How should we choose the right model for us and who chooses?

None of these models can be imposed on unwilling schools and schools must immediately report to their dioceses (and dioceses to the Society) cases where there is a local attempt to force church schools to join academy companies as minority members, for example by suggesting (illegally) that they would be left out of a secondary school's admissions arrangements.

SECTION 8: THE PAST, THE PRESENT AND THE FUTURE

36. Is conversion into an academy a fundamental change or do some things stay the same?

It is a fundamental change because schools become independent schools and cannot change back without closing. However, a number of things remain the same: admissions, collaboration on children with special educational needs and other hard to place children, religious designation, age range (normally, but see below), the terms and conditions of employment of existing staff, the various worship and RE requirements for different types of school and the governance, employment, RE and worship arrangements for VC/Foundation minority converters.

37. What is the government policy of conversion "as is"?

This was developed initially to describe government policy on admissions and religious designation but has subsequently been extended and made much more detailed in respect of VC converters so that they do not receive the same powers re staff appointments, RE and worship as should strictly be theirs as independent schools. The government has inserted special clauses into the Funding Agreement to cover this (which must be use only for VC and Foundation converters) and is expected to legislate to cover the matter in the next Education Bill.

38. What can actually be changed and when?

VC schools can continue to change to VA or to Foundation majority schools before converting (using statutory notices under the Education and Inspections Act 2006). They would then become majority model academies on conversion.

There will be a process for minority model academies to change to majority model after conversion. This is likely to require a local consultation and, since such a change would mean changing the Articles, the Secretary of State would be the decision maker. He would normally agree such a change.

Also the DfE has indicated that in a small number of cases where there was a very strong local reason and all parties were in agreement, a VC/Foundation minority school would be allowed to convert using the majority model. We recommend looking closely at this possibility in all circumstances.

While the legislation is actually under a different section of the School Standards and Framework Act, the powers of independent schools in respect of employment criteria, worship and RE are broadly those familiar in the VA context. The contractual position of existing staff is protected on conversion.

39. What about age range or other changes?

It was always foreseen that academies would convert with their existing age range and they must do so with their existing gender intake, their existing admission policies and any selective powers they may currently have. This is an expected area of “as is”.

However, the Academies Act recognises that sometimes changes of age range at the time of conversion may be attractive locally and thus should be enabled. Sections 8 and 9 of the Academies Act 2010 apply. The school would be treated as an additional school. A separate consultation would be required and the Secretary of State must take account of the impact of such a change on schools and further education establishments in the area of the school.

This provision enables the addition of 6th forms and/or the creation of all-age schools. It could also enable the change from three- to two-tier provision.

Other changes may be proposed (eg a single sex school becoming co-educational). If proposed at the same time as conversion it is assumed they will be treated as additional schools. If proposed later, there will have to be a consultation and the Secretary of State will decide whether to agree the change. Changes post-conversion are likely to have lighter-touch procedures than statutory alterations under the 2006 Act.

40. How is the religious character of an academy preserved?

This is achieved by having a majority of Church members on the academy company and the appointment by them of a majority of church governors. The Models include provision (and recommendations) for Church of England Corporate Bodies to form the core of the membership. This ensures succession of members (and hence of governors) in much the same way as present Voluntary school foundation governor arrangements,

We advise that the DBE, if it is incorporated, should itself always be a member and governor in its corporate capacity. This ensures that it is inside the company so able to challenge decisions that could weaken the religious character of the academy. This may be the time for more DBEs to incorporate themselves. Otherwise they will have to ask the DBF (or the trustees) to undertake this role for them.

The very important (and non-optional) Supplemental Agreement provides that the DBE (whether or not it is a member of the company) may request the Secretary of State to use his powers of intervention if the academy drops two SIAS grades over a five year period or fails a SIAS or if the DBE believes that the academy is being conducted in a way that puts its religious character at risk. We believe that the Secretary of State would respond positively to such requests where either the SIAS criteria are met or where other serious reasons exist. DBEs should not hesitate to use this power.

