



Department
for Education

Schools causing concern

**Guidance for local authorities and
Regional Schools Commissioners on how
to work with schools to support
improvements to educational performance,
and on using their intervention powers**

September 2019

Contents

Key principles	4
Coasting and the school support offer	5
Summary	6
About this guidance	6
Effective from date	6
Expiry or review date	7
What legislation does this guidance refer to?	7
Who is this guidance for?	7
Terminology	8
Chapter 1: Introduction	10
Chapter 2: Maintained schools ‘eligible for intervention’	12
Warning notices in maintained schools	12
Teachers’ pay and conditions warning notices	16
Issuing a warning notice to a maintained school	17
Actions local authorities and RSCs may take in maintained schools that have failed to comply with a warning notice	18
Chapter 3: Specific powers of local authorities and the Secretary of State in maintained schools eligible for intervention	21
Local authority and Secretary of State powers to require the governing body to enter into arrangements	22
Local authority and Secretary of State powers to appoint additional governors	23
Local authority and Secretary of State powers to appoint an Interim Executive Board (IEB)	24
Power of the local authority to suspend the delegated authority for the governing body to manage a maintained school’s budget	27
Power of the Secretary of State to direct a local authority on the appointment of interim executive members	27

Power of the Secretary of State to take over responsibility for interim executive members	28
Power of the Secretary of State to direct the closure of a maintained school	28
Power of the Secretary of State to make an academy order	29
Power of the Secretary of State to revoke an academy order	31
Chapter 4: Academies causing concern	32
Academies judged inadequate	33
Financial intervention in academies	34
Chapter 5: Other local authority duties	35
School performance	35
Special Educational Needs (SEN)	36
Alternative Provision	36
Safeguarding	37
Chapter 6: Governance	38
Additional non-statutory guidance relating to local authority oversight of governance in maintained schools	38
Schools causing concern and charity law	39
Chapter 7: Pupil referral units	41
Further sources of information	43
Legislation	43
Guidance	43
Other departmental resources	44

Key principles

On 4th May 2018, the Secretary of State announced principles for a clear and simple accountability system¹.

These principles aim to provide school leaders with greater clarity and transparency on the circumstances in which we will intervene in schools; how we will identify and support schools that are underperforming; and ways of working with schools.

In practice, this means that:

- Regional Schools Commissioners (RSCs) will only mandate academy conversion, leadership change or trust transfer of a school in relation to educational standards if Ofsted has judged it inadequate.
- RSCs will not use educational standards warning notices unless the school has already received an Ofsted inadequate rating.
- RSCs will not use formal intervention powers as a result of a school meeting the coasting definition.
- RSCs will not conduct uninvited visits to schools.
- High quality and effective governance is key to the success of any school. As such, the department is committed to ensuring robust governance in all schools. Where breakdowns in governance occur, The RSC and Education and Skills Funding Agency (ESFA) will continue to use their powers to hold schools to account for their governance and financial management regardless of the school's Ofsted rating. Both maintained schools and academies will be held to account equally and RSC's will continue to challenge underperformance in both types of school.

RSCs will always approach academy trusts, local authorities and in the case of schools with a religious character, the relevant religious body, not individual schools (unless the school is a single academy trust).

The department remains committed to academy conversion as a positive choice for schools and will continue to aid conversion as it has done previously.

¹ More information regarding these changes can be found here:

<https://www.gov.uk/government/publications/principles-for-a-clear-and-simple-school-accountability-system>

Removal of the coasting measure and the school support offer

On 3 May 2019, the Secretary of State announced the removal of the 'floor' and 'coasting' standards and confirmed that from September 2019 we will use Ofsted Requires Improvement judgements as the sole method of identifying schools for an offer of improvement support.

From September 2019, the department will no longer publish coasting thresholds and RSCs will take no formal action as a result of a school meeting the coasting definition. Whilst local authorities retain the power to intervene, the department is unlikely to support action against a school on the basis of coasting data alone.

The Secretary of State confirmed that from September 2019 we will use an Ofsted 'Requires Improvement' judgement as the sole method of identifying schools for an offer of improvement support.

This support offer is a way of supporting schools with the capacity to improve to do so quickly, helping the existing leadership team find and access support that is right for their circumstances. Schools with two consecutive requires improvement judgements will be eligible for more intensive support.

