

Oxfordshire Academies Programme

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

Guide for schools with actions, timelines and interdependencies with OCC
teams for completion of the
**Commercial Transfer Agreement (CTA) and Land Transfer
Documentation**

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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 exists to provide support for schools to achieve the above but not to lead them or to handle the conversion process per se. The School Organisation and Planning Team 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 converters. The CTA must be executed and copied to the DfE, and Land Transfer documentation must be confirmed as ready to sign and seal, approximately 4 weeks (28 days) prior to the conversion date. The deadlines for particular conversion dates are published on the DfE website and are updated regularly.

This document provides a guide for schools during 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 support schools to convert to academy status and shows interdependencies and timelines to enable the agreement of realistic deadlines for conversion to ensure due diligence is maintained by both parties.

Schools are advised to read this document as part of their initial decision making process and to share this with their solicitor early on to save time, and potentially fees.

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.

Process for Informing the Authority and Agreeing a Conversion Date.

BEFORE AN ACADEMY ORDER IS ISSUED

From the DfE generic flowchart for the academy conversion process it can be seen that the first two stages can happen with little involvement from OCC unless particular information is requested (and often is) by DfE. Technically the school can remain remote from OCC in the early stages of this process whether for a voluntary conversion or a sponsored conversion brokered by DfE. In practice all parties tend to work together fairly early on to avoid duplication and allow time for certain information to be researched and potential complications with financial and land matters to be identified. We would encourage all schools to contact the School Organisation and Planning team early in their process of considering conversion by e-mailing School.planning@oxfordshire.gov.uk

AFTER AN ACADEMY ORDER IS ISSUED

It is at this point the authority is formally informed of the decision of Secretary of State (SoS) to allow a school to convert to become an academy. A conversion date will be agreed between DfE, the local authority and the school which is practicable. The authority will need to be a party to two key documents: the Commercial Transfer Agreement (CTA) and the Land Transfer documentation which are required by DfE to be agreed approximately four weeks before a conversion date and without which conversion cannot take place.

The School Organisation and Planning team has a managed process for the completion of these two documents whereby conversion dates will effectively be 'booked' and resources will be made available to ensure these can be met. Regular contact and support for the school throughout the completion of this documentation will be available. Successful completion of the conversion process on time will be a joint effort and this guide shows the key points at which information needs to be provided by the school to ensure your conversion proceeds smoothly.

Schools should be aware that where conversion dates have not been formally agreed with the authority, we cannot guarantee that the aspirational date will be met and that resources have not been allocated to other school conversions which have been agreed. There is no maximum number of conversions to be handled in one month as there is flexibility to meet demand with appropriate notice.

