



**Essex Clerks'  
Association**

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*supporting clerks supporting governors*

# **Getting Started as an Academy Secretary (Clerk)**

A Brief Guide for Clerks to Governing Bodies whose schools are changing status to academy.

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The documents referred to in this guide are available on the Essex Clerks Association website on the Academies page

This guide is produced for clerks who are at the start of the academy conversion process and may need to service or advise a governing body meeting before completing basic transition training. If you need more detail on any item please follow the suggested links.

## **1 TRANSFERABLE SKILLS**

Any Essex trained Clerk has perhaps 80% of the skills/ knowledge needed to clerk an academy. Core skills such as agenda preparation and planning, minute writing and membership recording will be required by all Governing Bodies. The 20% gap in skills relates to gaining new knowledge of a different set of rules, procedures structures and documents as described below.

## **2 CONVERSION TO AN ACADEMY – GUIDELINES FOR CLERKS.**

**2.1** The Department for Education (DfE) draft guidelines on the decision making process, a Governing Body needs to follow, can be found at the link below: It is the Governing Body that approves all stages of the process which are set out as follows:

- Governing Body at a meeting hears the views of the Headteacher and staff governors about likely feelings of staff. The Governing Body resolves to set up a working party to make a recommendation on a change to academy status and to then report back to the Governing Body.
- The Governing Body considers the recommendation of the working party and, if happy, authorises consultation with stakeholders, instructing the working party to draw up consultation procedures and collate responses.
- The Governing Body considers the working party report and decides to apply for Academy status.

**2.2** The above assumes the Governing Body makes a positive response to Academy status at each stage. If not the Governing Body needs to move back to an earlier stage or cancels the consultation.

**2.3** A clerk's role is to ensure meetings are convened within the prescribed limits and that meetings are legal (quorate, resolutions, votes recorded etc.) No additional clerking skills are required.

**2.4** These are guidelines and governing bodies can vary them if they feel there is a good reason, but they should be cautioned because some unions have warned they may challenge decisions in court if they feel proper procedures have not been followed. It is important that staff are consulted early in process, as well as a formal TUPE process.

**2.5** Full details of the consultation process may be found at:

<http://www.education.gov.uk/schools/leadership/typesofschools/academies/becominganacademy/b0061257/how-to-become-an-academy>

Academy Status Toolkit (3 parts) - can be also found on [www.ncogs.org.uk](http://www.ncogs.org.uk) and on the ECA website

**2.6** Before Academy Status can be approved the **Articles of Association** and the **Funding Agreement** documents must be in place. The agreement is finalised by the **Memorandum of Association** which sets up the Academy Trust as a company registered as a charity. The Academy is now responsible to the Department for Education rather than the Local Authority.

Each academy is owned and run by its academy trust, which has responsibility for the building and the running of the academy as well as control over the land and other assets.

**2.7** The Academy Trust enters into agreement with the DfE through the **Funding Agreement**. The Academy Trust will have at least 3 Members who are responsible for appointing the Directors and Governing Body. In practice, the existing school's governing body will decide who should be members and governors. It is possible to be a trust member and a governor. The composition of the Board of Directors will be specified in the Articles of Association.

**2.8** The composition of the governing body will be specified in the Articles of Association. An existing governor who becomes a governor of the Academy, continues her/his term of office until the date it would have expired had they remained as a governor of the predecessor school.

### **3 ACADEMY STRUCTURES / POWERS**

**3.1** The **Articles of Association** set out the structure for the Academy which may be:

- A single academy trust responsible for a single school Governing Body
- A single academy trust responsible for a number of different school Governing Bodies (Also known as Academy Chains)

Model Articles can be viewed here:

<http://www.education.gov.uk/b0061866/supporting-documents-for-schools-converting-to-academies/model-memorandum-and-articles-of-association>

**3.2** The Articles will specify how a Governing Body appoints members to the Trust (minimum of 3 members) and will also specify how a Trust makes appointments to Governing Body vacancies (other than parent, staff or Authority governors).

**3.3** The Articles will also specify the make up of the Governing Body agreed with the DfE.

**3.4** The Academy Trust has a strategic role whereas the Governing Body manages the Academy on behalf of the Trust. i.e. Governing Body functions remain essentially the same.

**3.5 Trust Duties** include:

- To comply with relevant sections of the Company Act 2006 and related statutes
- To advance, for the public benefit, education in the UK - establish and run a school which provides a broad balanced curriculum
- To co-operate with other academies, maintained schools and statutory bodies
- To research new techniques in education and publish the results

- Can delegate investment of funds not immediately required to a financial expert - governors set the investment policy and monitor
- Hold the assets of the Academy (as set out in the Commercial Transfer Agreement (CTA)) as agreed with the Local Authority on transfer.
- To amend the Articles

From January 2011, Academies are exempt charities; and do not have to register with the Charities Commission.

