

Oxfordshire Academies Programme

OFFICERS GUIDE TO COMMERCIAL TRANSFER AGREEMENT (CTA) AND LAND TRANSFER DOCUMENTATION

*Guide for officers with process flowcharts, timelines and team interdependences for completion of **Commercial Transfer Agreement (CTA) and Land Transfer Documentation***

V8.1
February 2023

Table of Contents

Introduction.....	3
DfE High-Level Academy Conversion Process.....	4
Teams Involved in the CTA and Land Transfer Processes.....	5
Academy Conversion Cycle for CTA and Land Transfer Documentation	6
1. School Organisation and Planning Team	7
2. Legal Services (Commercial).....	9
3. Estates	11
4. Legal Services (Conveyancing)	14
5. Property & Facilities.....	16
6. Energy	18
7. HR Team (EPS).....	20
8. Finance.....	22
9. Finance (Trust Funds)	24
10. SENSS Team	26
11. Pensions.....	27
Key to Process Mapping Shapes.....	29



Introduction

The Education and Adoption Act 2016 sets out a continued commitment to the academies programme.

In this context the County Council recognises that the diversity of educational provision in the county will continue to expand and had reviewed its position on academy status when the Education and Adoption Bill 2015 was introduced into parliament. In October 2015 the county council cabinet agreed the following points:

- Adopt a more assertive policy in identifying appropriate sponsors for schools required to convert to academy status;
- Promote appropriate groupings to form new Multi-Academy Trusts and encourage the growth of existing Multi-Academy Trusts based in the county;
- Further develop and promote the collaborative company model both to incorporate more schools in these and to extend the scope of their pooling of resources and responsibility.

The School Organisation and Planning Team (SOaP) is available to provide support and advice for schools to achieve the above but not to lead them or to handle the conversion process per se. Schools can decide for themselves if and when they wish to engage in conversations about how they might organise for operational efficiency across groups of schools in future. The School Organisation and Planning Team (SOaP) also coordinates the activity across OCC to support the drafting and execution of the CTA and Land Transfer Documentation, which are the key deliverables OCC must agree with schools to enable their conversion.

The DfE suggests a minimum 16-week deadline from the Academy Order to the academy conversion date, for standard voluntary conversions. The CTA must be executed and copied to the DfE, and Land Transfer documentation confirmed as ready to sign and seal, by the date set by DfE, which is 28 days prior to the conversion date. The academy conversion processes in this guide have been mapped against the standard 16-week timeline, however individual conversions may differ dependent on individual circumstances.

This document provides a process reference for OCC officers involved in supporting schools in their transition to academy status from the issue of the Academy Order to the date of conversion **in relation to the completion of the CTA and Land Transfer documentation only**. It identifies and documents the processes undertaken within OCC to assist schools in their conversion to academy status and document interdependencies and timelines to enable the setting of realistic deadlines for converting schools.

Please note that a charge is now applied to all voluntary conversions since 1st April 2016. This is to cover some of the costs incurred by the Council during the conversion process.

DfE High-Level Academy Conversion Process

1. Registration

1. Schools register interest using the on-line form.
2. A named contact in Department for Education (DfE) contacts the school and supports them through the conversion process.
3. School governing body starts the consultation required by legislation with interested parties (can start later but must be completed before Funding Agreement).

(Amended DfE Process Flow)

2. Application to convert/ pre-approval checks

1. School governing body and Foundation (where relevant) pass a resolution in favour of academy conversion.
2. School submits application to convert form to DfE.
3. School develops plans to support another school to raise standards and discuss with named DfE contact.
4. Secretary of State approves school proposal and issues Academy Order.

3. Achieve Funding Agreement

The Scope of this document
relates to boxes 3 & 4 only

1. School submits grant claim to DfE and receives £25,000 grant to cover costs associated with the conversion process.
2. School finalises governance documents based on DfE model documents provided.
3. School registers the Academy Trust with Companies House. *
4. School agrees leasing arrangements for the school land and buildings.
5. Local Authority/governing body complete the TUPE process.
6. School completes required consultation with interested parties.
7. School submits the Funding Agreement to the Secretary of State for approval.
*if school is not joining an existing trust.

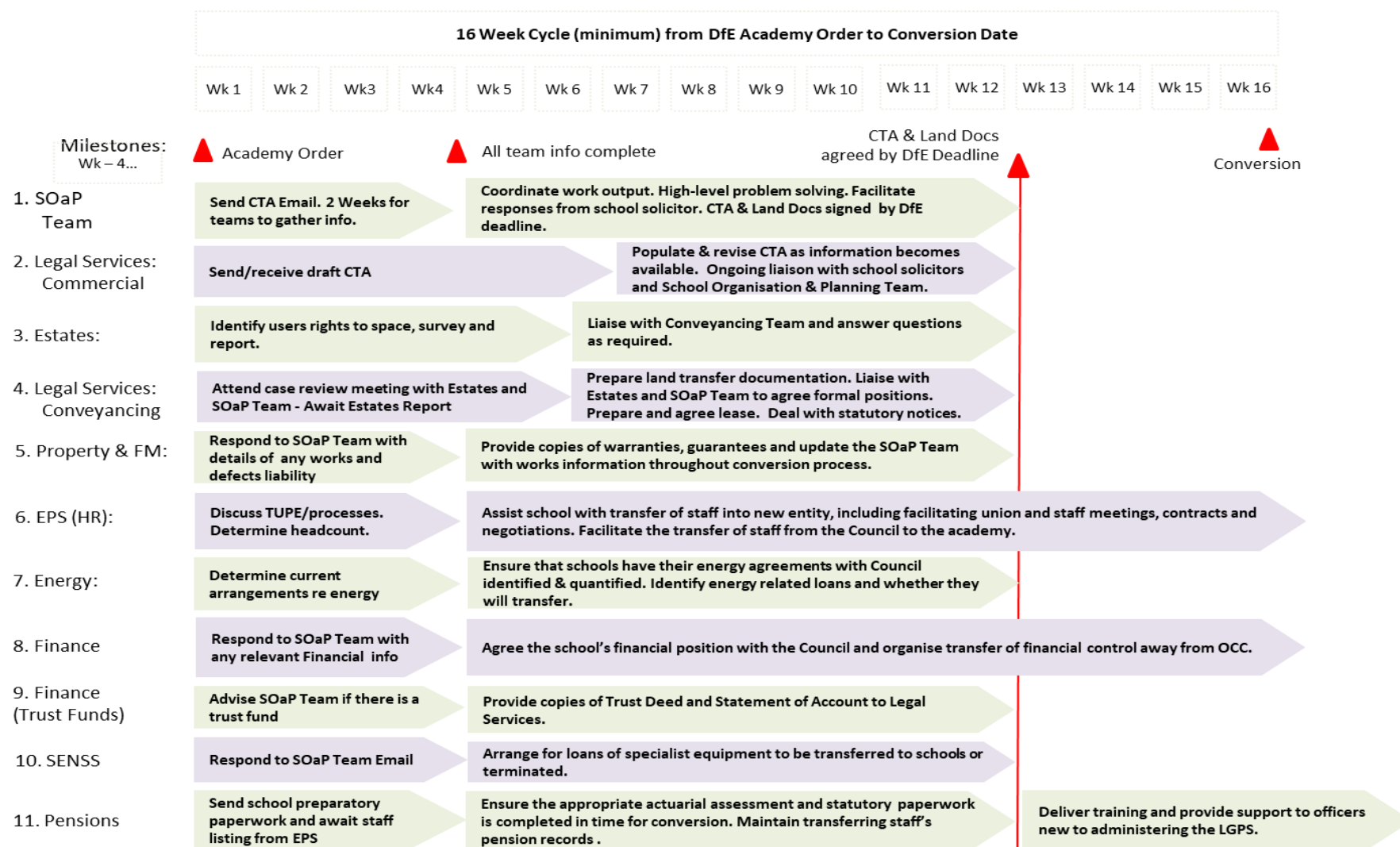
4. Pre-opening - Opening

1. ESFA provide school with indicative funding letter.
2. DfE sign and seal Academy funding agreement.
3. School undertakes any DBS checks as necessary.
4. School puts new financial systems and contracts in place.
5. School completes academy registrations e.g. with exam bodies.
6. School opens officially as an Academy.