Support will be optional and we will always approach academy trusts local authorities (and in the case of schools with a religious designation, the relevant religious body) first, not individual schools (unless the school is a single academy trust) to inform them about the offer of support. It will be for the academy trust or maintained school to make the final decision on whether to accept the offer. Support will come from either:

- an academy trust;
- an accredited system leader, such as a teaching school; or
- a school improvement provider using evidence-based programmes.

Summary

About this guidance

This is statutory guidance for local authorities given by the Department for Education, on behalf of the Secretary of State. Section 72 of the Education and Inspections Act 2006 places a statutory duty on all local authorities in England, in exercising their functions in respect of maintained schools causing concern, to have regard to any guidance given from time to time by the Secretary of State.

This guidance covers:

- maintained “schools causing concern” (within the meaning of section 44 of the Education Act 2005);
- maintained schools that are “eligible for intervention” (within the meaning of Part 4 of the Education Act 2006);
- other maintained schools about which the local authority and/or Secretary of State have serious concerns which need to be addressed²; and
- academies causing concern.

It sets out the factors local authorities and RSCs will consider, and the process they will follow in order to decide the right approach to supporting a school to improve.

The Secretary of State’s powers in this area are exercised by RSCs who are expected to follow this guidance. For the purpose of this guidance, it will generally be the RSC who is referred to as using the Secretary of State’s described powers.

This guidance primarily sets out how local authorities and RSCs will intervene at a school level. RSCs will always approach academy trusts and in the case of schools with a religious character, the relevant religious body, not individual schools, about trusts’ leadership and oversight of their schools.

Effective from date

This guidance is effective from September 2019.

² Powers of intervention regarding Pupil Referral Units are included in the alternative provision statutory guidance: <https://www.gov.uk/government/publications/alternative-provision>

Expiry or review date

This guidance will be kept under review and updated as necessary.

What legislation does this guidance refer to?

- School Standards and Framework Act 1998
- Education Act 2002, including Schedule 2
- Education Act 2005
- Education and Inspections Act 2006 (“the 2006 Act”)
- Apprenticeships, Skills, Children and Learning Act, 2009 (which amends the 2006 Act)
- The School Governance (Transition from an Interim Executive Board) (England) Regulations 2010 (“Transition Regulations”)
- Academies Act 2010
- Education Act 2011 (which amends the 2006 Act, and Schedule 14)
- Children and Families Act 2014
- Education and Adoption Act 2016 (which amends the 2006 Act and the Academies Act 2010)

Who is this guidance for?

- Local authorities, who must have regard to it as statutory guidance on how they use their powers of intervention in their maintained schools.
- RSCs, who will be expected to follow this document as guidance on how they will exercise the Secretary of State’s powers of intervention in maintained schools causing concern and for how they will take formal action in academies causing concern.
- Dioceses, school foundations, governing bodies of maintained schools and academy trusts will also want to be aware of this guidance and the implications for their schools.

- Others, such as headteachers, school/trust staff, parents and carers, who may find it useful.

Terminology

Maintained schools and academies

Throughout this guidance, “maintained schools” means local authority maintained schools including maintained special schools (and is not referring to academies). Where this guidance refers to “academies” this should be taken to include free schools, studio schools and University Technical Colleges (but is not referring to maintained schools). Where the guidance refers to “schools”, this indicates it applies to both maintained schools and academies.

Pupil referral units

Pupil referral units (PRU) are maintained by the local authority, but are not included within the definition of a ‘maintained school’. Chapter 7 gives further advice on the Secretary of States intervention powers in PRUs.

Schools with a religious character

As set out in the School Standards and Framework Act 1998 (SSFA 1998), a school with a religious character is any school that has been designated as such by an order made by the Secretary of State³.

Trustees of the School

The trustees of the school are the members of the foundation which established the school. In foundation schools or voluntary schools, the trustees are therefore the members of the foundation which established the school.

For schools and academies with a religious character the trustee would be the:

- Church of England
- Catholic Church
- other religious authorities

³ Section 69 of the School Standards and Framework Act 1998.

Academy trustee

In an academy, the trustee (an academy trustee) refers to those who sit on the board of an academy trust. They are also the company directors. In Church academies they will be referred to as 'directors'.

Charity trustee

The academy trustees (members of the board) are company directors and also charity trustees⁴. In Church academies however, those on the board are referred to as 'directors' and the term 'trustees' is reserved for those on the board of the separate trust that owns the land.

In foundation and voluntary schools the governing body (a corporate body created under the SSFA 1998) is a charity and the governors are its charity trustees. Some foundation schools have a separate charity as a foundation which holds the title to the land and buildings on trust for the provision of the school. The members of the trust are also its charity trustees.

