

Academy construction projects – know your legal duties

A brief guide



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1. Introduction

Why have we created this guide?

Embarking on a construction project is exciting for any school, academy or Multi-Academy Trust (MAT). After all the planning and fund raising, your dream of a new sports hall, modular classrooms, roofs, boilers or replacement kitchen is getting closer. **It is tempting to think you can just appoint a builder and get on with it!**

In fact, the regulations around planning, financial controls and Health & Safety on construction sites make things more complicated than they can first appear. And whether you are having maintenance or new building work carried out, you will have legal duties to fulfil. You are even responsible for ensuring everyone on site has an enhanced DBS check to work around children.

If you don't know your Construction (Design and Management) Regulations 2015 (CDM 2015) from your Contractors Health and Safety Assessment Scheme (CHAS), it is wise to seek professional guidance about what is involved. It's about avoiding costly mistakes, as well as protecting your staff, pupils and parents – and your reputation. **If something goes wrong you could face prosecution, and lasting damage to your OFSTED rating.**

We hope this ebook will answer many of your questions.

The Surveyors to Education Team



“S2e have transformed our school to accommodate more students and to allow us to upgrade existing parts, with minimal fuss and disruption”

St Martins Catholic Academy

2. Planning consent and building control

Know your statutory duties

Many academies and MATs, particularly those who only occasionally have building work done, are not experts in construction projects.

It is therefore essential to make sure you **know your statutory duties**.

As set out in the **Town and Country Planning Act 1990**, a planning application may be required for the change of use of an existing building or land, for the alternation or refurbishment of a building as well as for the construction of a new building.

However, it is not always clear cut with **permitted development rights** allowing specified developments to proceed without the need for a full planning application: *for example, for minor operational works that would not exceed 25% of the existing floor space.*

While Planning Consent (or Permission) deals with the appearance of the proposal and the effect it will have on neighbouring properties and the general environment, **Building Control** deals with the technical and construction details of building works to ensure the **Health & Safety** of people in and around the building.

“S2e were able to raise over £5m and project manage two really big builds whilst ensuring that the impact on our pupils was minimal and delivering on all our other planned maintenance projects.”

*Harinder Sidhu,
Associate Vice Principal*

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3. Landlord consent

Understand what permissions are required

Obtaining Landlord Consent and ensuring compliance with your Academy Order are crucial. If you do not own your estate's land and buildings, you will need to obtain Landlord Consent to make alterations to the premises. Even if you do own your estate, you need to understand what legal interests there are in it.

For example:

- If you occupy freehold land, the title may include restrictive covenants that limits you.
- If you have a leasehold interest, the terms of the lease may limit the things you can do.
- If the land is owned by a charitable trust, the charity's governing document may limit what you can do or require you to fulfil specific charitable objects.
- If you are a school with a religious character, you will need the consent of the trustees of the school for any transactions involving the land and buildings.
- If you have granted leases or other usage agreements to third parties, such as utility companies or local sports teams, these may also limit what you can do.



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4. Procurement

Evidence that public funds have been spent lawfully

Procurement must comply with the **Academies Financial Handbook** – you need to be able to prove robust audit trails and sound procurement strategies, demonstrating that public funds have been used as intended by law.

You must be able to show that:

- spending has been for the purpose intended and there is probity in the use of public funds
- spending decisions represent value for money
- internal delegation levels exist and are applied
- a competitive tendering policy is in place, and the procurement rules and thresholds in the Public Contracts Regulations 2015 are observed
- professional advice is obtained where appropriate

The DfE strongly recommends its **frameworks of quality-checked suppliers of goods and services** to make buying simpler and quicker, and provide better value for money.

Surveyors to Education (S2e) can provide the appropriate professional advice to ensure you take all the right steps.



Procurement Checklist

- Ensure purposeful spending
- Value for money
- Internal delegation exist
- Competitive tendering
- Professional advice

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5. Asbestos

A survey must be undertaken before any building project

Disturbing asbestos or asbestos-containing materials can let potentially dangerous asbestos fibres escape into the air. An **Asbestos Refurbishment and Demolition Survey** must therefore be undertaken before any building project gets underway.

Asbestos can be located in Artex ceilings, water tanks and floor tiles.

Before being banned in 1999 it was often used to **lag pipes**, for **guttering and soffits**, on **insulation panels**, in **flues** and for many more purposes. Identifying and if necessary stripping it out must be carried out by **trained asbestos removal specialists**.



I never let a project start until we have verified there is no asbestos present by commissioning a refurbishment/demolition survey. This is not something you can leave to chance.

Pat Rogers,
S2e Health & Safety Advisor



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6. CDM Regulations 2015

Ensure construction work is carried out safely

You must check the Construction (Design and Management) Regulations 2015 (CDM 2015) for your legal duties in appointing a **Principal Designer** and **Principal Contractor** to ensure Health & Safety on your site.