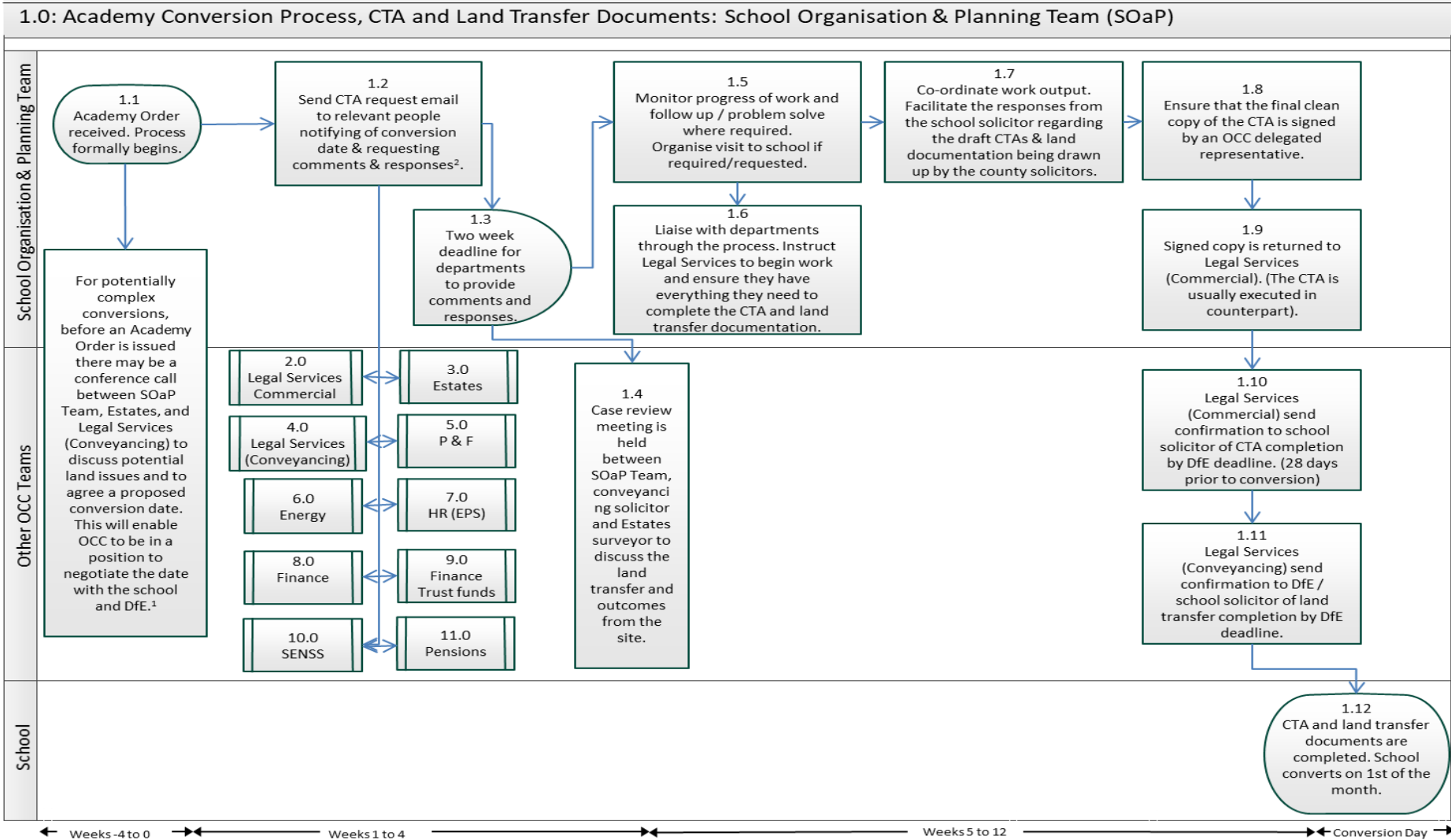
Teams Involved in the CTA and Land Transfer Processes

Team	Key Responsibility
1. School Organisation & Planning Team	Coordinate activity across the Council to ensure the CTA and Land Transfer Documents are completed and exchanged on time, and ultimately that conversion is also on time.
2. Legal Services - Commercial	Ensure the CTA is agreed, negotiate positions on various aspects such as capital work with the school's solicitor and agree which assets and contracts will be transferred to the academy (including staff) upon instructions from the School Organisation & Planning team. Deal with continuing and new contracts with the Council and, where appropriate, other third parties. Provide legal advice and assistance with other contractual matters arising.
3. Estates	Review and interrogate OCC legal property records (the terrier) and provide copies of relevant documents relating to any legal interest in the school site to Legal conveyancing team. Carry out inspection of the school site to confirm boundaries and identify any other users or occupiers of the site including whether the school has the benefit of any joint use facilities. Agree heads of terms for third party users or OCC continued use of any parts of the site which need to be formally documented and issue formal legal instructions. Liaise with Legal Services as necessary through to Legal completion.
4. Legal Services - Conveyancing	Formally agree ownership and terms for leases and other formal agreements related to the land transfer on the school site. Responsible for finalising leases with the Academy solicitor.
5. Property and Facilities	Identify building works planned post-conversion and identify capital works completed (including works in the Schools Structural Maintenance Programme) and within the 12 month defects liability period to ensure access to the Academy post-conversion is provided to carry out works, inspections or repairs within this period where required.
6. Hants CC EPS(HR)	Assist school with transfer of staff from the Council into new company, including contracts and negotiations.
7. Energy	Ensure that schools who convert to academy status have their energy agreements with the Council identified and quantified. Identify energy related loans and whether they will transfer.
8. Finance	Agree the school's financial position with the Council and organise transfer of financial control away from OCC to the Academy Trust.
9. Finance (trust funds)	Transfer trust funds from the Council to the Academy.
10. SENSS	The Special Education Needs Support Service (SENSS) advise the School Organisation & Planning Team of any specialist equipment currently on loan, usually for individual pupils with particular disabilities, as this loan arrangement will be transferred to the new academy trust.
11. Pensions Services	Ensure the academy is set up as a Statutory Scheme Employer within the Pension Fund providing guidance and training on regulatory requirements and responsibilities of the scheme employer role.

Academy Conversion Cycle for CTA and Land Transfer Documentation



Academy Conversion Processes: CTA & Land Transfer Documentation – 1. School Organisation & Planning Team

