Becoming an Academy, Establishing or Expanding a Multi-Academy Trust

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Scope

This guide is a summary of the key HR responsibilities, implications and processes involved in becoming an Academy, establishing or expanding a Multi-Academy Trust (MAT) i.e.:

* A Local Authority (LA) School converting to a stand-alone Academy (with or without a sponsor).
* Establishing a MAT.
* MATs expanding to include more Schools

This summary guide covers the relevant education and employment legislation as well as the practical aspects of Academy conversion or MAT expansion. The DfE Convert to an academy: guide for schools is essential reading. For specific advice please contact EPM. This HR guide deals solely with the legal framework and responsibilities and liabilities for the employer in relation to staff, and the protection for employees.

1. Employment Law

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) (TUPE) places rights, responsibilities and liabilities on both the old and new employers, as well as providing protection for employees during and after the process of becoming an Academy or joining a MAT.

Essentially, there are two parties to the transfer process:

* Transferor: the current employer (LA, governing body or MAT)
* Transferee: the new employer (the academy trust or MAT)
* In summary TUPE:
* Automatically transfers all rights and liabilities in relation to each employee from the current employer (“the transferor”) to the new employer (“the transferee”).
* Imposes an obligation on the current employer (“the transferor”) to provide data relating to the transferring employees to the new employer (“the transferee”) in the form of prescribed Employer Liability Information (ELI) and wider due diligence if requested, at least 28 days prior to the transfer.
* Imposes an obligation on both parties to inform and consult with employee representatives about the transfer and any measurers (being any ‘action, step or arrangement’) – [TUPE reg. 13 and 14].
* Protects an employee’s terms and conditions of service, their continuity of service and against dismissal.

Although the concept of TUPE is straightforward, the practicalities can be complex, and it is important that the transferee (new employer) follows the process carefully in order to minimise the risk of exposure to legal claims from employees.

1. Process: A Practical Guide

The TUPE obligations on the academy process can be simplified into the following steps:

**The TUP Step 1** – Inform and consult

TUPE places an obligation upon the transferor and transferee to inform and consult with the ‘appropriate representatives’ of their employees who may be affected by the transfer regarding certain prescribed information (see below). Where the employer recognises trade unions in respect of all the affected employees, the ‘appropriate representatives’ will be representatives of the recognised trade unions for this purpose. The obligation has no time limit but needs to be undertaken early enough before the proposed transfer to make it effective.

Trade union representatives must be informed of the following information:

* The fact that the transfer of employer is to take place;
* The approximate date of the proposed transfer of employer;
* The reason for the proposed transfer of employer;
* Any legal, economic and social implications of the transfer of employer for the affected employees;
* The proposed transfer would affect all permanent employees, or employees engaged on fixed-term contracts, where the end date extends beyond [date before the transfer date] who are currently employed by the transferor;
* If any agency workers are used, how many the School or Academy is using, in which parts of the undertaking they are working and the types of work they are carrying out;
* Any measure which the transferee (new employer) will take as a result of the transfer, or if no such measures will be taken, this should be stated. A ‘measure’ is any ‘action, step or arrangement’ which the new employer intends to implement and includes the effect of transfer to the new employer on the contracts of employment of the affected employees.

The purpose of consultation is to consider the views of staff and trade unions before any final decision to implement the transfer of employer is reached. If any measure is envisaged that will affect the employees, trade union representatives must be consulted with a view to seeking their agreement.

Any representations made must be considered, a response given and, if representations are to be rejected, the reasons for doing so stated. Historically, the expectation was that measures would be very few and far between and standard documentation reflects this. However, this may change, especially with the establishment of more complex MAT structures. Should you believe that it is necessary to make changes to staff terms and conditions on transfer you are advised to discuss the matter with EPM.

Measures on transfer might include:

* Change of pay date with the new employer (“the transferee”)
* Introduction of new benefits or new non-contractual policies provided by the new employer (“the transferee”)
* Discontinuation of discretionary benefits provided by the current employer e.g. redundancy package
* Discontinuation of the current employer’s Local Agreements
* Discontinuation of current employer’s job evaluation scheme

There are potential financial penalties for failure to fulfil the obligation to inform and consult.