The duties of charity trustees in relation to schools causing concern are set out in chapter 6 of this guidance.

⁴ See s.177 of the Charities Act 2011 which defines a charity trustee as 'the persons having the general control and management of the administration of a charity'.

Chapter 1: Introduction

We are building a supportive schools culture in which local authorities and RSCs work with school leaders to drive school improvement for the benefit of pupils and parents. At the same time, it is essential that action is taken wherever a school is judged inadequate, or where there is financial mismanagement or failure of governance. Optional school support will be offered to schools that have been judged as 'requires improvement' by Ofsted. Intervention is different to school support and refers to the formal action taken by local authorities and RSCs in schools that are causing concern. Interventions are about acting swiftly to address underperformance and financial or governance failures, and helping schools to deliver the best outcomes for their pupils.

This guidance describes the processes local authorities and RSCs may take in schools that are eligible for intervention within the meaning of Part 4 of the Education and Inspections 2006 Act. These include:

1. **Schools that have failed to comply with a warning notice** – Local authorities may give warning notices to their maintained schools where they have concerns about unacceptable educational performance, a breakdown in leadership and governance, or where the safety of pupils or staff may be being threatened. RSCs may give a warning notice to a maintained school where they have concerns about a breakdown in leadership and governance, or where the safety of pupils or staff may be being threatened. Where a maintained school does not comply with a warning notice, it will become eligible for formal intervention. The warning notice process for maintained schools is described in more detail in Chapter 2 of this guidance.
2. **Schools that have been judged inadequate by Ofsted** – An academy order must, in line with statutory requirements, be issued for all maintained schools that have been judged inadequate by Ofsted, requiring them to become sponsored academies. When an academy is judged inadequate by Ofsted, the RSC is able to terminate the funding agreement with the existing academy trust and move the academy to a new trust. The process for schools judged inadequate by Ofsted is described in more detail in Chapter 2 (maintained schools) & Chapter 4 (academies) of this guidance.

This guidance is statutory for local authorities, and sets out their role in relation to maintained schools that are causing concern. It also describes how RSCs will exercise the Secretary of State's powers to intervene in maintained schools, and how they will take action in academies that are causing concern.⁵

⁵ More information about RSCs, how they operate and how they are supported by their Headteacher Boards can be found here: <https://www.gov.uk/government/organisations/schools-commissioners-group>

The specific statutory powers of local authorities and RSCs to intervene in maintained schools are described in Chapter 4 of this guidance. Other local authority duties are set out in Chapter 6.

RSCs will address underperformance in academies on behalf of the Secretary of State as described in Chapter 4 of this guidance. Any further arrangements for addressing concerns in academies are set out in each academy's funding agreement.

This guidance describes the roles and responsibilities of local authorities and RSCs, and how they will work with others in the school system to ensure underperformance, financial mismanagement or governance failure is challenged and schools are supported to improve. This includes, academy trusts, governing bodies, foundation trusts, the relevant religious bodies and the trustees of any state funded school.

The Government is committed to protecting the ethos of schools with a religious character, and RSCs will ensure that their intervention arrangements safeguard the religious character and ethos of such schools, working closely with the relevant religious body. For all Church of England and Roman Catholic schools, this guidance should be read alongside the relevant Memorandum of Understanding⁶, which describes in further detail how RSCs and dioceses will work together to address underperformance concerns in those schools.

Where any school is run by a charity trustees (as is the case in academies, foundation and voluntary schools) or is on land held by the trustees of the school, local authorities and the Secretary of State will, in using their powers of intervention, have regard to charity law and the responsibilities of the various trustees. This is described further in Chapter 6.

⁶ More information about the memoranda of understanding can be found here: <https://www.gov.uk/government/publications/church-schools-and-academies-memoranda-of-understanding>

Chapter 2: Maintained schools ‘eligible for intervention’

This chapter explains how a maintained school may become ‘eligible for intervention’ within the meaning of part 4 of the Education and Inspections Act 2006. A maintained school will be ‘eligible for intervention’ if it:

- Has failed to comply with a warning notice; and/or
- Is judged inadequate by Ofsted.

Where a maintained school has become eligible for intervention, local authorities and RSCs have specific powers they may use to bring about improvement. These powers are covered in more detail in chapter 3. Local authorities and RSCs will exercise their discretion when deciding whether to use these powers.

Warning notices in maintained schools

Warning notices can be given to schools that are causing concern but are not currently eligible for intervention. Both RSCs and local authorities may issue warning notices but there are differences in the circumstances under which they may be issued.