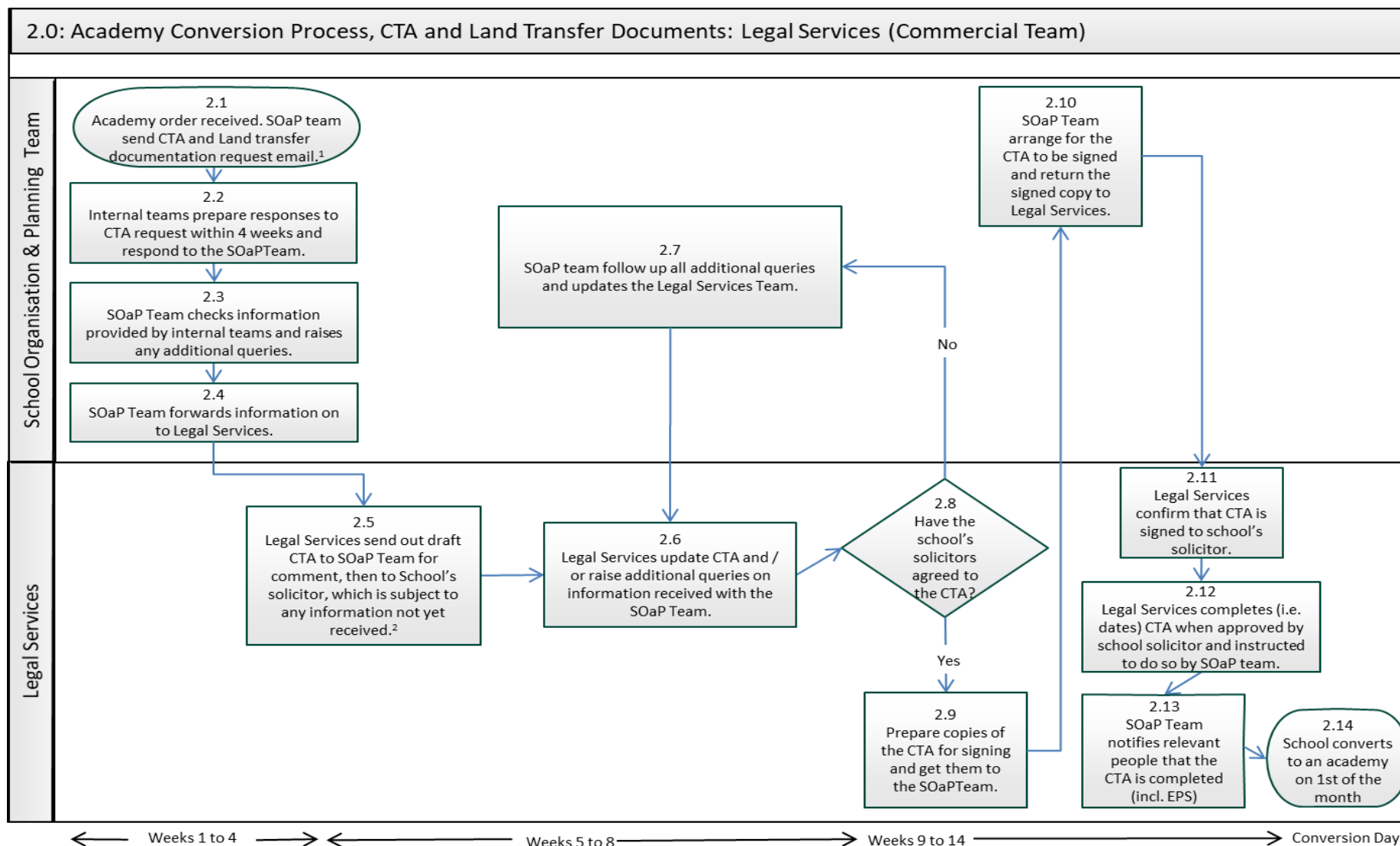


Footnotes:

1. Work in relation to the land transfer aspects of conversion in practice begins prior to the issue of the academy order at the point which the DfE request a pro forma to be completed by the County. At this stage the Estates team will begin their processes with approximately a 4-week lead in time expected between the pro forma being requested and the academy order being issued. If the conversion is likely to be complex, a conference call can be arranged to help inform the conversion date proposed to the School and to the DfE. The conference call will also help to lay out the main issues/ particularities with each school and will inform the site visit to be carried out by the Surveyor before the case review meeting. From this conference call it may be decided that a longer conversion time is required above the standard 16 weeks. In this instance the timeline is extended and so internal deadlines for different teams' work throughout the process will be amended as appropriate and a list of the agreed revised deadlines will be issued to all teams. – See Estates and legal services process maps for more information.
2. For a detailed explanation about the processes each department undertakes, please see the individual process maps.

(For key to process mapping shapes please refer to the key at the end of the document)

Academy Conversion Processes: CTA & Land Transfer Documentation – 2. Legal Services (Commercial)



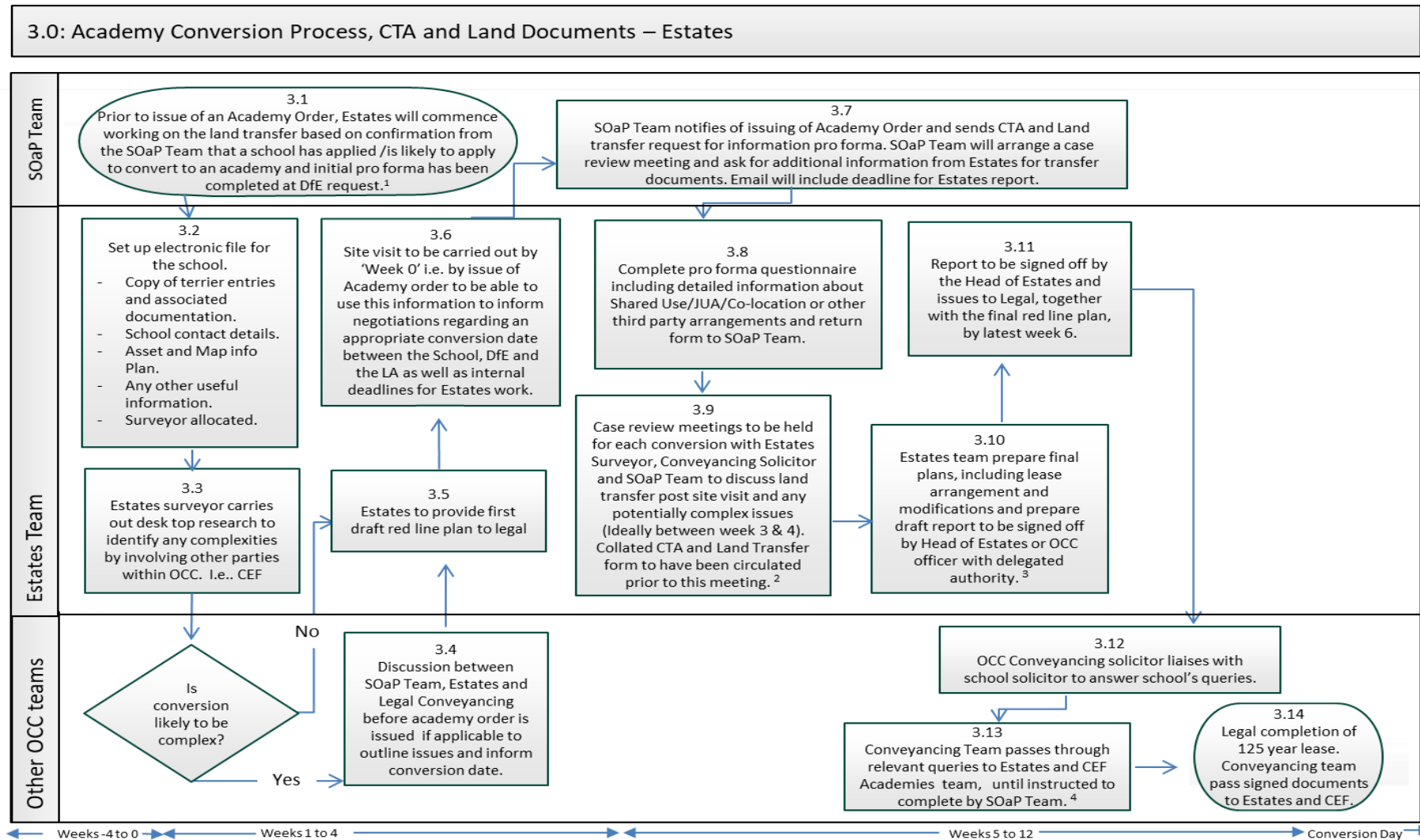
Footnotes:

1. The CTA Request Email does not necessarily cover all information Legal Services requires. It covers the standard information. Until Legal Services receives feedback, they don't know if there are any other issues relevant to the school in question.
2. This is a continual process as instructions come in at different times and new points arise on an on-going basis.

General Notes

- The objective of the process is to agree which assets, contracts and liabilities will be transferred to the academy and which need to be retained by the Council and the terms on which those assets, contracts and liabilities will be transferred.
- The output of the process is the CTA; this document was developed by the DfE and has been modified to suit Oxfordshire's requirements but is negotiated for each conversion.
- Legal Services copies the School Organisation and Planning Team in on all material correspondence. The School Organisation and Planning Team is responsible for chasing internal teams and the school where information is not complete/provided. Works contracts cause the most frequent delays.
- Any changes in employee information between the date of completion and the date of conversion are notified to the school by EPS (HR) as OCC is warranting in the CTA that this information will be kept up to date during this time.