41. Is an academy company a charity?

Yes. An academy company is an exempt charity with the Young People’s Learning Agency as principal regulator. The trust is answerable in some respects to the Charity Commission, but no registration or returns are required and (as with voluntary school trustees and governing bodies currently) there is no charity number. The DfE often refers to the academy company as the academy trust. We generally use the term academy company so as not to confuse the academy trust and its trustees with the existing trustees who hold the site and will make it available to the academy as set out below.

42. Who are the charity trustees of that academy company?

The company directors (described as governors in the single academy company constitution model) are the trustees of the charity.

43. Why are they sometimes called Governors?

They are called governors in the single academy company constitution model (the name they had as a maintained school), but in law their true status is as company directors of the academy company. In multi-academy companies they are properly called directors and this differentiates them from the governors on Local Governing Bodies for the individual schools. Note that the governors on Local Governing Bodies only exercise powers at the behest of the directors and that these powers may be withdrawn (or over-ruled) at any time. A governor on the Governing Body of a maintained school and a governor on the Local Governing Body of an academy run by a multi academy company have very different roles and responsibilities.

44. How do the existing trustees fit into the picture?

The existing trustees will always continue to hold the land for the school. We strongly advise that, although it is legally possible under the Academies Act for them to hand over their freehold to the academy company to hold as trustee (never in the academy company's own right), the trustees should **never** in fact do so.

There are three reasons for this (a) if the school site is all they own they will be destroying their own trusts –which is itself a breach of trust (b) they would be in danger of triggering reversion of their site to the heirs of the original donors under certain Acts if they disposed of their site in this way (c) in the case of minority conversion models the academy trust is not a suitable body to sustain the trusts of a Church of England school.

45. Who are our existing trustees? Do all voluntary and foundation schools have them?

Existing trustees may be the DBE, the DBF, the local incumbent and churchwardens or a special membership local trust. Schools should know who they are and must consult them and get their agreement for academy conversion. If the school does not know, the diocese may know. The trust deed, if they have it, will say. The National Society may have the information in its archives. If the information cannot be found, schools must take legal advice, approach the Charity Commission and resolve it. Schools should not try to convert without knowing who the trustees are.

46. How is the land dealt with?

The DfE originally supposed that the trustees would convey the freehold of their land to the new academy company and that still remains an option set out in the DfE guidance on land transfers.

However, the DfE has accepted that this is not necessary (and is not “as is”) and that land may continue to be owned by the existing trustees who then provide it to the academy company for its occupation and use.

This may be by means of a lease and a model lease forms part of the model documents. However, even a lease is not “as is”, since voluntary schools currently use their sites by simple permission (a sort of informal licence) of the trustees without any documentation.

National Society advice is that this informal arrangement (which has worked well for more than 100 years) should be the norm for all portions of school sites (VA, Foundation or VC) currently in the ownership of trustees. Consequently no lease or written licence is actually required.

The DfE may want to press for leases in the case of VC sites (as they always have a mixture of public and private value in those parts owned by the trustees). The National Society recommends that schools, dioceses and trustees should resist this pressure, as it does not

reflect “as is”. If schools do agree to a lease, they must use the model provided as it includes essential safeguards for the trustees.

Care must also be taken if there is residential property (a school house or a caretakers’ house) on the site to be leased. There is a technical problem about enfranchisement which means that such premises must be leased separately and for shorter periods than the 125 years of the standard lease.

The National Society’s legal advisers will be able to provide a written license if necessary.

Land currently in the ownership of the governing body may be returned to the LA for them to lease to the academy trust or, preferably, the governing body may decide that it wishes the Secretary of State to direct that the land be transferred freehold to the academy trust. The National Society advises the latter course as the norm. This will facilitate any later transactions between the academy company and the trustees should the academy need new or further buildings and consequent site changes are required. Land in Local Authority ownership will normally be leased to the academy company.

47. Why does the Supplemental Agreement include possible diocesan/trustee powers over the land?

Because the school site belongs to the trustees (which may be the DBE or DBF) it is provided that they may take on responsibility for insurance and for maintenance/improvement, charging these to the academy company. Some dioceses and schools may wish to do this, as it enables some economies of scale and resources. If so, the diocese must be careful not to take on any responsibilities for which it is not funded. The model is drafted with that proviso in mind.