Although the obligation to inform and consult only applies to employees’ representatives it is advisable to involve staff in the process as much as possible. Effective employee communication and consultation, coupled with engaging in early discussions with trade union representatives, will help to avoid any misconceptions or uncertainty regarding the process. The ’people part’ of the process is vital to retain positive employee relations and to ensure employee engagement in the process.

**Step 2:** Documentation, Indemnities and Employee Data

The DfE [Convert to an academy](https://www.gov.uk/guidance/convert-to-an-academy-information-for-schools): guide for schools provides information on the documentation you will need.

The current employer (“the transferor”) must provide certain prescribed information (Employee Liability Information (ELI)) relating to staff to the new employer (i.e. the Academy or MAT). This is so the new employer (“the transferee”) can understand its future obligations, establish any liabilities that it will inherit, consider the implications of those and, establish if any indemnities are appropriate (an indemnity is a promise to accept liability for another’s loss). The ELI must be provided at least 28 days before transfer. However, it is helpful if the current employer (transferor) provides the information as early as possible. In addition to the ELI, the new employer (transferee) may wish to ask further ‘due diligence’ questions of the current employer (transferor) so it can fully establish the responsibilities it will be taking on. EPM can provide an ELI template and suggested standard due diligence questions to assist the transferee in requesting this information from the transferor.

The ELI information is incorporated into the legal staff transfer document: the Commercial Transfer Agreement which must be drawn up by a lawyer and covers all liabilities and indemnities. The DfE provides a template: [Commercial Transfer Agreement.](https://www.gov.uk/government/publications/academy-commercial-transfer-agreement)

1. EPM’s Professional Advice and Expertise

We offer comprehensive advice and support with the statutory TUPE requirements as well as practical guidance for a seamless transfer process. EPM’s work with over 75 MATs has offered a streamlined and professional approach to HR and Payroll management. An effective approach, experienced team and sector knowledge have enabled EPM to build a market-leading reputation and a national client base of over 1300 Schools across 65 Local Authority areas. We work closely with Academy Leaders in order to understand the Trust’s vision and objectives in order to provide relevant and appropriate HR advice, tailored to requirements.

As part of the full HR service, at no additional cost, we can provide advice and support in the following areas:

* Template Timetable for TUPE for New Employer (Transferee) (see Appendix 1)
* A model ELI/due diligence checklist
* A model letter to staff confirming the new employer
* A presentation to staff and trade union representatives regarding the implications of TUPE
* Advice on any ‘measures’ that you may need to include within the consultation period
* Advice on the transfer of staffing information
* Model staffing policies and procedures suitable for use within an academy for consultation
* A draft consultation letter for staff and trade unions
* Attend any staff/trade union consultation meetings
* Advice in relation to “TUPE surgeries”/one-to-one meetings
* Advice on any representations received from trade unions or staff during the consultation period

As part of the full HR service, at no additional cost, and providing that EPM’s services are retained following the transfer, we can provide:

* Advice on terms and conditions for transferred staff
* Advice on terms and conditions for new staff
* Advice on trade union recognition and consultation with trade unions post-conversion
* Advice on any inherited employee relations issues (e.g. sickness, disciplinary, capability etc.)
* Advice on any restructuring and redundancy following a TUPE transfer
* A model contract for newly appointed teachers and support staff

Please note that the Service Level Agreement does not cover attendance at one-to-one meetings.

1. Post Conversion Considerations

EPM can also provide advice on the following issues:

Working with Trade Unions

* Is a Trust obliged to recognise unions? (Recognition Agreements)
* Facilities time; should Academies continue to contribute to LA arrangements, are there alternative models?
* Is a joint consultative committee (JCC) arrangement required? If so, is this internal/local/ regional/national?