Local authorities may issue warning notices to their maintained schools under the following circumstances:

1. the standards of performance of pupils at the school are unacceptably low and are likely to remain so⁷; or
2. there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, such standards of performance; or
3. The safety of pupils or staff at the school is threatened (whether by a breakdown of discipline or otherwise); or⁸
4. The governing body have failed to comply with a provision of an order under section 122 of the Education Act 2002 (teachers' pay and conditions) that applies

⁷ Low performance standards are explained in further detail in Section 60(3) of the Education and Inspections 2006 Act

⁸ Warning notices issued for unacceptably low performance, a breakdown in management or a threat to staff or pupil safety are named in legislation as ‘performance standards and safety warning notices’.

to a teacher at the school; or have failed to secure that the head teacher of the school complies with such a provision.⁹

RSCs will only issue a warning notice to maintained schools under the following circumstances:

1. Where there has been a serious breakdown in the way the school is managed or governed, which is prejudicing, or likely to prejudice, such standards of performance; or
2. Where the safety of pupils or staff at the school is threatened (whether by a breakdown of discipline or otherwise).

RSCs will only issue warning notices for low standards of educational performance in exceptional circumstances, such as where there are links to poor financial management and/or failures of governance.

Failure to comply with a warning notice will make a maintained school 'eligible for intervention' under Sections 60 and 60A of the 2006 Act. Local authorities and RSCs will use their discretion to decide whether the use of formal powers is necessary.

Roles of local authorities and RSCs

Local authorities should use warning notices to hold their schools to account and should work together with RSCs where they judge that a warning notice is necessary¹⁰.

RSCs will issue a warning notice on grounds other than educational standards where, in the RSC's opinion, it is appropriate to act. Examples of this may include where the local authority has failed to act swiftly enough in a specific case, has generally not acted swiftly or robustly enough in the past, or lacks capacity to act. The Secretary of State's power to issue a warning notice takes precedence over the local authority's, so the RSC can also act where the local authority issues a warning notice that the RSC does not consider to be robust enough, or where the RSC does not consider that the action required by a local authority warning notice is robust enough¹¹.

The local authority must give a copy of any warning notice they issue to the relevant RSC; similarly, an RSC must give a copy of any warning notice they issue to a maintained school to its local authority.

⁹ Warning notices issued for these reasons are named in legislation as 'Teachers' pay and conditions warning notices'.

¹⁰ Where action is needed urgently, for example where the safety of pupils or staff is threatened, the local authority may reasonably take action without having to wait to discuss the case with the RSC beforehand.

¹¹ Section 60 (4A)-(4B) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

In the case of a school with a religious designation, the local authority or RSC should raise concerns with the appropriate religious body at the earliest opportunity.

Low standards of pupil performance

The detail of what constitutes “low standards of performance” is set out in section 60(3) of the 2006 Act. Local authorities may continue to exercise their discretion when issuing warning notices on the grounds of low standards of pupil performance.

In May 2018 the Secretary of State issued principles for a clear and simple accountability system. As part of these principles the department will not seek to use its intervention powers for low standards of pupil performance unless the school has been judged inadequate by Ofsted. In practice this will mean that RSCs will only issue warning notices for low standards of performance in exceptional circumstances, for example, where there is good evidence of financial mismanagement or a breakdown in governance. In general, where Ofsted have inspected the school and issued a ‘requires improvement’ rating then the department will instead extend an optional offer of support. The department may, however, intervene in a school judged as ‘requires improvement’ on the basis of other evidence, such as evidence of a breakdown in governance.

RSCs may continue to issue warning notices to maintained schools in situations where there has been a breakdown in financial management and/or governance or where the safety of staff or pupils is threatened. RSCs may issue warning notices on these grounds regardless of the school’s Ofsted rating. Examples of the circumstances in which warning notices might be issued on these grounds are set out in the following sections.

Breakdown in the way a maintained school is managed or governed

Another ground for issuing a warning notice is that there has been a serious breakdown in the way the school is managed or governed, which is prejudicing, or is likely to prejudice, pupils’ standards of performance. High quality and effective governance is key to the success of any school. As such, the department is committed to ensuring robust governance in all schools. Where a breakdown in governance occurs, the local authority and the RSC will continue to use their powers to hold schools to account for their governance and financial management regardless of the school’s Ofsted rating.