However, in many cases academy companies will wish to undertake insurance and maintenance/improvement works themselves and dioceses would be content with this. The Supplemental Agreement must be amended accordingly. Academy companies may use the diocesan buildings teams to carry out this work for them as most VA schools do at present. VC schools should speak to their dioceses about this as part of their conversations on conversion. This is a well-established diocesan service that offers economies of scale without taking the decision-making and strategic role from the academy company.

48. What happens if an academy closes?

Land in the ownership of the trustees remains in their ownership and is either used by them for a replacement school/academy or would be sold by them, much as happens now. Any decisions about the relative sale proceeds due to the trustees and to the Secretary of State would be agreed or determined by the Secretary of State much as now. The same criteria will continue to be used.

Otherwise, the school simply closes and is (or is not) replaced according to need. This may require a school competition. If a replacement school is required then the Secretary of State may well agree that it can be a Church of England school so that the site can continue to be provided. Otherwise he has to buy the site at (we believe) open market value. We have provided that any lease terminates with the closure of the school so that the value of the site is not impaired.

49. Can we just decide to change back?

No. Currently at least the academy would have to close and there would be a school competition. However, the Secretary of State could agree to what would effectively be a change back. This is one of the policy issues that have been developing recently.

SECTION 9: WHERE TO BEGIN AND WHAT TO READ

50. What should we do first?

Following open discussion it is important to get legal advice as soon as the school feels it is necessary, even paying some of the costs before the government funding package is available.

51. Where can we find information and guidance?

Read the DfE guidance and associated papers at:

<http://www.education.gov.uk/schools/leadership/typesofschools/academies/becominganacademy>

This outlines the process.

Read the publicly available guidance documents on academies and conversion on the Lee Bolton Monier-Williams website at:

<http://www.leeboltonlee.com/website/xhtml/article.asp?PageName=96>

Papers describe further process and technical guidance step by step through conversion.

Most dioceses have already produced some guidance and have established some criteria that they feel schools should meet. It is important find agreeable ways forward having to pay lawyers to argue them out. Dioceses may consider academy day conferences or similar to talk through the issues with a wide range of their schools, not just those pushing to convert quickly.

52. Who can we talk to for informal advice?

Schools that have already converted or are well into the process nearby can help. Note that community schools are not likely to be aware of the complexities of a church school situation. The conversion of a community school is usually much more straightforward.

There may be commercial consultants available, but the same provisos apply.

When a school is ready to formally agree to apply to the Secretary of State for an Academy Order then DfE funding kicks in. This is normally £25,000 but more may be available in exceptional cases. Schools will need lawyers at this point and may need half the grant to pay them. This can increase if the land situation is complex or there are complications or disagreements.

SECTION 10: DISCUSSIONS AND CONSULTATIONS

53. Who should we talk to early on?

Dioceses, trustees, schools and bodies appointing foundation governors.

Other local schools (church or non-church) to see whether a group is possible and/or desirable.

Outstanding schools should start discussions with schools they might offer to support, as is required by the Act.

A failing school may be directed to become an academy and to find a partner or partners.

Other schools may be approached by other schools or may make approaches on their own initiative. Talk to the diocese first, as they will be able to help and guide.

54. How much should we try to do before we begin the formal process?

The main issues should be discussed and agreed before the formal and costly part of the process. Try to agree to use the relevant model to provide an academy company acceptable to all parties. This should not be finalised without legal advice, but look carefully at it to see if an agreement is possible or whether there will be a debate.

Discuss the single or multi issue - you may need some technical advice – to find out if there is broad agreement.

The more that can be agreed in principle the less trouble and expense there will be in the formal process. Schools must be fairly clear about these matters before going out to consultation.

55. Who decides to begin the formal process?

The governing body alone decides to begin the formal process. Consent from various other bodies is needed quite quickly, so keep them informed to avoid protracted wrangles. Schools must consult with DBEs at this stage and secure their written consent before applying.