Academy Conversion Processes: CTA & Land Transfer Documentation – 3. Estates



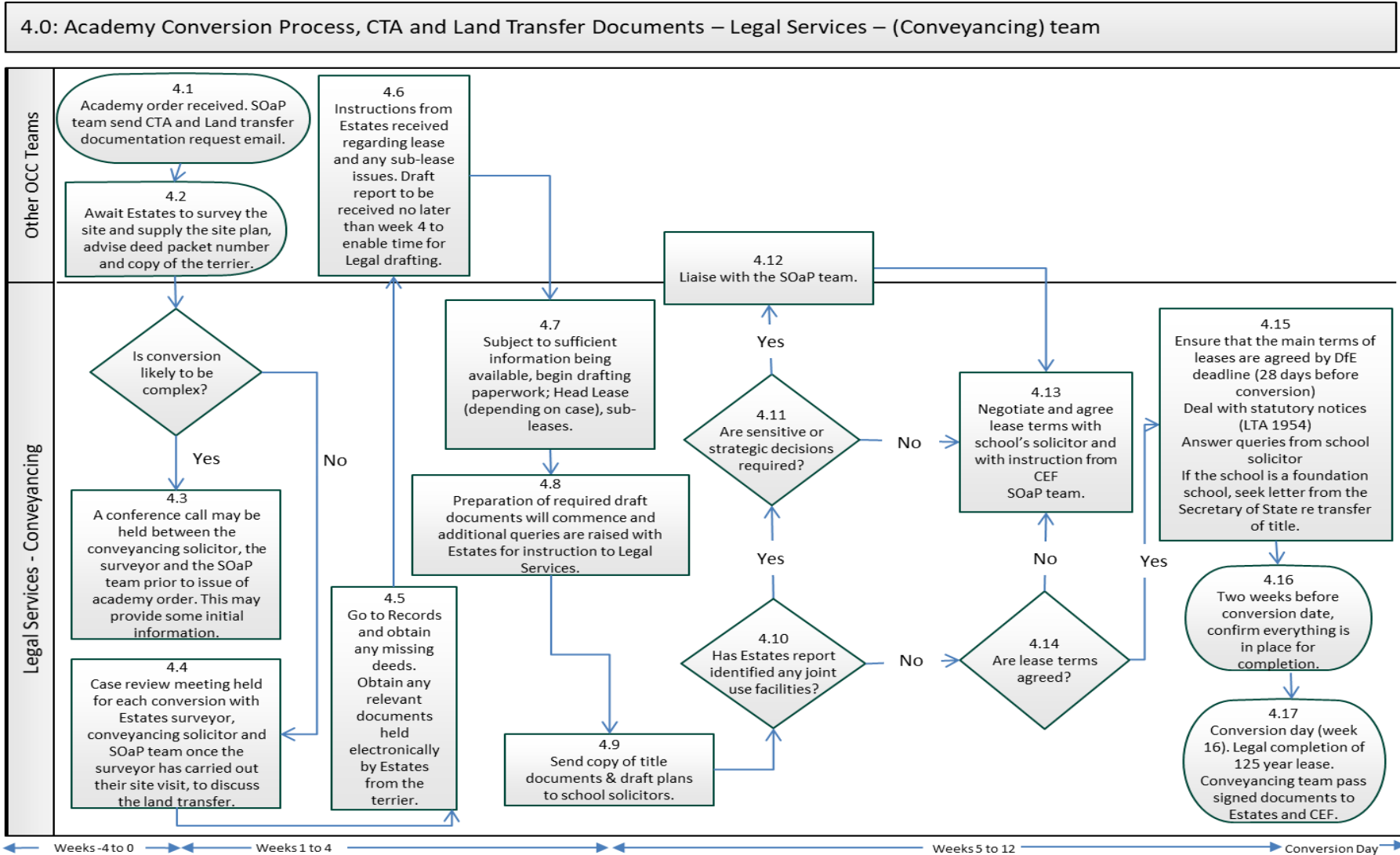
Footnotes:

1. The Estates Team will begin work at the point that the DfE informs the LA of receipt of an application from a school to convert to an academy and the School Organisation and Planning Team confirm the likelihood of it progressing at the point of request for initial information about the school. This early indication of an upcoming conversion helps the team to manage their workload and conduct preliminary research in an effort to determine the likely workload for each new conversion and in practice this should be approximately 4 weeks prior to the issue of the Academy Order. (Minus 4-1 weeks). The preliminary information may be referred to in agreeing the conversion date between DfE, the school and OCC once the Academy Order has been issued. There is a risk that the Academy Order might not be issued, and that OCC will result in abortive costs; however, OCC accepts this risk to enable smooth operation of the conversions process within the DfE timeline requirements.
2. Both the discussion held prior to the issue of the academy order and the case review are key points within the land transfer process to ensure the sharing of information about relevant issues about how the school operates which may have an impact on land issues and to have an initial discussion about the how the land transfer could be dealt with. These review meetings are also intended to inform and check progress on property issues against the proposed conversion date. It is vital that the case review can occur by the specified date – ideally between week 3 and 4 so as not to hold up proceedings with the land transfer.
3. Where a conversion date has been agreed which is in excess of the standard 16 weeks from Academy Order, a date for when the formal property report should be completed and sent to Legal Services will have been agreed earlier in the process between Estates, Legal Conveyancing Team and the School Organisation and Planning Team.
4. Estates are involved in negotiating and instructing on all aspects of the property transfer process up until the point of completion of the documentation. The property surveyor is the client of the conveyancing solicitor and therefore instructions must come from that team. There will be a flow of communication between the surveyor, solicitor and the School Organisation and Planning Team to take decisions and act upon all aspects of the transfer.

General Notes:

- The target timeline for a standard conversion is to ensure the *draft* report is authorised for Legal Services (Conveyancing) within 8 weeks following the request from the School Organisation and Planning Team to complete the DfE initial pro forma for the academy application of a school (or 4 weeks from receipt of an academy order). The final signed report should be sent to Legal services by the latest 6 weeks from receipt of academy order. This however is dependent on the complexity of the site and the conversion date which has therefore been programmed. More complex conversions may follow a slightly amended conversion schedule, which will be set early in the process, and therefore different deadlines throughout the process may have been set and agreed between School Organisation and Planning Team, Estates and Legal Conveyancing. This timeline is used as a process guide but can be adapted for different timelines if necessary, as stated above through agreed procedure for setting deadlines.
- Where complex property issues arise after the conversion date has been agreed, this has to be managed separately. The Estates team aim to uncover as many potentially delaying factors early in the process, however some negotiations with third parties or other unforeseen issues can arise later on. The School Organisation and Planning Team and Legal Conveyancing are informed as soon as any issues arise and solutions to the issues are discussed and agreed as soon as possible. Where a delay to the target conversion date is a risk the School Organisation and Planning Team will ensure DfE, and the school are kept informed and are included in discussions about how to proceed.