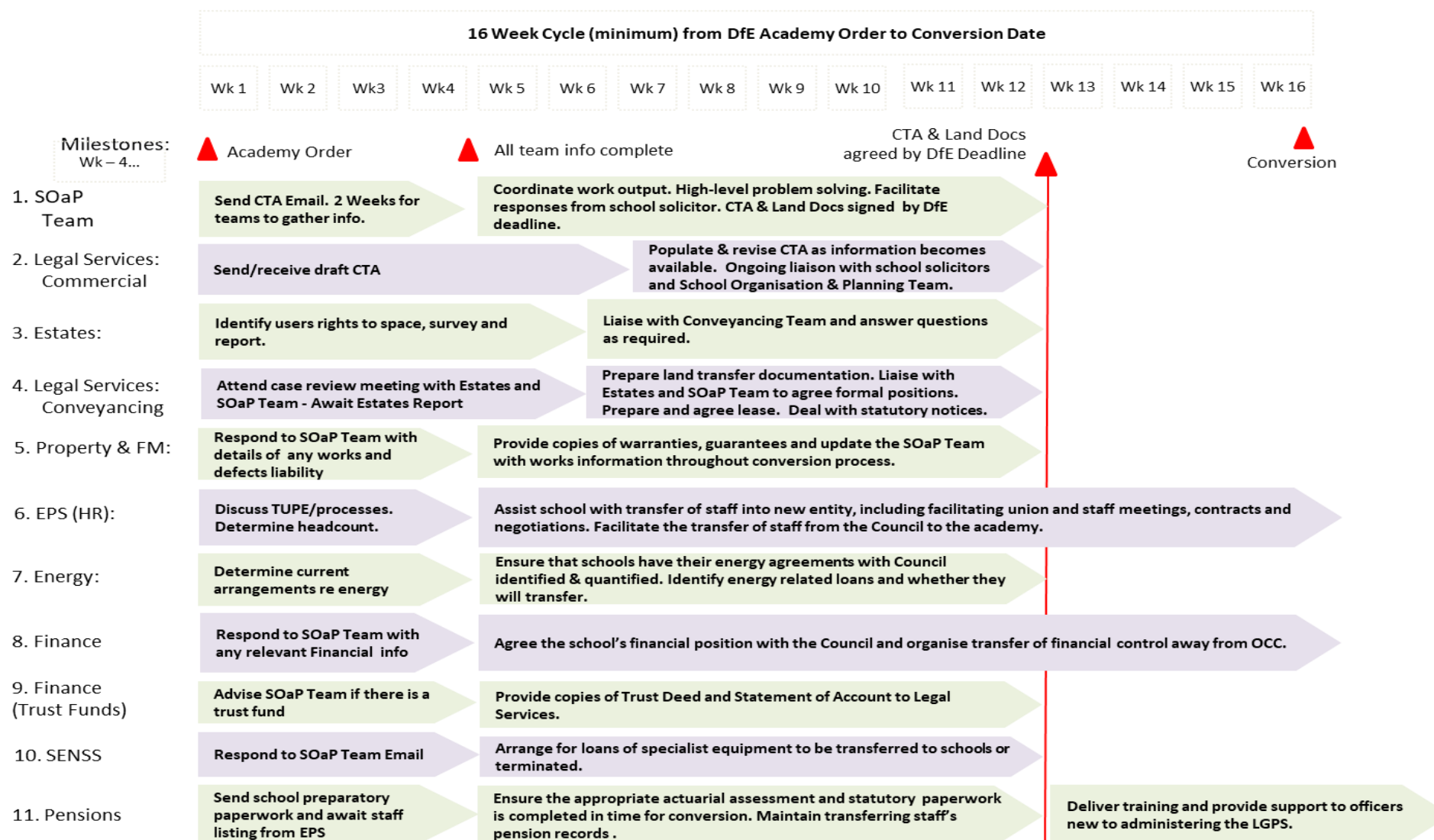
Schools should also note that the timescale shown in the guide is the minimum time usually required for all parties to complete their due diligence checks to ensure the right contract terms for staff, buildings, and future wellbeing of the pupils at that academy are discussed and agreed. Failure to leave time for discussion can lead to compromise a school may not ideally wish to make.

The above statements apply to voluntary conversions and sponsored conversions initiated by DfE, although typically more details are researched ahead of an academy order being issued with the sponsored academies.