SECTION 11: THE FORMAL PROCESS

56. Which schools can now apply for conversion?

Outstanding schools can all apply and move fast-track. Ensure sufficient time is allocated to do this properly.

Failing schools may now find themselves directed to become academies.

Good schools with outstanding features may now apply and in due course all schools will be able to. The DfE may require you to undertake various tasks like finding partners to convert with, depending on your circumstances.

57. How do schools make a formal beginning?

The governing body passes a resolution to request an academy order from the Secretary of State. The procedure from there on is set out on the Lee Bolton Monier-Williams website and on the DfE website and is not repeated here.

58. Who has to agree?

The trustees and all those bodies appointing foundation governors have to agree. We advise that this should include the diocesan bishop, since he appoints the ex-officio governors. If this group does not include the DBE, it must be separately consulted under the DBE Measure. The trustees must also consult the DBE under the Measure.

The various consultations required are described in the LBMW and DfE documents as are the points in the process when you should undertake them. Schools should produce a brief consultation document describing for all consultees what the school aims to do.

The National Society advises schools to consult widely and openly, although the decision to apply for conversion is that of the governing body – subject to the agreements required from the listed bodies (in 93). Schools should not try to bypass these agreements. They are required and the Secretary of State would be acting illegally if he allowed schools to convert without them.

59. Who will help and advise schools?

An adviser from the DfE will be allocated as soon as the formal process starts and lawyers will be needed. Schools must ensure that the firm is sufficiently experienced and specialist. Ensure that any local firm bases its work on the agreed model documents and does not try to reinvent them.

It should be satisfactory and less expensive for one firm of lawyers to do all the work. However, if school, trustees and DBE are not in agreement with one another about matters of fundamental importance then separate legal advice will need to be taken. This can be avoided if full discussions take place before the formal process begins.

60. Who will pay for the conversion process and will it be enough?

The DfE provides a standard grant of £25,000. This can be increased if a case can be made out. However the DfE is unlikely to provide extra funds for arguments over changes to the model documents which DfE has already agreed. Use the models as much as possible - they are drawn so as to protect schools and have been agreed by the DfE on the basis of the appropriateness of their approach.

Experience to date suggests that the £25,000 is sufficient, but complex land issues or major local disagreements could add cost.

61. How is the decision made and who makes it?

The Secretary of State either agrees or does not agree to the governing body's request for him to make an academy order. There is no appeal against his decision, except that if he was thought not to have followed his own law he could be subject to judicial review.

SECTION 12: TAKING THE BIG DECISIONS

62. Are we going alone or in a group?

Schools will have gone into the formal process having made that decision. It is possible for further schools to join the company later and the company would have to be changed to the multi-model. Schools are not confined to the single model for ever.

The legislation does not provide a way in which a single academy can withdraw from a multi-academy company and set up a single academy company, or join some other grouping. It could be that the company a school has joined will not let permit it to leave.

If a school converts with a single academy company, but agrees to operate collaboratively as part of a group, then the Heads of Agreement under which such collaboration would be formed will provide for ways in which individual academies could withdraw.

63. What member and governor models are right for us?

VA schools should use Model 1 on the Church Schools section of the DfE website. It is designed expressly for that purpose and incorporates the concept of corporate church members and governors, which firmly secures the church character for the future.

Foundation majority schools should use the same model but will require some of the detail from Model 2 to reflect their employment, RE and worship "as is" positions.

VC converters must use model 2, as this is agreed with the DfE to reflect the complex VC position. Note the important provisions for foundation members and foundation governors and the powers accorded to them. These are essential to safeguard the character of the academy into the future.

Foundation minority converters must also use Model 2 for the same reasons.

Model 3 is drafted mostly for situations where the DBE itself (or the trustees, especially in RC schools) either themselves comprise the membership and governorship or appoint almost all. It can be adapted for more normal Church of England situations where the members and governors will be or will be appointed by a variety of Church of England bodies or persons. In such circumstances it is not really different from model 1.

64. Are we going to change to VA or Foundation majority before conversion?

The Society advises that VC and Foundation minority schools should always explicitly address this question and decide it in consultation with the diocese before entering on the formal phase of conversion. Schools should not avoid the issue as the majority academy model is much more able to safeguard the character of the academy into the future than any minority model could ever do.