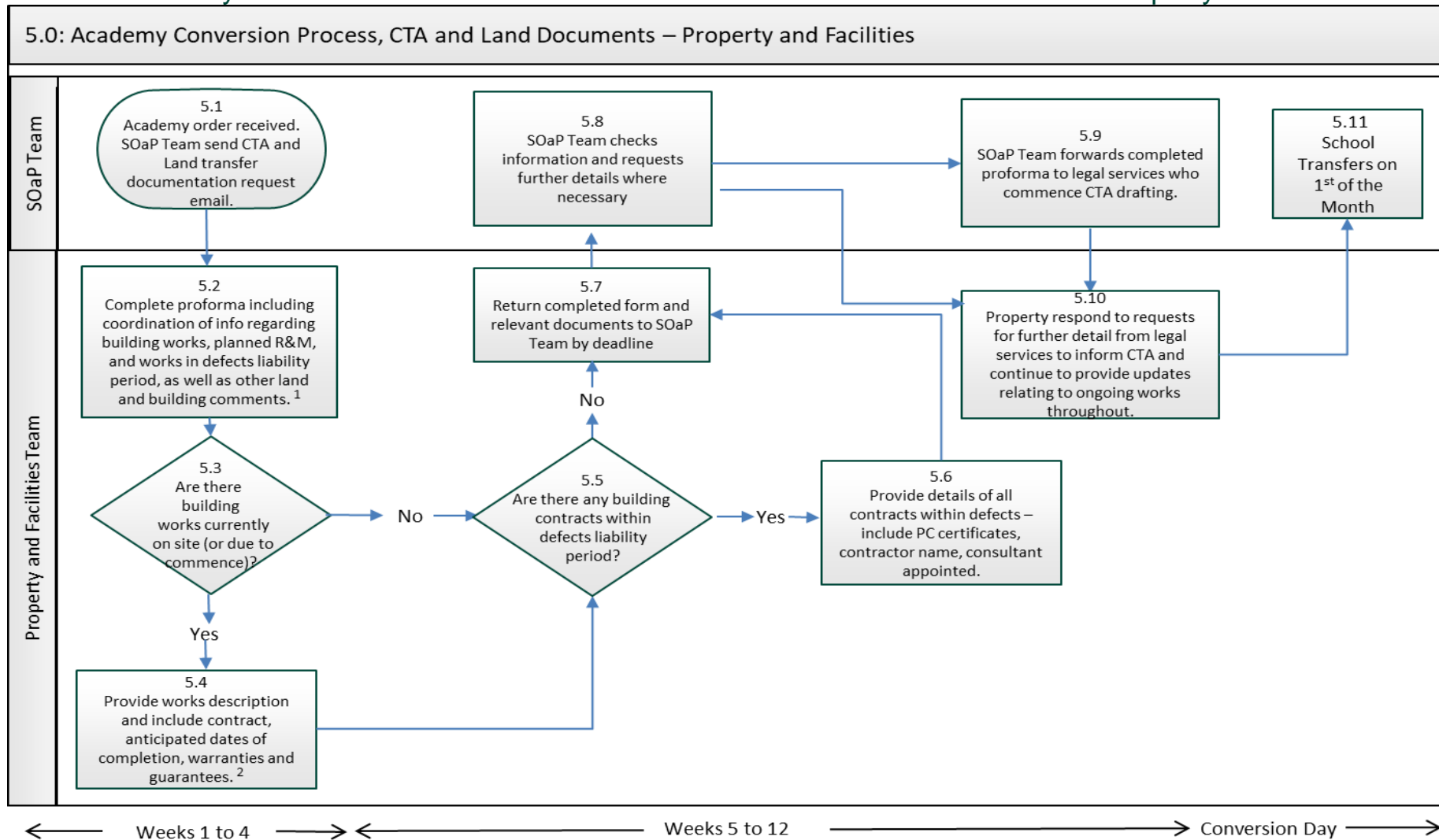
Academy Conversion Processes: CTA & Land Transfer Documentation – 4. Legal Services (Conveyancing)



Conveyancing Notes:

- The conveyancing process, i.e. land transfer, is a separate process to the CTA, with different documentation produced. It culminates in various land transfer documents being produced as opposed to a CTA. Whilst the work progresses, liaison continues between Legal Services: Conveyancing and the Estates Team.
- Some initial work towards the land transfer aspects of a conversion start before the academy order is issued – a conference call may be held between the School Organisation and Planning Team, Estates Surveyor and Conveyancing solicitor to share initial information and the expected requirements for the land transfer. See Estates and School Organisation and Planning Team pages for further information.
- The 16-week timeline is generally achievable unless a site is particularly complex (see notes on how this is identified earlier with the Estates and School Organisation and Planning Teams where appropriate). The key requirement is to get the plan and title within the initial 2/3 weeks of this process so investigations of legal title can commence. The procedure may vary if the converting school is a voluntary or foundation school. Where a longer conversion time is agreed, the internal deadlines are amended as appropriate to allow additional time, for example for more complex conversions. In these cases, the length of time required by Legal Conveyancing to complete their work will be dependent on the type and number of documents needed and the level of negotiation required with the academy solicitor or other parties. Any amended deadlines are agreed between School Organisation and Planning Team, Estates and Legal Conveyancing.

Academy Conversion Processes: CTA & Land Transfer Documentation – 5. Property & Facilities



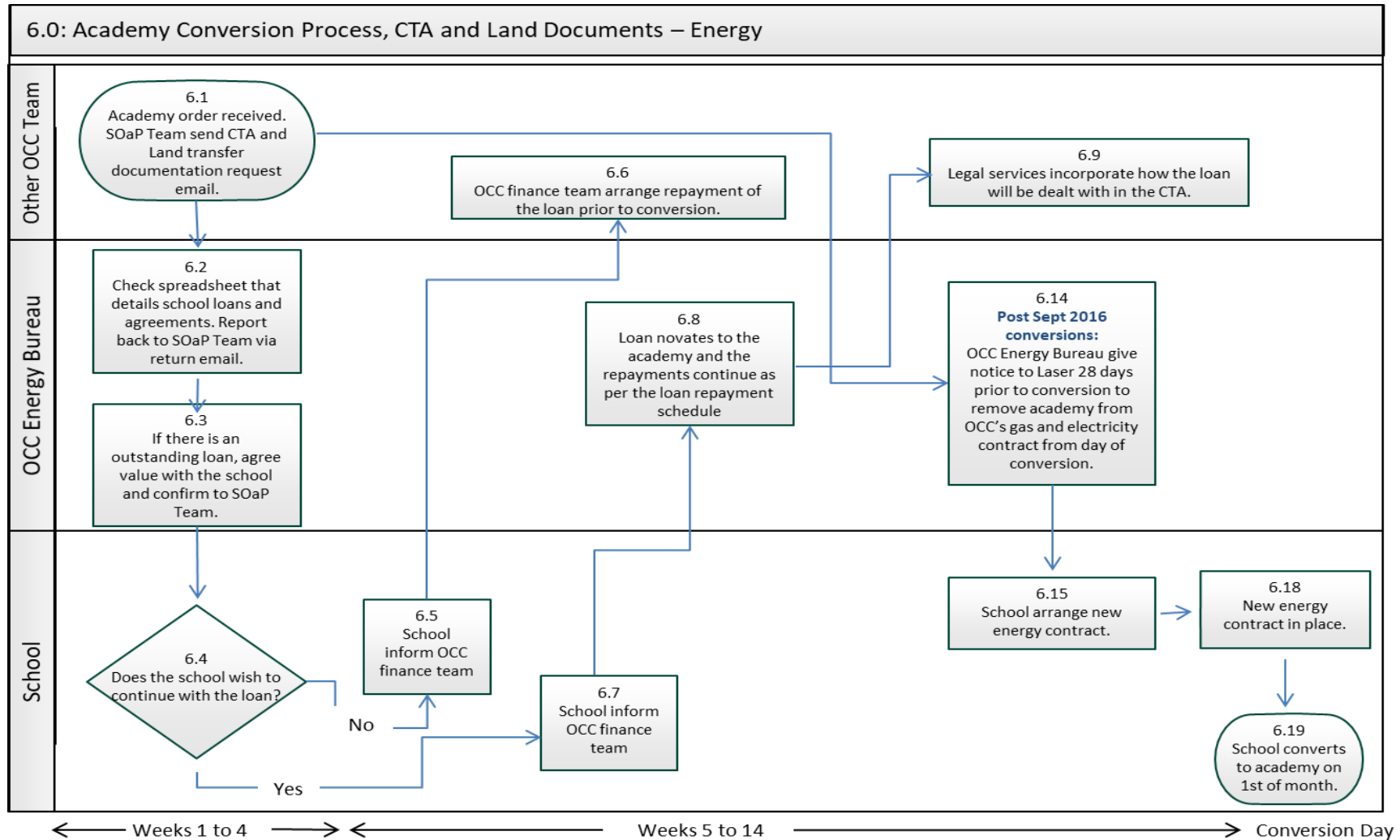
Footnotes:

1. Works information provided in the proforma should include building works currently on site or planned to commence, for which a commitment has been given or otherwise contemplated in any way, including feasibility works, capital works and works in any of the programmes. It's crucial that all information relating to any works currently taking place at the school as well as historical works and those that are still within the defect's liability period are documented with as much detail as possible at the earliest stage. Delays providing this information can mean that legal services cannot commence drafting the Commercial Transfer Agreement.
2. Copies of all warranties and guarantees are required so that legal services can determine if these are transferrable to the trust. If they are deemed to be transferrable by Legal services, P&F request the issuer to reassign the guarantee/warranty to the trust from the date of transfer.

General Notes:

- Access to attend site post conversion is required if works are within defects liability period, for maintenance, inspection or repairs.
- Any changes to completion dates or works on site taking place should be communicated to the School Organisation and Planning Team and Legal Services as soon as known and throughout the conversion process.