**3.6 Governing Body Duties** will be extended and will include:

- ensuring the quality of educational provision
- challenging and monitoring the performance of the academy
- managing the academy trust's finances and property
- employing staff
- setting the admissions policy in accordance with the DfE's Admissions Code and setting up an appeals committee.
- observing the law on exclusions as though they were a maintained school
- responsibility for setting pay for new staff (existing staff covered by TUPE)
- reporting to the Trust

**3.7** The respective responsibilities of the trust body and the governing body will be set out in the **Articles of Association**. Each Governing Body and Trust will need to come to an understanding of where the responsibility dividing lines lie.

## **4 KEY DOCUMENTS (CLERKS' CONVERSION TOOL KIT)**

### **4.1 Memorandum of Association**

DfE's approval to establish the Academy Trust.

**This document replaces:** The Instrument of Government

### **4.2 Articles of Association**

This is the key document.

#### **4.2.1 For the Trust** it:

- sets out the Academy's "object" i.e. what it does
- gives it the authority to finance operations and appoint staff
- sets out the share holding arrangements for the trust
- sets out the membership of the trust
- sets out the requirements to hold annual and general meetings and who to call them
- sets out the meeting and voting arrangements
- specifies when proxy votes may be taken

#### **4.2.2 For the Governing Body** it:

- sets out the composition of the Governing Body
- sets out terms of office and election arrangements
- specifies when the Governing Body Annual General Meeting must be held

- sets out the meeting convening and voting arrangements.
- specifies when proxy votes may be taken.
- specifies governors' powers
- requires the appointment of a governors' **secretary** (to replace the ~~GB~~ clerk to the Governing Body)
- gives the Governing Body authority to delegate and set up committees
- makes arrangements to appoint a Principal (Headteacher )
- is responsible for the preparation of annual reports and returns.

**This document replaces:** The Instrument of Government and the Standing Orders.

**Please note:** each set of Articles are specific to that Academy. The above are only general principles that probably apply to most.

### 4.3 Funding Agreement

This document sets out how the Academy will be financed and the finance rules.

**This document replaces:** The Local Authority funding agreement and the draft Schools' Financial Value Standard regulations (formerly Financial Management Standards in Schools).

### 4.4 Good Governance: A Code for the Voluntary and Community Sector

**This document replaces:** The Governors' Code of Conduct.

### 4.5 Guide to the Law

The current version (January 2010) does not apply to academies. There is some suggestion an academy version may be published in the near future. In the interim in areas of dispute the Guide to the Law could be considered as best practice.

The rules relating charitable companies can be found here:

[http://www.charity-commission.gov.uk/charity\\_requirements\\_guidance/](http://www.charity-commission.gov.uk/charity_requirements_guidance/)

### 4.6 Delegation /Decision Planner

While this document is closely related to the Guide to the Law and is not statutory, it still seems relevant to academy governance. The tasks described must clearly be undertaken by the academy. By providing a fourth column for the Trust, it creates a useful document to clarify and agree which functions of the academy are delegated to which level.

### 4.7 Policy Planner

Academies remain subject to the law on equality, admissions and special educational needs. If the Secretary is to become the information manager for the academy, it will be vitally important that s/he takes control of this key information tool. Knowing what policies are approved and when by Trust, GB or committee will be essential to their role. A list of suggested policies is available on the ECA website.

## **4.8 Terms of Reference**

A review of committee terms of reference will be needed, but functions are likely to remain much the same. Any references to the former school's name and the Local Authority will, of course, need to be removed. Additional Terms of Reference for Admissions and Exclusions Appeals plus audit committees may need to be developed.

## **5 DUTIES OF ACADEMY SECRETARY**

**5.1** An **academy secretary** will be potentially be working in two areas:

- The Academy Trust
- The Governing Body

This may not, however, apply where there is an academy chain as in this case there may be a Trust Secretary and a number of Governing Body secretaries.

As each academy is entitled to draw up its own secretary's job description, any comments that follow are of a general nature.

### **5.2 Trust Secretary additional duties**

- Hold registers for the trust (members' register; directors' register; directors' residential address register)
- Advise new trust members of additional duties & responsibilities
- Advise Companies House of changes to members & directors
- Submit annual returns to Companies House.

The private sector equivalent of the trust secretary is the company secretary. The role of the company secretary is described here in more detail

<http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1073887645>

Academies may choose to appoint a company secretary to this role rather than extending a clerks job description/ contract to include this area.