Terms and Conditions of Employment

* Are National Conditions (STPC and Burgundy Book/Green Book) fit for purpose for a MAT?
* Life beyond a “quick academy conversion” – is post TUPE harmonisation achievable?
* Academy contracts – mobility clauses and other non-LA terms.
1. Links to Further Reading

[Business transfers, takeovers and TUPE](https://www.gov.uk/transfers-takeovers)

[BIS Guide to the 2006 TUPE Regulations](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275252/bis-14-502-employment-rights-on-the-transfer-of-an-undertaking.pdf)

[Convert to an academy: guide for schools](https://www.gov.uk/guidance/convert-to-an-academy-information-for-schools)

[DfE Model academy commercial transfer agreement (CTA)](https://www.gov.uk/government/publications/academy-commercial-transfer-agreement)

[ACAS TUPE guidance](http://www.acas.org.uk/index.aspx?articleid=1655)

Appendix 1

Template Timetable for TUPE for New Employer (Transferee)

|  |  |  |  |
| --- | --- | --- | --- |
| Step | Date | Event/Action | Action by |
| 1 |  | Appoint a Legal Adviser to deal with the Commercial Transfer Agreement. |  |
| 2 |  | New employer (transferee) provides current employer (transferor) with: Proposed timetable for the transfer detailing: Decision about and letter to unions about transfer and proposed measures; Staff information meeting (No 4 below); TU consultation meeting (No 3 below); Date of transfer. A draft joint TUPE information and consultation letter from the transferor and the LA/School/Trust to recognised unions of the affected staff. |  |
| 3 |  | New employer (transferee) and current employer (transferor) meet with the recognised unions to inform them about the transfer and any proposed measures. EPM will attend on request. (Helpful to arrange this on the same day as the staff meeting - No 4 below). |  |
| 4 |  | New employer (transferee) and current employer (transferor) meet with Transferor’s staff to advise them regarding: The transfer and the proposed date; The rationale for the transfer; Employment protection provided under TUPE; Any proposed measures at this stage; The discussions with trade unions; Data to be shared with the Trust by the transferor; management arrangements post transfer and any other practical changes e.g., change in uniform. Staff to be given the opportunity to ask any questions. Union representatives can be present at the staff briefing. EPM will attend on request. |  |
| 5 |  | New employer (transferee) asks current employer (transferor) to provide employee liability information (ELI) and where applicable asks further due diligence questions. Current employer is advised to check transfer data with employees. Legally the information must be provided to the new employer at least 28 days prior to the date of transfer. |  |
| 6 |  | New employer (transferee) provides current employer (transferor) with payroll spreadsheet detailing what employee information is required for payroll purposes. |  |
| 7 |  | If not already in place, new employer (transferee) opens a bank account in the new employer’s name. Ensure a new BACS number is set up with the account. |  |
| 8 |  | Payroll spreadsheet to be completed by transferor and sent to new employer along with P45s. |  |
| 9 |  | New employer (if not already an Academy) Contact TPS Advise of conversion to Academy Status and set up login details for the STU (please forward to EPM if you wish us to access STU on your behalf). Contact LGPS Advise LGPS of the Academy conversion and seek confirmation of employer pension contribution rate. Contact HMRC A new PAYE reference is required from the date of conversion. If EPM provide payroll, we can resolve this for the School. Contact the Pension RegulatorsIt is the School’s responsibility to end the original PAYE reference number with the Pension Regulators.Contact third party providers (AEO’s, childcare vouchers) to notify them of change of employer if applicable. |  |
| 10 |  | New employer seeks final assurance of accuracy of and any changes to the employee liability information and where applicable due diligence since its original provision. |  |
| 11 |  | Transfer date. |  |
| 12 |  | Transferred employees sent a welcome letter by the new employer. |  |