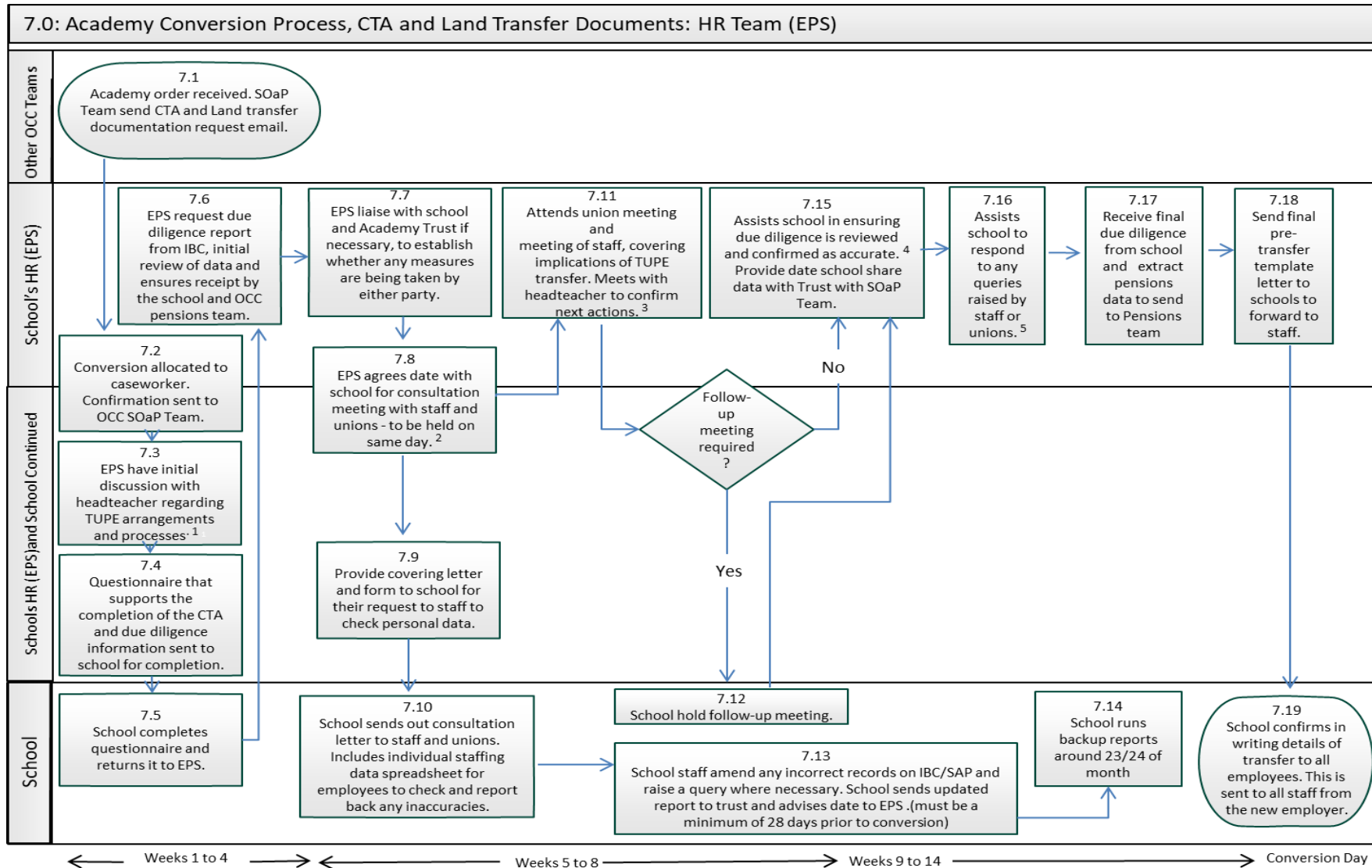
Academy Conversion Processes: CTA & Land Transfer Documentation – 6. Energy



Energy Notes:

- Some schools have made energy saving investments as interest-free loans via the Council; this process also seeks repayment of those loans or revised loan agreements to cater for schools moving to academy status.
- The Council will ask Laser, its current energy broker, to remove academies from the OCC contract from the day of conversion. Academies must therefore put in place their own arrangements for energy supply from the date of conversion to avoid going into expensive 'out of contract' rates. The government recommends schools use a Public Sector Buying Organisation for energy purchase; examples include LASER: <http://www.laserenergy.org.uk/> and Crown Commercial Services. Advice is available on the gov.uk website <https://www.gov.uk/guidance/buying-for-schools/>
- For those schools which have had automatic meter readers installed through OCC, OCC will continue to cover the rental cost of these for the duration of the existing contract (five years from date of installation). It will be for the academy to ensure that the AMR is operational and providing reliable energy data and to meet any costs associated with maintenance of the AMR. Once the existing contract ends, it will then be for the academy to make arrangements for ongoing energy monitoring provision. Stark (the OCC provider) offers services directly to schools. Alternatively, the academy may make arrangements with their energy supplier, an alternative provider, or may choose not to receive energy data. If a school chooses not to renew the contract with Stark, they will not need to contact Stark, but they will need to inform the supplier. The supplier will need to appoint a new data collector to collect readings from the meter. They might also want to change the meter.

Academy Conversion Processes: CTA & Land Transfer Documentation – 7. HR Team (EPS)



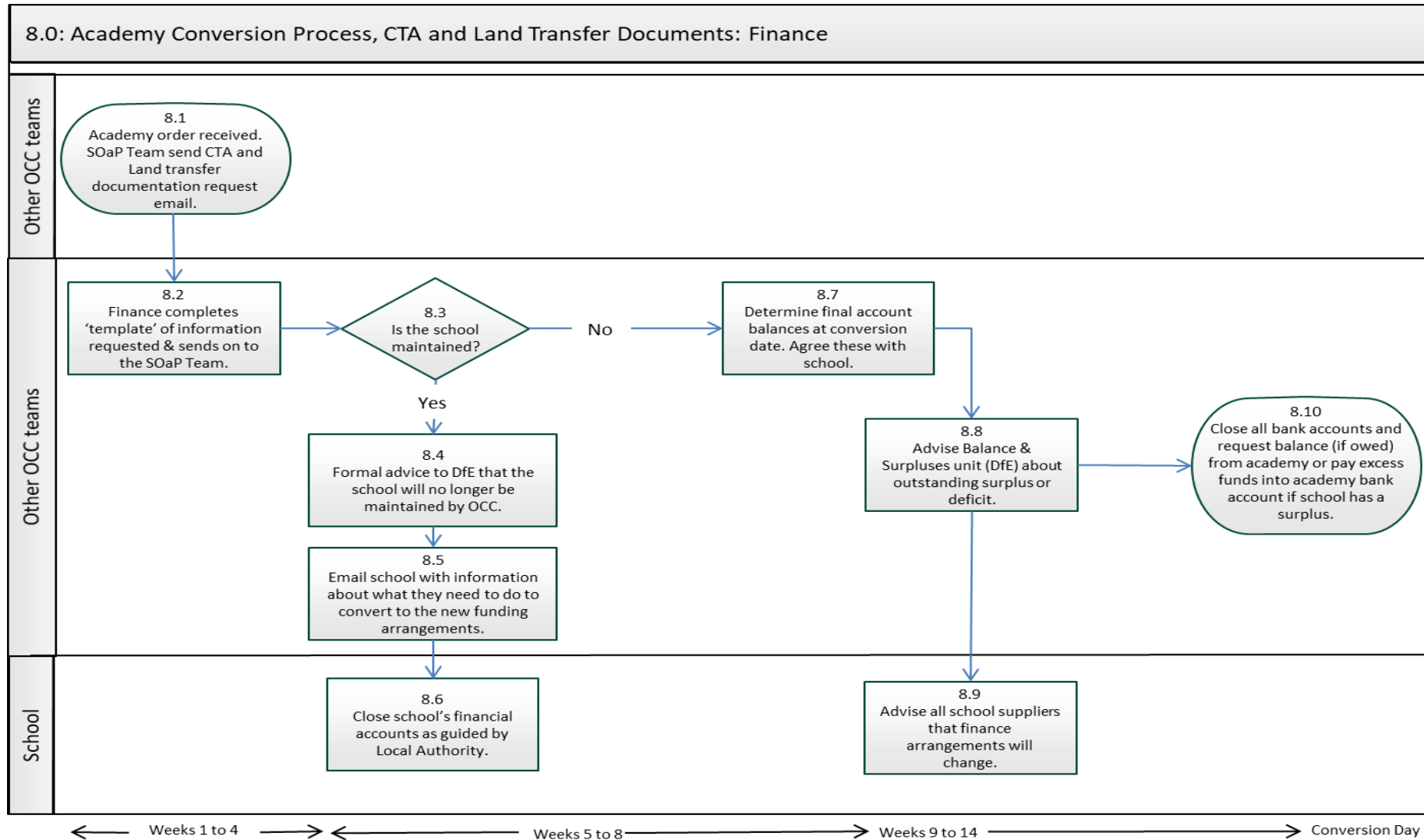
Footnotes:

