



Setting up an Academy

Legal Services for Schools
Seeking Conversion

The Government has extended the scope of the Academies Programme to include maintained primary and secondary schools. By introducing a streamlined process through primary legislation, it is intended that the conversion process will be straightforward and will enable schools to obtain Academy status within a reasonable period of time, currently estimated to be within a school term.

Our Experience

We have advised a number of schools on their conversion to an Academy including:

- Community Schools
- Special Schools
- Foundation Schools
- Foundation Schools supported by a Trust
- Voluntary Aided Schools
- Schools converting as part of a hard federation or partnership

Why Instruct Us?

- 1 Cost effective when compared to the costs charged by a private practice or in-house legal team
- 2 Timely advice provided when you need it
- 3 Personal service; we tailor the services we provide to your own individual requirements
- 4 We offer specialist education advice and support post conversion, thereby offering you a consistent package of legal support

The Process of Conversion

Governing Bodies and Headteachers can already access a range of information and guidance on the process of converting to an Academy on the Department for Education website.

However, Governors and Headteachers should not overlook the need for seeking independent legal advice at various stages of the conversion process. This is where Baker Small can assist.

Do We Need Legal Advice?

Although the process for converting to an Academy has been made easier and does not necessarily require “lawyers”, there are a number of legal issues which will need to be dealt with before, during and after the conversion process. These issues cover a range of legal areas, including:

- Education
- Employment
- Property
- Contracts

Governors and Headteachers will therefore need to ensure that the right legal advice is sought to enable a smooth transition to Academy status.



What Legal Issues Might You Encounter?

The conversion to Academy status brings with it a number of benefits but also legal consequences, which a Governing Body may not have had to deal with before when it was under the umbrella of its Local Authority.

There are a number of legal issues which are likely to be encountered for which Governors will need to be aware and for which they may need to take independent legal advice. These include the following:

Consultation on Seeking Academy Status

Although the Government is not requiring schools to undertake formal consultation with stakeholders in respect of the conversion to Academy status, as a matter of public law, it is important to ensure that those affected by the change of status are properly consulted. Inadequate or lack of proper consultation with those who are affected may result in a legal challenge by way of judicial review. Therefore, advice and assistance may be required with regard to managing the consultation process.

Governing Body Resolution

The Governing Body will need to pass a resolution approving of the application to seek Academy status. This must be undertaken before a school can commence down the Academy conversion process.

The Role of the Academy Trust

The body responsible for the operation of the Academy will be the Academy Trust. This body will need to be registered with Companies House and the Governors will need to ensure that a Memorandum and Articles of Association which govern its operation are prepared.

Governors may also want advice in respect of their legal obligations once the Academy is up and running.

Employment

Where the Local Authority is the employer of staff, advice will need to be provided to deal with the transfer of staff to the new Academy, where the employer will be the Academy Trust. This requires Governors to observe "TUPE" requirements, which protect staff terms and conditions on the transfer and also requires staff to be consulted about the transfer in advance.

Governors may also need to seek indemnities in the transfer agreement from the Local Authority in respect of existing employment disputes so that the Academy is not at risk of being financially liable for claims made against the former employer.

Property

The conversion process will generate a transfer of land/assets to the Academy which will need to be agreed and resolved with the Local Authority/landowner before the conversion is completed.

The property side of the conversion process may include any of the following:

- Advising on the land transfer;
- Undertaking searches against the land;
- Preparing the report on title;
- Negotiating the transfer of land (freehold/leasehold) to the Academy Trust from the Local Authority;
- Advice on the creation of joint-use agreements where rights to access land may be shared;
- Preparing the transfer of land;
- Dealing with any registration requirements with the Land Registry.

Contracts

The school may have a number of existing contracts (catering/IT/cleaning) and may need advice on transferring these to the new Academy.

Agreeing the Funding Agreement

The funding agreement that will be entered into between the Department for Education and the Academy Trust is typically a standard contractual document which sets out how the Academy will operate. However, legal advice may need to be sought on its terms and conditions so that the Academy trustees are fully aware and briefed of their duties and potential liabilities under the Agreement.

Governors also need to be mindful of the fact that Academies do not have the same level of protection as a maintained school. For example, Academies will be fully accountable for personnel disputes and challenges against its decision-making and will not be able to seek financial support from the Local Authority to defend such claims or challenges.

Education

Academies are independent schools and thus operate in a different way to maintained schools. Whilst the Government is likely to require Academies to meet the same type of obligations as maintained schools in respect of admissions, special needs and exclusions, all of the Academy policies and procedures in each of these areas may need to be reviewed and amended to reflect the different legal obligations which will apply.

Governance Arrangements

General advice may be required on issues such as the instrument of governance and the Academies personnel procedures. This is particularly relevant where the school was a community school before the conversion and relied on its Local Authority for advice and support.

What We Offer

The Government intends to provide Governing Bodies with a financial contribution to meet the costs of converting to an Academy. Whilst this is not intended to be used solely for seeking legal advice, it is important that Governors obtain value for money and are not using this resource solely on "lawyer's fees", which are unnecessary for the majority of the conversion process. At Legal4schools, we can advise you on the areas where you may need legal support. For an Academy Conversion you can instruct us in a number of different ways depending on your own individual requirements.

Free Initial Consultation

If you would like to discuss your conversion to Academy status or want general advice on whether this is the right step for the school to take, we can provide you with a free initial consultation.

Typically the initial consultation lasts for an hour in duration and it can be used to identify the legal issues that are likely to arise in respect of the conversion. Following the consultation, we will provide you with a written advice on the legal issues arising. If you would then like to instruct us to support you with your conversion, we can advise you through our Academy Conversion Package or by dealing with matters arising on an hourly rate.

Academy Conversion Package

For a fixed fee of £3,500 (+ VAT) we will provide you with:

- 50 hours legal support to be provided by a solicitor to assist you through the conversion process.
- This support can be used flexibly to provide the Governing Body and Headteacher with advice as and when they need it. The advice may take the form of written advice, attending meetings, drafting documents, delivering presentations and providing telephone advice.
- The support could be used to advise on any of the following issues;
 - The governance model;
 - General education advice;
 - Employment issues arising;
 - Contracts;
 - The transfer of land and assets.

If all of the support hours are used then further advice and assistance is charged on a discounted hourly rate.

If you do not use up all of the support hours, you can convert them to one of our School Subscription Packages, so that you can access ongoing specialist education legal advice and support.

The advantage of the package is that it allows the school to budget for legal support at the commencement of the conversion process, thus you are not going to be hit with an unexpected bill at the end of the process.

Disbursements

There may be some disbursements that will need to be incurred. These include:

- Search fees;
- Company incorporation fees;
- Land Registry fees.

All disbursements are charged separately and are agreed with the Governing Body in advance.

Advice and Assistance Charged via an Hourly Rate

If you are not sure how much legal support you will require through the conversion process, we can work with you on a needs basis and will charge you by way of an hourly rate.

We charge £75.00 per hour, which is discounted by 5%, where the school is an existing subscriber to one of our School Subscription Packages.



Contact

For more information on our subscription packages please contact our administrative team:

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