Local authorities (or RSCs where, for example, a local authority has failed to act swiftly enough, either in a particular case or generally in the past, or lacks the capacity to do so) should identify additional support or consider issuing a warning notice to a maintained school where the governing body is failing to deliver one or more of its three core strategic roles resulting in a serious breakdown in the way the school is managed or governed. The decision to issue a warning notice would depend on the severity of the case.

The core strategic roles of a governing body are to:

1. Ensure clarity of vision, ethos and strategic direction;
2. Hold the headteacher and Senior Leadership Team to account for the educational performance of the school and its pupils, and the performance management of staff; and
3. Oversee the financial performance of the school and make sure its money is spent appropriately, and to secure value for money.

Evidence that governors may be failing to deliver on one or more of these strategic roles could include, but is not restricted to:

- evidence of poor financial management and oversight, such as consistent overspending of the school's budget beyond agreed thresholds.
- high governor turnover;
- a significant, unexplained change to their constitution;
- the governing body having an excessive involvement in the day to day running of the school¹²;
- lack of appropriate engagement with data. This might include, but is not limited to, data on pupil learning and progress, or staff recruitment; and/or
- not sufficiently managing risks associated with strategic priorities and school improvement plans.

These situations could all indicate a serious breakdown of management or governance that may prejudice standards. In such circumstances, the local authority (or RSC) may investigate and, where appropriate, take action early by issuing a warning notice.

In the case of a school with a religious designation, we would expect the local authority or RSC to raise concerns about governance with the appropriate religious body at the earliest opportunity and before any formal action is taken.

Where a local authority (or RSCs) have concerns about the quality of a maintained school's governance, they may consider recommending that the school commissions an

¹² Governors should act in line with the 3 core functions of governance as set out in the governance handbook. Excessive involvement in the operational running of the school may impair a governor's ability to carry out their role properly and in line with the 3 core functions of governance. More information on governance and the core functions can be found in the Governance Handbook in the 'further sources of information' section of this guidance.

external review of governance, before considering more formal intervention. Guidance is available on commissioning and conducting such external reviews¹³.

The Governance Handbook¹⁴ provides further information about requirements and expectations of governors, and provides links to additional guidance, support and best practice.

The safety of pupils or staff at a maintained school is threatened (whether by a breakdown of discipline or otherwise)

Where local authorities or RSCs are concerned that the safety of pupils or staff at a maintained school is threatened, whether by a breakdown of discipline or otherwise, they should issue a warning notice. We would expect local authorities to issue warning notices in these circumstances for schools they maintain, but RSCs can act where local authorities fail to act swiftly or lack the capacity to do so.

Local authorities and RSCs should have regard to the statutory guidance on roles and responsibilities for safeguarding: 'Keeping Children Safe in Education' and 'Working Together to Safeguard Children'¹⁵. The guidance makes clear what all education institutions (including academies and free schools) should do to safeguard children in their care.

Teachers' pay and conditions warning notices

Under section 60A of the 2006 Act, local authorities have a power to issue a teachers' pay and conditions warning notice to their maintained schools. Failure to comply or secure compliance with the notice within the specified period will mean that the school becomes eligible for intervention under sections 64-66 of the 2006 Act¹⁶ (addressed in more detail in Chapter 4). These powers must be used within a period of two months following the end of the compliance period specified in the teachers' pay and conditions warning notice¹⁷. If the local authority fails to exercise these powers within this time, they can no longer be exercised and a new teachers' pay and conditions warning notice must be given in order to do so.

¹³ See under 'Further sources of information' for departmental guidance on governance reviews.

¹⁴ See 'Further sources of information' for link to the Governance Handbook.

¹⁵ See 'Further sources of information' for link to safeguarding guidance

¹⁶ These are the local authority's powers to appoint additional governors (section 64), to provide for the governing body to consist of interim executive members (section 65) and to suspend the school's right to a delegated budget (section 66). Chapter 3 of this guidance explains these intervention powers in more detail.

¹⁷ These are the local authority's powers to appoint additional governors (section 64) and to suspend the school's right to a delegated budget (section 66).

The Secretary of State does not have the power to (and therefore RSCs may not) issue teachers' pay and conditions warning notices.

A local authority must send the RSC a copy of any teachers' pay and conditions warning notice it issues¹⁸.

Issuing a warning notice to a maintained school

Local authorities should work with RSCs where they judge that a warning notice is necessary. Once it has been determined that a local authority or RSC will issue a warning notice to a maintained school, they must give the notice in writing to the governing body of the school. The notice must set out:

- the matters on which their concerns are based;
- the action the governing body is required to take in order to address the concerns raised;
- the period within which the governing body must comply or secure compliance with that action (the compliance period); and
- the action the local authority or RSC is minded to take (under one or more of sections 63 to 69 of the Education and Inspections Act 2006 or otherwise) if the governing body does not take the required action.