Appendix 2

Employee Liability and Due Diligence Checklist

This document shows all the information that is expected to be provided to the new employer (transferee) when a Maintained School becomes an Academy school or joins a MAT. It is based on the DfE Commercial Transfer Agreement. The text highlighted in red is what Employee Liability Information is required under Reg 11 of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

|  |  |
| --- | --- |
| Personal File | Date Received |
| Application form  |  |
| Interview notes  |  |
| References |  |
| Medical clearance  |  |
| Copies of qualification  |  |
| Copies of right to work documentation  |  |
| Disqualification form (if applicable)  |  |
| Prohibition check outcome (if applicable)  |  |
| Offer letter  |  |
| Occupational Health reports relating to a current absence/permanent medical conditions  |  |
| Appraisal forms covering past 3 years  |  |
| Any details confirming changes to terms and conditions in the last 12 months  |  |
| Information relating to any current absence or any notification of a future absence  |  |
| Any informal disciplinary cautions  |  |
| Any individual risk assessments  |  |
| Any requests for early retirement or flexible working  |  |
| Any leave taken in last 3 years  |  |
| Periods of time off for training  |  |
| Study agreements |  |
| Any disciplinary/capability information involving a warning (Please note that ELI only requires a two year period but no period of time is referred to in the Commercial Agreement)  |  |
| Statement of particulars/Contract of employment and any amendments  |  |
| Job description  |  |
| Grievances covering 2 year period of time  |  |
| Annual leave card (if applicable) |  |
| Work permits  |  |
| The new employer (the "transferee") must carry out its own checks on its new employees' original immigration documentation within 60 days of the transfer |  |
| Details of any other benefits in kind  |  |

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| --- | --- |
| HR Related School Files/Records | Date Received |
| Training, including any mandatory training  |  |
| Accident Forms and associated documentation (6 year period)  |  |
| Single central record for employees due to transfer  |  |
| Directed time budget  |  |
| Brief details of current and historic labour relations and any pending negotiations (including any agreed pay increases) |  |
| Risk assessments for current and previous 3 years  |  |
| Details of any enquiry, correspondence or contact between the Governing Body and the Equality and Human Rights Commission, the Health and Safety Executive and HMRC concerning employees |  |
| Details of any health and safety complaints, recommendations or claims within the last 5 years |  |
| Details of all consultancy agreements or self-employed personnel who are or may actually be employees, including casual staff |  |
| Details of all individuals in the undertaking working on training, work experience or similar schemes |  |
| Details of any litigation threatened or pending against the Governing Body or employed individuals |  |
| Details of employee and employer contributions over the last 3 years and details of when contributions are paid |  |
| Details of any court judgment or current employment tribunal award in respect of any employee dispute within the last 2 years |  |
| Copies of any individual, collective and workforce agreements entered into pursuant to the Working Time Regulations |  |

|  |  |
| --- | --- |
| HR Related School Files/Records | Date Received |
| A copy of any job evaluation scheme  |  |
| Grievance procedure/bullying & harassment procedure  |  |
| ICT acceptable use policy  |  |
| Equal opportunity policy  |  |
| Disciplinary procedure  |  |
| Maternity pay and paternity leave/adoption leave and pay/shared parental leave and pay/unpaid parental leave |  |
| Annual leave policy  |  |
| Special or discretionary leave policy  |  |
| Redundancy policy/procedure including redundancy pay/any redeployment procedures  |  |
| Sickness absence policy/procedure and sick pay entitlements  |  |
| Staffing and pay structure, pay policy  |  |
| Long service awards policy  |  |
| Trade union recognition agreement as well as a list of the representatives Including details of any health and safety committees/representatives  |  |
| Add any other collective agreements  |  |
| Burgundy Book (if applicable) [Burgundy Book Conditions of Service for School Teachers](https://schools.epm.co.uk/wp-content/uploads/2022/07/Burgundy-Book-Conditions-of-Service-for-School-Teachers.pdf) |
| School Teachers Pay and Conditions Document (if applicable) [School Teachers Pay and Conditions - EPM](https://schools.epm.co.uk/knowledge-bank/stpc/) |
| Green Book (if applicable) [Green Book: National Agreement on Pay and Conditions of Service - EPM](https://schools.epm.co.uk/knowledge-bank/green-book-national-agreement-on-pay-and-conditions-of-service/) |