OCC Teams Involved in the CTA and Land Transfer Processes

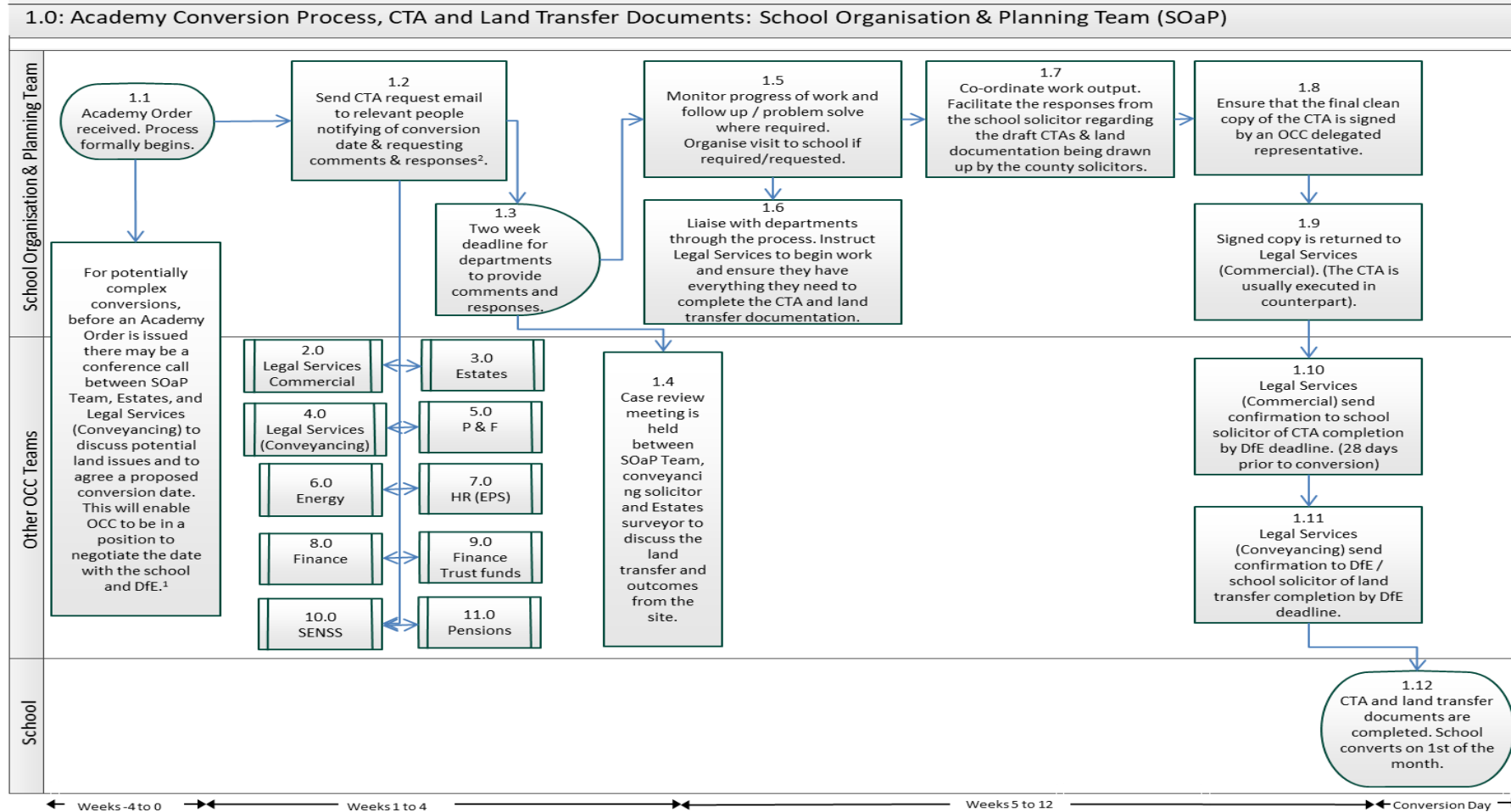
Team	Key Responsibility
1. School Organisation and Planning Team	Coordinate activity across the Council to ensure the CTA and Land Transfer Documents are completed and exchanged on time, and ultimately that conversion is also on time.
2. Legal Services - Commercial	Ensure the CTA is agreed, negotiate positions on various aspects such as capital work with the schools solicitor and agree which assets and contracts will be transferred to the academy (including staff) upon instructions from the School Organisation and 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.
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 and 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



OCC School Organisation and Planning Team Process Chart

The School Organisation and Planning Team coordinates activity across the Council to ensure the CTA and Land Transfer Documents are completed and exchanged on time. The activities they undertake for each school's conversion are presented in the chart below:



How do we work together to complete the documentation?

The tasks within each time bracket are not sequential.

Week/s	OCC Tasks	School Tasks
Weeks 1-4 (after academy order has been issued.) Legal	a. OCC Commercial Solicitor is instructed to commence negotiating and drafting the CTA. b. OCC Conveyancing Solicitor is instructed to commence negotiating and drafting the Land Transfer Documentation with the school's solicitor. c. OCC sends a copy of the land title to the school's solicitor.	a. School instructs solicitor to act on its behalf and to engage with OCC solicitors. b. Inform OCC of which solicitor will be acting for the school in this process and provide contact details. c. Respond to communication from the SOaP team/ OCC solicitors and your own solicitors in a timely fashion throughout the conversion process.
Weeks 1-4 Property	a. OCC Estates organises a survey of the school site with the Headteacher. b. Discuss & agree which areas within the school site might be leased back to OCC, and which might be leased to third parties. Agree terms of any planned building works post-conversion which are agreed by both parties.	a. Agrees to meet OCC surveyor at the school and has information available about other users on the site and any other local information which would be helpful in identifying any potential land issues which need to be addressed before the conversion date.

Week/s	OCC Tasks	School Tasks
Weeks 1-4 (continued) HR	<ul style="list-style-type: none"> a. Hampshire County Council Education Personnel Services (EPS) will contact the Headteacher to discuss HR processes and TUPE arrangements with EPS. EPS will perform the Council's HR function. b. EPS send a questionnaire that supports the completion of the CTA. c. EPS send due diligence information to school for completion. 	<ul style="list-style-type: none"> a. Respond as required by EPS to engage in TUPE processes. Particularly with regard to due diligence information provided which need to be accurate so as to treat all affected staff fairly and consistently. b. It is essential to check payroll records are up to date and return information as requested by EPS as promptly as possible. This will enable the OCC Pensions Team to send the actuaries accurate data asap and prevent long delays.