In addition to giving the governing body a warning notice, the local authority or RSC must give a copy to the headteacher; and in the case of a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority; and in the case of a foundation or voluntary school, the person who appoints the foundation governors¹⁹.

A copy of a warning notice must also be given to the relevant RSC copying in School.NOTIFICATIONS@education.gov.uk, when it is a local authority making it, or a copy must be given to the local authority, when it is the RSC making it²⁰. All warning notices must be copied to Ofsted at the time of issuing using the email address warningnotices@ofsted.gov.uk

Warning notices issued to maintained schools by RSCs will also be published online.

¹⁸ Section 60A (6)(a) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

¹⁹ Section 60(6) of the Education and Inspections Act 2006, as amended by the Education and Adoption Act 2016.

²⁰ Section 60(6A)-(6B) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

If a local authority is notified that the RSC has given a warning notice, the local authority may not give such a warning notice to the same maintained school without the RSC's agreement. If the RSC gives a warning notice, any earlier warning notice given to the same maintained school by the local authority will cease to have effect²¹. Whichever has given a warning notice should keep the other informed about what action the maintained school has taken to address the concern, whether they consider the school to have complied with the warning notice, and what, if any, interventions will be made as a result.

Actions local authorities and RSCs may take in maintained schools that have failed to comply with a warning notice

When a governing body has failed to comply with a warning notice to the satisfaction of the RSC or local authority within the compliance period, and the issuing local authority or RSC has given reasonable written notice that they propose to intervene, a school is eligible for intervention and further action may be taken²².

The local authority or RSC must have specified in the warning notice what action they were minded to take if the governing body failed to comply.

The powers in sections 63, 64, 66 and 66A of the 2006 Act²³ must be exercised within a period of two months following the end of the compliance period. If the local authority or the RSC fails to exercise these powers within this time, these powers can no longer be exercised and a new warning notice must be given in order to do so.

Maintained schools judged inadequate by Ofsted

Schools that have been judged inadequate are:

1. any school Ofsted judges as requiring significant improvement (as addressed in section 61 of the Education and Inspections Act 2006)²⁴; and
2. any school Ofsted judges as requiring special measures (as addressed in section 62 of the 2006 Act).

²¹ Section 60(4A)-(4B) of the Education and Inspections Act, as inserted by the Education and Adoption Act 2016.

²² Section 60(1)(d) and 60A(1)(d) of the Education and Inspections Act 2006 as amended by the Education and Adoption Act 2016. Chapter 3 of this guidance explains the intervention powers in more detail.

²³ These powers are as follows: Section 63 contains the power to require the governing body to enter into arrangements; Section 64 contains the power to appoint additional governors; Section 66 contains the power to suspend the delegated budget and Section 66A contains the Secretary of States power to require governing body to enter into arrangements.

²⁴ This is also known as a 'serious weaknesses' judgement by Ofsted.

The Secretary of State has a duty²⁵ to make an academy order in respect of any maintained school judged as inadequate by Ofsted, to enable it to become an academy and receive additional support from a sponsor.

The RSC, acting on behalf of the Secretary of State, will take responsibility for ensuring that the maintained school becomes a sponsored academy as swiftly as possible, including identifying the most suitable academy trust and brokering the new relationship between that trust and the maintained school. Further details about academy orders are set out in Chapter 3 of this guidance.

In the case of a foundation or voluntary school that is eligible for intervention and subject to an academy order, the RSC is required to consult about the identity of the person with whom academy arrangements are being entered into (called “the academy trust” in this guidance) before entering into such arrangements. The RSC will consult with the trustees of the school, the person or persons who appoint the foundation governors, and in the case of a school that has a religious character the appropriate religious body²⁶. RSCs will ensure that any arrangements will safeguard the religious character and ethos of these maintained schools²⁷.