### **5.3 Governing Body Secretary duties**

- Expected to cover most of the duties of the national clerks' job description
- May co-ordinate the annual report to the trust.

### **5.4 Rate for the job**

Taking on the Trust Secretary's role clearly involves additional duties and responsibilities. Remuneration for the role should be negotiated taking into account any additional duties and responsibilities.

## **6 ACADEMY DRAFT AGENDA PLAN/CALENDAR**

**6.1** The Governing Body calendar will provide for:

- An Annual General Meeting in the Autumn Term. The first Annual General Meeting will be held within 18 months from the date of incorporation and thereafter no more than 15 months between Annual General Meetings
- Finance items as agreed with the Bursar/School Business Manager/Finance Officer
- Other regular items transferred from the existing school's agenda plan/calendar
- Reports to the Trust
- Policy approvals

**6.2** The Trust plan will provide for:

- An Annual General Meeting in the Autumn Term
- Finance items as agreed with the Bursar – see above.
- Asset management plan reviews – see above.

More detailed agenda plans will be published on the ECA website this year.

## **7 MEMBERSHIP**

**7.1** The **Trust Secretary's** role relates to maintaining registers (see 5.2 above) and notifying Companies House of changes.

**7.2** The Governing Body structure is agreed as part of the Articles of Association and more guidance is available here:

<http://www.education.gov.uk/schools/leadership/typesofschools/academies/academiesfaq/a0066020/governance-faqs#faq4>

**7.3** The role of the **Governing Body Secretary** will be similar to the Clerk to the Governors role but will be following the rules in the Articles of Association rather than the Guide to the Law and Instrument of Government.

## **8 FINANCE**

**8.1** Finance will mainly be the province of the Bursar but secretaries need an outline knowledge so they can cooperate with the Bursar to provide relevant finance information and reports for the Academy.

**8.2** The accounts are completely different from schools' consistent financial reporting (CFR) returns and need to follow charities and company law requirements. The accounts are normally for an accounting period ending at 31 August. They can be completed by the school bursar. Academies' accounts have to be audited by an external auditor appointed and paid for by the academy; this audit takes place in the autumn term each year.

**8.3** The Bursar and Secretary will need to agree a finance reporting timetable which becomes part of the academy agenda plan.

**8.4** An academy is recognised as an exempt charity for UK tax purposes and more details on this area can be found here:

[http://www.charity-commission.gov.uk/charity\\_requirements\\_guidance/](http://www.charity-commission.gov.uk/charity_requirements_guidance/)

<http://www.charity-commission.gov.uk/Publications/cc48.aspx#7>

## 9 USEFUL LINKS

<http://www.education.gov.uk/academies>  
<https://www.ssatrust.org.uk/Academies/Pages/default.aspx>,  
(<https://www.ssatrust.org.uk/leadership/governors/Pages/Programmesforschoolgovernors.aspx>).  
<http://www.education.gov.uk/schools/leadership/typesofschools/academies/academiesfaq>  
<http://www.essexclerks.org/node/862>  
<http://clerktogovernors.wordpress.com/2011/02/16/considering-academy-status-useful-links/>  
<http://www.icsa.org.uk/about-icsa/our-networks/wccsa>  
<http://www.companieshouse.gov.uk/about/guidance.shtml>

## 10 FURTHER TRAINING

This guidance assumes that you are a clerk with previous experience of clerking a governing body meeting. The Essex Clerks' Association is planning to run a number of courses on converting from a Governing Body Clerk to an Academy Secretary and you are strongly advised to seek early training.

## 11 THE ESSEX CLERKS' ASSOCIATION NEEDS YOU

**11.1** This report was produced for the ECA by experienced clerks and secretaries, willing to share their experience and knowledge with their colleagues.

**11.2** The ECA is funded in 2011 by a generous grant from ECC Governor Services plus individual, voluntary contributions (£15) from Essex, Southend and Thurrock Schools.

**11.3** In light of government cuts to Local Authorities it is possible that the ECA's 2012 income will be based solely on contributions from schools.

**11.4** ECA's purpose is to support all clerks in Essex schools through termly updates, training, a dedicated website, regular briefing papers and an annual clerks' conference, as well as individual help and guidance from experienced colleagues.

**11.5** Our continued existence is dependant on the majority of schools in Essex agreeing to register secretaries and clerks with us.

**11.6** Finally we need the feedback from current Academy Secretaries. Each Academy is unique so everybody's experience will be slightly different. Any feedback would be useful so we can update this document and continue to issue detailed advice in the future.