1. A Head Teacher might ask for EPS' assistance directly, before the Academy Order has been issued.
2. There are multiple unions involved. EPS liaises with union secretaries and Head Teachers.
3. Head teacher and EPS meet with staff to confirm the information in the Measures Letter and answer questions, consider and respond to representations made, confirm Scheduled Body status, and ensure staff transferring are aware of their pension entitlements through either the Local Government Pension Scheme (LGPS) or the Teacher's Pension Scheme. LGPS staff who have opted out have to be put back into the scheme and can then choose to opt out again. At this point an FAQ document is also distributed.
4. Due diligence includes: All rights and obligations arising from contracts of employment (except criminal liabilities/some pension benefits), any liabilities relating to employees who were dismissed before the transfer (for a reason connected to it), and any collective/recognition agreements made with recognised trade unions.
5. Advise all staff of the transfer: Remember to inform all affected, including those on long-term sickness/maternity leave etc.; that a transfer is happening, when and why; the legal, social and economic implications for the affected employees; whether the employer envisages taking any action in connection with the transfer, and if so, what (e.g. reorganisation).

General Notes:

- Work is prioritised according to the conversion date.
- The staffing determination must be carefully timed to allow for the pay-run beginning on the 20th of the month, and the actual pay date at the end of the month. Furthermore, new joiners and/ leavers need to be accounted for, for example anyone that is leaving must be 'cleaned off' the payroll data.
- The Measures Letter is a legal document that details changes to working hours, pay rates, conditions etc. (if any). If a school does want to make changes, there is a risk that a variation under the Measures Letter will push out the timeline and additional meetings will be required. Note that this situation has not yet occurred.
- EPS keeps the School Organisation and Planning Team informed of any potential hold ups in the process.
- Schools will be advised to run off reports for revenue, capital and project monitoring, staffing costs, income and debt, travel and expenses prior to conversion, after which they will no longer have access to these reports. Payroll information is available in the staffing costs report.

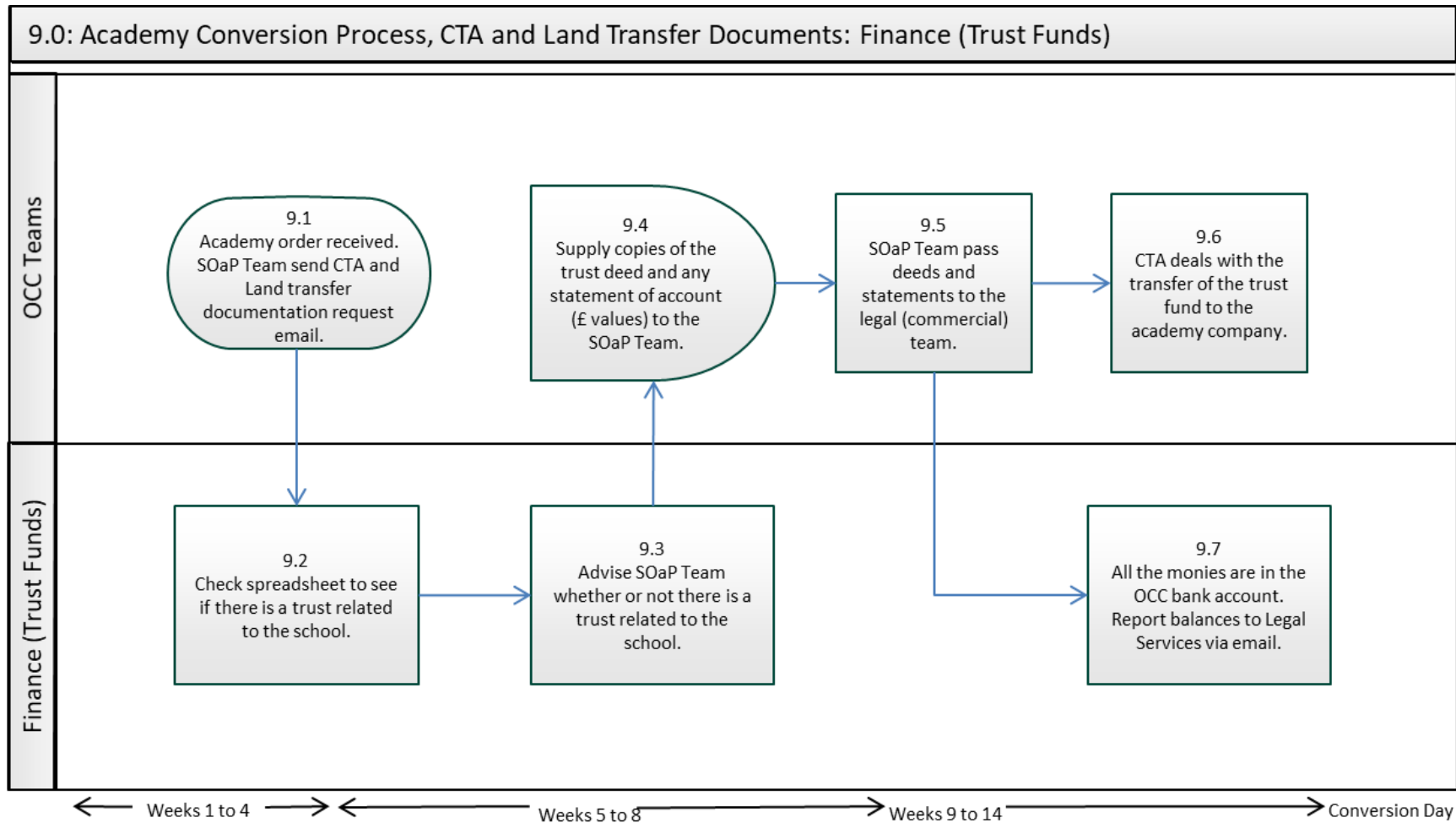
Academy Conversion Processes: CTA & Land Transfer Documentation – 8. Finance



Finance Notes:

- Education and Skills Funding Agency (ESFA) manages funding for academy schools. OCC prepares the funding figures for the ESFA.
- The requirement is to complete the finance conversion within four months from the conversion date. This may differ depending on each schools' circumstances.
- Schools that become academies will no longer have access to OCC SAP systems and must establish their own bank account, including setting up payment facilities and the transfer of any unofficial accounts (i.e. special purposes) to the academy and any official account administered by the school to a nominated successor (i.e. partnership funds).
- Finance requires as long a lead-time as possible. They welcome early information from the School Organisation and Planning Team. There are OCC budget implications when schools become an academy and early management is essential.
- Secondary and special schools may be more complex as each line of the accounts must be investigated. Primary schools are largely standardised.