If a maintained school is the subject of an academy order made under section 4(A1) or (1)(b) of the Academies Act 2010, the governing body and the local authority will be under a duty to facilitate the maintained school’s conversion into an academy by taking all reasonable steps towards that end. This means local authorities cannot charge for the costs associated with the conversion. During the interim period between a maintained school receiving an academy order and the school re-opening as an academy the local authority retains the responsibility for the school’s performance, including provision for school improvement. RSCs can use the Secretary of State’s power to give the governing body or local authority a direction, or directions, to take specified steps for this purpose²⁸. This can include requiring the governing body or local authority to prepare a draft of a scheme for the transfer of local authority-owned land that is no longer, or about to be no longer, used for the purposes of the school,²⁹ or for the transfer of other assets from the local authority or governing body³⁰. The RSC is able to set a date by which these steps must be taken³¹. If the RSC has identified an academy trust to run that maintained school once it becomes an academy, and has notified the school of this, then the governing body and the local authority must take all reasonable steps to facilitate that academy trust taking responsibility for the school.

²⁵ Section 4(A1) of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

²⁶ Section 5A of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

²⁷ RSCs should have regard to the Church schools Memoranda of Understanding. A link to the memoranda can be found in the ‘further sources of information’ section of this guidance.

²⁸ Section 5C of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

²⁹ Part 1 Schedule 1 to the Academies Act 2010.

³⁰ Section 8 Academies Act 2010.

³¹ Section 5C of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

Once the RSC has identified the academy trust for a maintained school that was rated inadequate, that trust has a duty to communicate to parents information about their plans for improving that school, before it is converted into an academy³². This is described in more detail in Chapter 4.

Where a maintained school was judged inadequate by Ofsted before the Education and Adoption Act 2016 took effect, that school will also be required to become a sponsored academy.

³² Section 5E of the Academies Act, as inserted by the Education and Adoption Act 2016.

Chapter 3: Specific powers of local authorities and the Secretary of State in maintained schools eligible for intervention

Local authorities and RSCs will work closely and co-operatively to support improvement in maintained schools that are causing concern. Where a maintained school is eligible for intervention³³ there are a number of statutory powers the local authority and the Secretary of State may use to support school improvement.

The intervention powers in respect of **local authorities** are set out in sections 63-66 of the 2006 Act:

Section 63 – power to require the governing body to enter into arrangements;

Section 64 – power to appoint additional governors;

Section 65 – power to appoint an interim executive board (IEB);

Section 66 – power to suspend the delegated budget.

The intervention powers in respect of the **Secretary of State** are set out in sections 66A-69 and 70C of the 2006 Act and section 4 of the Academies Act 2010:

Section 66A – power to require governing body to enter into arrangements;

Section 67 – power to appoint additional governors;

Section 68 – power to direct closure of a school;

Section 69 – power to appoint an interim executive board (IEB);

Section 70C – power to take over responsibility for an IEB;

Section 4 Academies Act – power to make an academy order.³⁴

In accordance with section 70A of the 2006 Act³⁵ the local authority must notify the relevant RSC each time they intend to use their intervention powers, copying in School.NOTIFICATIONS@education.gov.uk

Local authorities should obtain consent from the RSC before appointing an Interim Executive Board (IEB). The RSC will also notify the local authority before requiring the

³³ As defined by section 60B of the Education and Inspection Act 2006, as inserted by the Education and Adoption Act 2016

³⁴ Or in the case of an inadequate school, duty.

³⁵ As inserted by the Education and Adoption Act 2016.

governing body to enter into arrangements, appointing additional governors, appointing an IEB³⁶ or when the Secretary of State directs a local authority to close a maintained school.

When a local authority has been notified that the RSC intends to exercise the Secretary of State's intervention powers in a maintained school, the local authority may not use its intervention powers in relation to that school until the RSC notifies the local authority that it may do so³⁷.

This Chapter describes each power, the consultations the local authority or RSC must make before exercising the power, and the parties they must notify when they are exercising the powers.

Local authority and Secretary of State powers to require the governing body to enter into arrangements

Sections 63 and 66A of the 2006 Act enable a local authority and RSCs respectively, to require a maintained school that is eligible for intervention³⁸ to enter into arrangements with a view to improving the performance of the school. A notice may require the maintained school:

1. to enter into a contract or other arrangement for specified services of an advisory nature with a specified person (who may be the governing body of another school);
2. to make arrangements to collaborate with the governing body of another school;
3. to make arrangements to collaborate with a further education body; or
4. to take specified steps for the purpose of creating or joining a federation.

These arrangements could include support from a Teaching Schools Alliance or partnership with high performing local schools.

Prior to requiring the governing body to enter into arrangements, the relevant body must consult the governing body of the school, the appropriate diocesan authority (in the case of a Church of England or Roman Catholic school) and in the case of any other foundation or voluntary school, the person or persons by whom foundation governors are

³⁶ Section 70A of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

³⁷ Section 70B of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

³⁸ Except a school that is eligible for intervention as the result of a teachers' pay and conditions warning notice.

appointed. There is no statutory time scale in which the consultation process is to be completed and time scales may vary depending on the circumstances of the case. We would expect a normal consultation process to last for a period of 10 (ten) days³⁹.