It may be also that all Foundation schools should consider such a prior change, since that would give the consequent academy the full independent school employment powers instead of being restricted to the powers of the Foundation category.

VC schools could more easily change to Foundation majority before conversion, but this is less effective than the change to VA.

65. Are we going to agree to change to majority model after conversion?

This is clearly the alternative. It should be formally agreed so that parties are all sure that it will be done. Such a subsequent change will probably require a consultation and the decision will be made by the Secretary of State. It is our understanding that he would normally approve such a change.

66. What services are we going to buy in from our dioceses?

Schools and dioceses differ considerably in current practice but the trend is towards greater buy-ins from dioceses. The National Society strongly supports such developments. There is the possibility of mutual self-help, perhaps facilitated by the diocese, and of regional services provided by dioceses together. These can offer economies of scale, but dioceses should not try to become a kind of Local Authority. Light central staffing structures to manage the support processes plus buying in consultants or specialists as necessary seems likely to be useful approach.

67. What services are we going to buy in from our Local Authority?

This should be agreed in advance. Much depends on what the LA has on offer and the current relationship with them. The question should not be ignored.

68. What services are we going to buy in from elsewhere?

Commercial and charitable agencies of various sorts will be trying to sell their services and schools should check the market ensuring that any company is aware of the position of Church of England schools. This will be important in areas such as HR.

SECTION 13: THE MODEL DOCUMENTS

69. What model documents are there for Church of England schools?

The Model Documents can all be found on the DfE website at:

<http://www.education.gov.uk/schools/leadership/typesofschools/academies/b0061866/supporting-documents/model-documentation-for-church-schools>

They comprise 3 versions of the Memorandum and Articles (as described above), a model lease, the crucial Supplemental Agreement and an optional Members Agreement. The Funding Agreement contains options that must be selected correctly for the VA, VC or Foundation context.

70. How do we decide which model Memorandum and Articles to use?

VA converters should use Model 1 (unless by exception they prefer Model 3 as set out above). VC and Foundation minority converters must use Model 2. Foundation majority converters should use Model 1 with some emendations.

71. How much leeway is there in changing the Memorandum and Articles?

The Models are drafted to enable schools to select appropriately for their local situation e.g. in respect of incumbents, area deans and other corporate persons to be included as members and/or governors. In theory schools could seek to make other major changes. However the National Society strongly advises that schools use the models as written. To do otherwise will (a) incur extra costs to be met by the school and (b) may result in company structures that cannot preserve the character of the school or protect the trusts upon which the land is held (c) may not be acceptable to the DfE., which has done a considerable amount of work to develop these models.

72. What is the Supplemental Agreement?

The Supplemental Agreement is an agreement between the diocese, the Secretary of State and the academy company which regulates the relationship between them. It is an essential part of the document package and has been developed to safeguard the concept of conversion “as is” so that the character of the school and the position of its trustees may be protected. It has been approved by the DfE and reflects the existing statutory powers of DBEs and trustees and meshes in properly with the Memorandum and Articles and, where used, the lease.

73. Is it compulsory and can it be changed?

The National Society advises dioceses and trustees that they should not agree to conversion of a school without the Supplemental Agreement nor be prepared to modify it without taking national legal advice. The DfE will also not agree to conversions of Church of England schools without it. If any conversion seems likely without a Supplemental Agreement dioceses **must** inform the Society as a matter of urgency.

74. Why is a lease from the trustees sometimes needed and sometimes not?

A lease is not normally needed to make the trustees’ land available to the academy as they can continue to make the land available by informal licence as in all voluntary schools. No change is needed. If the DfE insists on a lease then legal advice should be taken and the requirement should be resisted as not representing “as is”. A model lease has been agreed and can be used without major detriment provided that care is taken to lease separately any residential property. The issue of a lease is closely connected to the notion of public value in trustees land. VA capital grant and BSF/PCP funding are not counted as producing public value, so none will exist in most VA schools. However, there will be some in almost all VC schools. This is a separate matter from the common fact that some of the site (usually the playing fields) will be owned by the LA and made available by them under a lease to the academy company.