Week/s	OCC Tasks	School Tasks
Weeks 5-14		
Energy	<ul style="list-style-type: none"> a. Schools need to make arrangements for their own gas and electricity provision from the date of conversion. Schools should send meter reads as soon as possible to both their suppliers (Total and Npower) and arrange to settle any estimated billing b. If a school has automatic meter reading from Stark, OCC will continue to cover the rental cost of these for the duration of the existing contract with Stark. 	<ul style="list-style-type: none"> a. If a school has automatic meter reading from Stark and wishes not to renew the contract, they will not need to contact Stark but 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. b. Prepare a register of all contractual commitments with third parties, including but not only, OCC, and share this with the solicitor for inclusion in the CTA. c. Engage in discussions with all contract providers regarding services to be bought post-conversion.
SENSS	<ul style="list-style-type: none"> a. SENSS Team identifies any SEN Equipment at the school to be returned to OCC when the relevant pupil using the item leaves. 	<ul style="list-style-type: none"> d. Check list of SEN equipment identified as currently being used at the school.

Week/s	OCC Tasks	School Tasks
Weeks 5-14 (continued)	a. The lease terms are negotiated & agreed.	a. Ensure solicitor is responding and commenting on draft leases / other Land Transfer documentation from OCC land solicitors.
Legal (commercial)	b. OCC Commercial Solicitor populates CTA with additional contracts information received from SOaP Team and sends to school solicitors. This includes information about SEN and music equipment on loan.	b. Ensure school is responding and commenting on draft CTA's as sent by OCC solicitor to school solicitor
Finance	c. OCC Finance emails the school advising what they need to do to convert to the new funding arrangements.	c. If the school changes the MIS, the school need to be aware that this might require data to be migrated from one system to the other.
	d. OCC Finance agrees final account balances with the school at the conversion date.	d. All OCC support service contracts will end at conversion so, if the school wishes for them to continue, the school must complete a buy back form. (See below for OCC buy back details.)
		e. If the school has an outstanding energy loan, it can be paid off prior to conversion-inform Finance team if this is the wish of the school.

Week/s	OCC Tasks	School Tasks
Weeks 5-14 (continued) HR	a. EPS drafts a Measures Letter for recognised trade unions and invites the trade unions to meet the Headteacher. b. Final staffing list sent to school for checking from EPS team. c. Any changes to be made at the school are discussed and agreed by EPS. d. EPS provides a covering letter and form to the school for their request to staff to check their personal data.	a. Headteacher advises EPS whether there will be working condition changes for staff. b. Headteacher meets the trade union representatives and is supported by EPS. (NB School is responsible for keeping minutes of the meeting.) c. School conducts HR due diligence, supported by EPS d. School staff amend any incorrect records on ESS Lite. <i>NB. Pensions: 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.</i> e. School staff enter any adjustments, by payroll deadline of month of conversion. Outstanding payroll adjustments after deadline should be sent to new payroll provider.
Week 14 Legal (commercial)	a. OCC Solicitor sends completed CTA to school solicitor for signature.	a. School signs and returns completed CTA and Land Transfer documentation to their solicitor to be shared with OCC and DfE.
Weeks 15 - 16 (conversion day – 1st day of the month) HR	a. OCC and school to agree any staffing changes occurring between CTA signing and conversion day.	a. School confirms in writing the details of transfer to all employees. This is sent to all staff from the new employer.

Week/s	OCC Tasks	School Tasks
Finance	a. OCC Finance closes all school bank accounts and requests balances from the school, if owed, or pays excess funds into the school's SAP bank account.	a. School to close any "private" bank account where included on OCC banking contract.
Legal (conveyancing)	a. Land Transfer documents are signed and sealed once the school becomes a legal entity to which assets can legally be transferred.	a. School signs and returns documentation for transfer.

Important recommendations for action before conversion

Energy Guidance

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/government/publications/energy-for-schools>), including an 'Energy for Schools' guide.

- 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.

Meter Reads

All schools should send up to date meter reads to OCC Energy Bureau and the supplier as soon as possible after submission of an academy order.

Bill validation

As a maintained school, your energy supply and bills are checked and validated by OCC Energy Bureau. As an academy you will fall outside this service. Bill validation helps ensure your energy bills are accurate and avoid unnecessary costs.

To ensure that your bills are correct, you will need to check that your meter reads correspond with the energy use shown on the energy bills, or you might like to consider buying in to an energy bureau service to do this for you. For example, Laser offers a fully managed service which includes energy purchasing and bureau services.

