



CHURCH OF ENGLAND
ARCHBISHOPS' COUNCIL
EDUCATION DIVISION



Guidance

Update 3 BECOMING AN ACADEMY

This short summary gives a quick over-view. However, becoming an academy is a major step for a school and there is a lot to weigh up in the making the decision and a lot of detail to be handled.

Linked to this summary is a much more substantial paper which addresses the major questions for governing bodies, provided by Lee Bolton Monier-Williams. It should be read in conjunction with the public guidance documents available on the LBMW website at:

www.lbmw.com

The **links** go to relevant parts of the main document. To start reading it from the beginning, go to **becoming an Academy**.

1. A school or a trustee of a school interested in becoming an academy or a diocesan officer, must consult with key partners. It is absolutely essential to approach possible conversion together. **What should we do first** explains this.
2. Since the Academies Act became law in August, much detail has been agreed about how the Act affects Church of England schools and dioceses. **A bit of background** details some of this. The government will not allow VC and Foundation converters the full independent school powers in respect of employment discrimination, RE and worship. Generally schools will be restricted to the regime of the previous category – ie VC, VA or Foundation.
3. VA, VC and Foundation schools are not the same and the consequences of conversion are different for each. In particular note the Local Authority's duty to **maintain** all VC, VA and Foundation schools. There are losses as well as gains in becoming as Academy. Many things that are at present guaranteed to the school by statute (education law) are not guaranteed to independent schools in the same way. The Memorandum and Articles and other documentation must be built to ensure that the Church character of the school is not lost or diminished.
4. **What is a voluntary school** tells you about the key aspects of Voluntary school status: who owns the school; who runs it; what is the role of the DBE and of the trustees. The Model Documents are intended to provide appropriate protections.
5. **What is a foundation school** does the same. They are not the same as voluntary schools. A voluntary school is set up by its trustees who allow it to occupy their land. In a foundation school the governing body sets up the foundation and allows it to hold land which it might have held itself – and it can get rid of its trust or change from trust majority to trust minority on the governing body. None of this is possible for voluntary schools.

6. The new style academies are not like VA or VC or Foundation schools. They are a new kind of school. This is a radical new start for the school and all parties concerned need to realise that.
7. **What is an academy** advises about the business-like status of academies. Academies are accountable to the Secretary of State. The obligations to him and those to your parents, pupils and staff must be balanced. There are important revenue and capital consequences of conversion, considerably affected by the context of the school. Some efficient LAs only top slice a small amount of money from schools' budget and gives a valuable service. Others may not. Although there are extra freedoms, there are continuing restrictions and new academies will be dependent on the Secretary of State for their future. The "buck" stops at the academy company. The connection with the diocese remains, both for legal reasons (the DBE Measure, lots of legislation, like admissions, and the fact that the church trustees own the school land and buildings) and because smaller schools without the budget and staffing to go it alone efficiently will need the help of a diocesan 'family'.
8. **What do you want to achieve?** A school will want the control of its but must think through what it *has to* and then *might* spend it on. Schools should consider what kind of future relationship they want with the diocese. This may be easy to envisage if a school is currently VA, but harder for VCs who are not so used to it. It may be very hard if there are no current Service Level Agreements in the diocese.
9. Schools must consider whether to convert alone or in a group such as a secondary with a group of feeder primaries (Church and non-church). A group might consist of primaries or include post 16 in some form. The decision to become an academy will affect many other schools around it. It will also affect the LA, especially if the school does not want to buy any continuing services from it. Models have been worked out now for groups of various kinds both church and mixed. Existing Federations may seek to convert as one group and the church schools in it will need appropriate documentation to protect their position. This is all agreed in principle with the DfE, but the details will differ from one project to another because of local circumstances.
10. The strongest group models are ones where there is a church majority at member, director and local governing body level. However, other models are possible. They need the greatest care and attention to detail.
11. **The past, the present and the future** spells out the implications of change. It is not possible to change back except by closing, but other modifications are possible. In particular, a VC converter may change later to become like a VA converter with a church majority of members. This is the only secure way of protecting the church ethos and character in the long run. It is not yet known what would happen if a school joined a group academy company and then subsequently wanted to withdraw. It might have to close in order to do so, but might be able to persuade colleagues in the company to let it go. The law is silent on this and much would depend on the attitude of the Secretary of State.
12. The academy documents include provisions that protect the religious character so it is crucial that schools use the documents as a package and amend them only after legal advice. These documents have been agreed with the DfE and it will be difficult and expensive to change them radically. All options are covered in the documents.
13. The documents constitute the academy company (both a company and a charity), set out how your land (and buildings) will continue to be made available (mostly simply by occupation as schools do now, perhaps by a lease where the DfE requires this). The land cannot be transferred as freehold, as this will destroy the school's original trust and cause its trustees to break their trust. If schools have to use a lease, be aware of "enfranchisement" if there is any residential property on the site (even if it is not at present used for residential purposes) as shorter leases are needed for those parts of the site.
14. The Supplemental Agreement is an important (and not optional) document, which is an agreement between the diocese/trustees and the Secretary of State but to which the academy company is also made a party. The other documents do not work without it and it contains crucial powers about the trustees' property and about the maintenance of the religious character of the school. In particular it enables the DBE to request the Secretary of State to exercise his powers to intervene in the school (and flood the governing body with governors agreed between himself and the DBE) if something goes

badly wrong. The Supplemental Agreement also protects the land (so far as is possible) if the academy closes so that the church either continues to hold the land for educational re-use or sale (much as now) or the Secretary of State has to compensate the trustees with full value.

15. **Where to begin, what to read and the formal process** are self-explanatory. The website documents referred to there are vital, and governing bodies must become familiar with them. Some legal work and advice will be required. The DfE will appoint an advisor to help a school through the process. A senior member of the school staff or a leading governor will have to do most of the work, or a school could pay someone if it has the resources. At least half the £25,000 government grant available is likely to be used for legal fees.
16. Once a school has decided to convert on its own or in a group (see **taking the big decisions**) it should note the guidance on which Model Memorandum and Articles (M&A) to use and how these fit with the various other documents. Legal advisers can help work out the membership and governor numbers for various different kinds of circumstances. This is the time governors must decide on whether to take full advantage of the “freedoms” of independent school status.
17. **The Model Documents** links to the DfE website and explains the various documents which should be read carefully. Note that the M&A, the Supplemental Agreement and the Lease (when needed) all fit together. Any changes should only be made after taking legal advice. The voluntary Members Agreement makes clear the powers of the trustees to remove the school from their site and provides for an interim measure if things are not going right with the school.
18. **Sources of detailed advice and assistance:** the National Society, their legal advisers, your lawyers are there to help and there is some government money to pay for this. The schools will normally be expected to meet any DBE costs. There are no grants for this.

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