The CDM regulations have been set out by the **Health and Safety Executive** to ensure construction work and repairs are undertaken safely and without damaging workers' and other **people's health**. Complying with CDM 2015 will also help make sure that your building is **safe** to use and maintain, and that it gives you **good value**.

If your project will involve more than one contractor, you will need to appoint (in writing) an **Architect/Designer, Principal Designer** and a **Principal Contractor**. You must vet their qualifications and verify their references.

You are also responsible for discussing with them before work starts – and throughout the build – how risks ranging from **falls from height** to **fire** and **collapse of structures** are being managed.

At S2e we are experienced Principal Designers and will co-ordinate all the Health & Safety aspects of your project.



“S2e were able to secure funding for our kitchen refit through a CIF bid. They quickly put a plan together to address safety issues such as poor ventilation and the absence of a gas safety interlock system, as well as making sure the new layout and materials used did not pose a fire risk.”

*Ian Joyce, Facilities Manager
The Winstanley School*

7. Choosing contractors

Obtain all the documentation needed to meet legal obligations

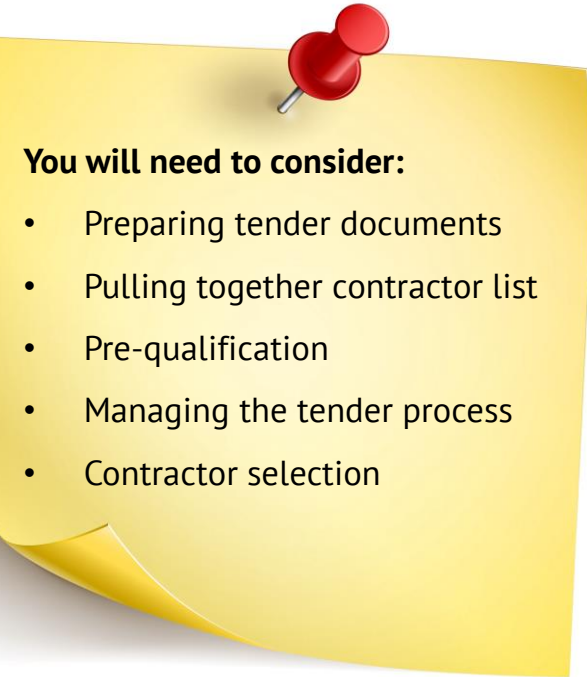
Before choosing contractors you must verify they have the qualifications to meet all Health & Safety and legal requirements.

These include **background checks** on:

- previous incidents
- financial stability
- CHAS (Contractors Health and Safety Assessment Scheme)
- Construction Line
- enhanced DBS (Disclosure and Barring Service)
- SMSTS (Site Management Safety Training Scheme)

How can S2e help?

S2e can support you in choosing **qualified** designers and contractors, ensuring every CDM 2015 requirement is met, obtaining the documentation needed to meet your legal obligations and giving you the **confidence** that you have everything on track.



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8. Obtaining adequate design information

Comply with suitability and spatial requirements

It is your responsibility to obtain adequate design information.

This includes:

- design briefs
- design and suitability/durability studies
- compliance with Building Bulletins
- compliance with DfE spatial guidance
- asbestos surveys
- structural and M&E (mechanical and electrical systems) information
- pre-construction H&S packs.



“S2e were able to secure £2.1m to build a new sixth form block. They pulled out all the stops thanks to their forward thinking and value for money proposal”

*Ben Elliot, Director of Corporate Services
Higham Lane School*

9. Appointing a Contract Administrator

Independent, impartial and fair decision making

You should appoint a Contract Administrator (CA) regulated by the **RICS** (Royal Institute of Chartered Surveyors).

The CA will act on your behalf and thereafter become responsible for instructing the project's requirements as laid down within the contract.

They should:

- have the knowledge and skills to understand the relevant contractual provisions and how to apply them
- act in a manner which is independent, impartial and fair when making decisions
- have in-depth knowledge of construction and the inter-relation between trades and construction operations so the changes and their impact can be traced
- be able to set up appropriate office procedures and record keeping
- understand the different types of critical path and project programming techniques.

This a role that S2e can fulfil.



Key CA Tasks:

- Charing meetings
- Inspecting works
- Giving instructions
- Applications for time extensions
- Certifying the date of completion
- Setting the final account

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10. In summary

Chartered building surveyors specialising in education

We hope this ebook has been a useful guide to the steps you need to take to comply with statutory requirements before embarking on any academy or MAT building project.

As qualified chartered building surveyors specialising in education, we have proven project expertise and can advise on any aspect of your legal obligations when it comes to construction work.

Our experience helps make every project stress free and ensures you get the best value for every penny you invest in the future of your academy or MAT.

If you would like to discuss any of the information in this eBook or have any questions, please contact us on 0116 5070130 or email enquire@s2e.org.uk.

The Surveyors to Education (S2e) Team

“All works were completed in good time and had minimal impact on the day to day running of our school. Overall, we are extremely pleased with everything that S2e has been able to deliver.”

*Mark Teesdale, Facilities Manager
Welland Park Academy*

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