75. What are the alternatives to a lease from the trustees?

No documentary lease or licence is required at all. A written licence could be provided if it is thought necessary in some local circumstances.

76. Who decides whether a lease is required?

The DfE may insist on a lease in some circumstances. This should be very rare.

77. Can we change the model lease or use a different one?

The National Society advises that the model lease should be used as it stands and that legal advice should be taken (and the Society informed) if any changes are proposed.

78. What is the Members Agreement?

It is an agreement between the members of an academy company where the Church of England has only minority membership (Model 2 Memorandum and Articles conversions). It is not required in majority members (Model 1 or Model 3 Memorandum and Articles) conversions. It offers further protection to the maintenance of the character and ethos of the school. Its main value is to make clear to the academy company that it has responsibilities in these matters that cannot be avoided and to provide mechanisms for remedy that are less draconian than those contained in the Supplementary Agreement. The Members Agreement is voluntary but once agreed can be enforced. The National Society recommends its use in all situations where church membership of the academy company is in the minority and suggests that its provisions are helpful to the non-church members in that they provide clarity and means of redress that are less draconian than those (unavoidable) measures that are contained in the Supplemental Agreement.

79. Is it compulsory and can it be changed?

It is not compulsory and it can be changed. The National Society advises that nothing should be deleted from the Agreement as drafted. It should be informed of any proposals for deletions.

80. Who decides whether there should be a Members Agreement or not?

The proposed members of the academy company decide.

SECTION 14: SOURCES OF DETAILED ADVICE AND ASSISTANCE

81. Do we need a lawyer?

Legal advice and services are required at the stage of the formal application for an academy order. The various parties are encouraged where possible to use a single law firm to undertake the work for them all. However, if disagreements arise, school, diocese and trustees may need to take separate advice.

82. Do we need to pay someone to do the non-legal work for us?

The school may decide to pay someone other than a staff member or governor or other volunteer to undertake the administrative work. Some will be undertaken as part of the legal package. Practice varies on this and experience suggests that is not normally necessary to pay someone, as the school leadership has to be extensively involved due to the nature of the fundamental decisions that have to be taken.

83. How is the cost of diocesan work covered?

The cost of diocesan work can be met from the government £25,000 grant and dioceses do seem to need this. The parties should recognise that the DfE may not wish to go beyond the £25,000 if large costs mount up because of disagreements between diocese and school. Talk first so as to avoid, or fully focus, any disagreements before lawyers become involved.

SECTION 15: A BIT OF BACKGROUND

84. What has been happening since the Academies Act 2010 became law?

Even before the Bill became an Act the DfE was taking expressions of interest and formal applications so that schools could convert into academies by the 1st September 2010. Some did achieve this.

As the government took the Bill through parliament, a small number of changes were made and some promises given in debate.

At the same time DfE officials worked out how to implement the Act and, once it achieved its final form, officials continued to develop the detailed policies of implementation. This showed up a lot of issues concerning the conversion of any school whose site was owned by trustees and especially those with a designated religious character. A major issue was the way trustees' land could be made available to the academy. The government had assumed that the freehold could simply be passed across to the new Academy Company which is not the case. How could the religious character of the academy be protected in the legal context of independent schools legislation? How could an academy company membership be developed that was capable of protecting and developing the religious character of the school?

In the past a school changing to a different category (eg VC to VA) or becoming an Academy immediately gained all the powers and the full legal context of the new category, but now VC and Foundation converters will have to retain certain aspects of their previous status. For Church of England VC/Foundation Minority conversions this new doctrine focuses on governance (foundation governor minority must be maintained), employment powers (VC/Foundation restricted employment powers must be retained), RE (Agreed Syllabus the norm in VC/Foundation converters) and worship. Negotiating these matters with the DfE was time-consuming. The legal advisers have drafted documents that protect the ethos of Church of England schools that, in the maintained school context, are covered by legislation and have agreed with the DfE what exactly conversion "as is" really means.