Please see the OCC Contacts section below.

Finance

We strongly recommend that the school run the reports below before conversion. **Please note that these reports will not be available post-conversion.** Where a report relies on financial information, it is also crucial to run the report before payroll suspend the service in order to run their own monthly reports as the information is not available during this period. We would recommend that the school runs the report as close to conversion as possible which would normally be around 23rd / 24th of the month prior to conversion.

We recommend that you run all the reports available using the help information provided. These reports include:

- Revenue monitoring
- Capital monitoring
- Project monitoring
- Staffing costs
- Income and debt
- Travel and expenses

As an example, to get to the 'Staffing costs' report help page, navigate as follows (selecting the named tiles):

Home -> Finance -> All -> Enter 'Reports' in the search box and narrow search by checking 'Finance'.

For ease of reference, you may note that you can export the data to Microsoft Excel.

Payroll

Important: Payroll deadline before conversion is the last time IBC payroll team can enter any adjustment. Any outstanding adjustments required after payroll has closed must be sent to the new payroll provider.

Pensions

Important: Please check the school's payroll records are up to date and provide information requested by Hants EPS as promptly as possible. This will enable OCC Pensions Team to send the actuaries accurate data as soon as they have reconciled the staff list with their own system and will prevent long delays. Failure to ensure staff data is up to date will delay actuarial assessment and an interim rate will be applied. The Academy Trust may incur an underpayment or overpayment of contributions as a result.

In exceptional circumstances an initial meeting is held between the school and OCC Pensions Services Employer Team 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.

Where training sessions are offered, these are for practitioners dealing with day to day issues, queries and refunds.

When a new school joins a multi academy trust there are several issues to be considered in relation to the employer contribution rate and whether any adjustment is to be made – this decision will be made in consultation with the Fund Actuary and take into account:

- View of the academy
- The effect on FRS102 reporting (financial reporting standard undertaken by MAT)
- If the deficit is being paid in cash
- Whether maintaining the current contribution rates will increase the academies overall deficit.

If you require any further assistance, please see contact details for the Pension Services Employer Team below.

Insurance

Upon conversion to academy status, your insurance policies with Oxfordshire County Council will cease. It is therefore important prior to conversion that you arrange separate insurance to ensure that you are fully covered on the date of conversion. We would recommend that you read the advice on the DfE website which can be found here or by searching for Academies risk protection arrangement (RPA). Please note that where insurance cover has been taken out with the county council, the whole year's premium will be taken and is non-refundable. Please see contact details for the insurance team below.

OCC voucher scheme

Upon conversion, the school will no longer be part of the Oxfordshire County Council (OCC) voucher scheme. The school can, of course, join any voucher scheme but this will need to be set up by the school or the Trust that the school is joining.

The school should ensure that members of the voucher scheme are aware that it will be coming to an end and should ensure that they are informed of any new scheme that may be put in place. OCC currently use Edenred as a service provider and they can be contacted on 01244 625378, (Louise.Millett@edenred.com) should you have any questions about your current service or if you wish to contact them about potential future involvement with this particular scheme.

If you wish to talk to OCC about the scheme, please contact County HR, or staff.benefits@oxfordshire.gov.uk.

OCC Contacts

Please use the contacts below for specific enquiries throughout the conversion process.

Nature of Enquiry 'Who do I contact for...?'	Contact Team	Contact Details
Confirming my target conversion date	SOaP Team, DfE Project Lead	School.planning@oxfordshire.gov.uk 07920084517
Specific queries relating to HR, the TUPE process	EPS	02380 383500, http://www3.hants.gov.uk/education/educationpersonnel/services.htm , eps.consultants@hants.gov.uk
Obtaining a buy back form	Education Support Service	http://schools.oxfordshire.gov.uk/cms/node/995
Specific queries relating to energy supply	Energy Bureau	energybureau@oxfordshire.gov.uk .
Specific queries relating to Pensions	Pension Services Employer Team	0330 0241 359 (option 3) or email pension.employer@oxfordshire.gov.uk
Specific queries relating to Insurance	Insurance Team	0333 014 3385 insurance@oxfordshire.gov.uk

Glossary

- CTA: Commercial Transfer Agreement
- EPS: (Hampshire County Council) Education Personnel Services
- OCC: Oxfordshire County Council
- P&F: Property & Facilities
- DfE: Department for Education
- TUPE: The Transfer of Undertakings (Protection of Employment) Regulations