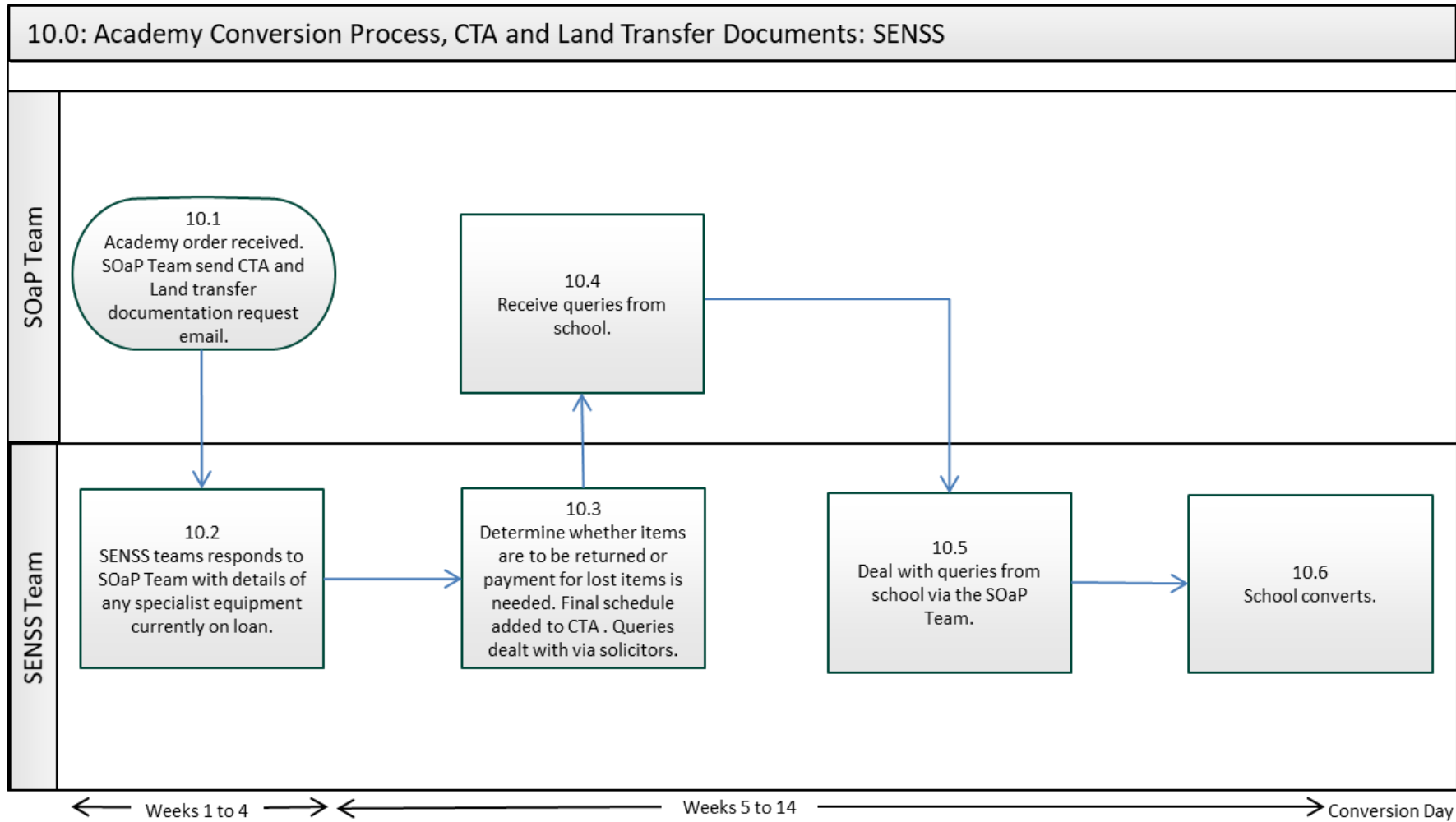
Academy Conversion Processes: CTA & Land Transfer Documentation – 9. Finance (Trust Funds)



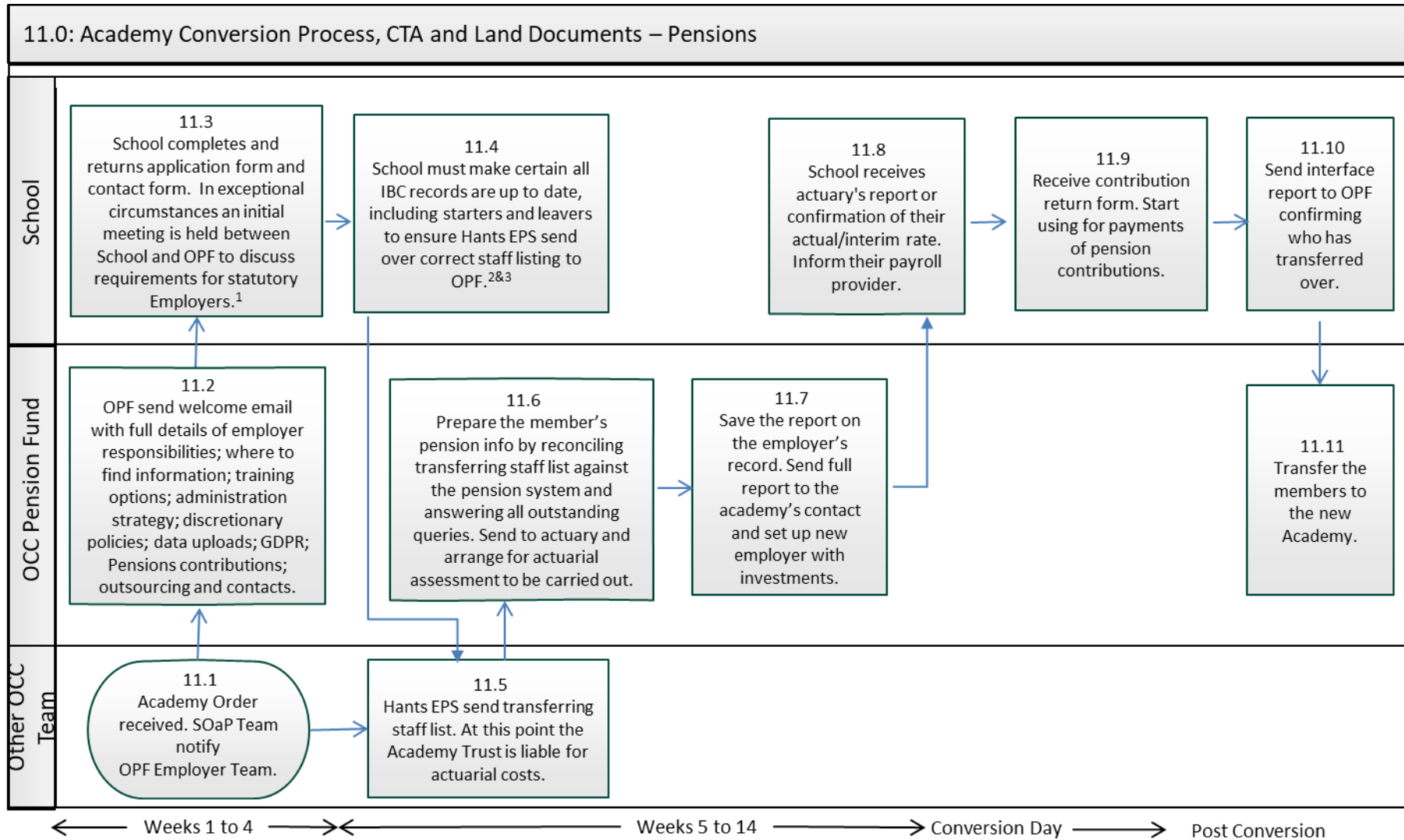
Notes:

- The purpose of this process is to transfer school trust funds to the new entity.
- Some converted academies have now taken over the management of their trust funds. There are now only a very small number of trust funds remaining that relate to schools across Oxfordshire.

Academy Conversion Processes: CTA & Land Transfer Documentation – 10 SENSS Team



Academy Conversion Processes: CTA & Land Transfer Documentation – 11. Pensions



Pension team footnotes:

1. Initial meeting is to discuss employer costs and regulatory responsibilities. The school needs to be aware that LGPS applies to all staff who are not members of Teachers' Pensions – even if they are not currently in the scheme. The school will be a 'Statutory Employer' within LGPS – this is not optional.
2. Schools will check payroll records are up to date and provide information for this due diligence procedure, to Hants EPS as promptly as possible. This will enable OPF to send the actuaries accurate data as soon as we have reconciled the staff list with our own system and will prevent long delays.
3. Failure to ensure staff data is up to date will delay the actuarial assessment and an interim rate will be applied. The Academy Trust may incur an underpayment or overpayment of contributions as a result.

Key to Process Mapping Shapes