Local authority and Secretary of State powers to appoint additional governors

Sections 64 and 67 of the 2006 Act enable a local authority and RSCs respectively, to appoint additional governors where a maintained school is eligible for intervention. This will usually be used when they believe a school would benefit from additional expertise to support or strengthen existing governance arrangements.

Before making any appointment, the RSC must consult:

1. the local authority;
2. the governing body of the school;
3. in the case of a Church of England school or a Roman Catholic school, the appropriate diocesan authority; and
4. in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed.

There is no statutory time scale in which the consultation process is to be completed. We would expect a normal consultation process to have been carried out within 10 (ten) days but this may vary depending on the circumstances and urgency of the case.

Where the RSC has used this power, they may pay remuneration and allowances which they consider appropriate to any governor they appoint. Further, the local authority may not exercise their power to suspend the governing body's right to a delegated budget.

Where the local authority appoints additional governors there is no requirement to consult.

In the case of a voluntary aided school, where a local authority has used their power to appoint additional governors, the appropriate appointing authority may appoint a number of foundation governors equal to those appointed by the local authority, in order to preserve their majority. However, legislation provides that where the RSC has used this power, the relevant appointing bodies are not authorised to appoint foundation governors for the purpose of outnumbering the other governors including those appointed by the RSC⁴⁰.

³⁹ Local authorities and RSCs should be mindful of weekends, bank holidays and school holidays when deciding on the length of the consultation.

⁴⁰ Section 67(6)(b) of the Education and Inspections Act 2006.

Local authority and Secretary of State powers to appoint an Interim Executive Board (IEB)

Section 65 of the 2006 Act enables the local authority to apply to the RSC for consent to constitute the governing body of a maintained school as an IEB, and section 69 enables the RSC to require the governing body of a maintained school to be constituted as an IEB. Both of these powers must be exercised in accordance with Schedule 6 of the 2006 Act.

Local authorities and RSCs should work together in circumstances where an IEB may be put in place. Local authorities and RSCs should assess each individual case and decide who is best placed to implement and take responsibility for the IEB. RSCs have the power to appoint additional members to a local authority IEB and, if necessary, take control of the IEB using the powers set out in this chapter.

Consultation

Before the local authority or the RSC can use this power, they must consult:

1. the local authority (only required when the RSC is intervening);
2. the governing body of the school;
3. in the case of a Church of England school or a Roman Catholic school, the appropriate diocesan authority; and
4. in the case of any other foundation or voluntary school, the person or persons that appoint the foundation governors.

This requirement for the RSC to consult the bodies in 2, 3 and 4 above does not apply if the local authority has already done so as part of their own proposal to appoint an IEB. There is no requirement for the RSC to consult about appointing an IEB if an academy order has effect in respect of the maintained school⁴¹. In these circumstances the RSC will give advance notice to those listed above that the governing body will be replaced by an IEB on a specified date. There is no statutory time scale in which the consultation process must be completed. It is likely that the time scale will vary depending on the

⁴¹ RSCs should continue to have regard for both of the church MOUs. The MOUs require continuing engagement with the relevant diocese regardless of whether an academy order is in place.

circumstances in which the IEB is required. We would expect a normal consultation process to last for a period of 10 (ten) days⁴².

Local authorities must use the IEB application form on the DfE website⁴³ following the accompanying instructions.

When the decision has been taken to appoint an IEB, the local authority or RSC must write to the governing body to give them notice that the IEB will be established. This notice must specify a date when the IEB will commence and will usually also give a date when the IEB will cease, or an exit plan.

Delegated budget

An IEB has a right to a delegated budget. If the school's budget has previously been withdrawn from the governing body, then the local authority must restore the budget from the date the IEB commences its work. If a notice to withdraw the right to a delegated budget was given to the original governing body specifying a date to do so, the notice will no longer be valid from the date of commencement of the IEB.

The role and duties of the IEB

The IEB's function is to provide interim expertise and high-quality governance to support future improvement in the maintained school and this should include the promotion of high standards of educational achievement.

While an IEB is in place, it qualifies as the governing body of the maintained school and any reference in the Education Acts to a governor or foundation governor applies to an interim executive member. During the interim period, the requirements concerning the governing body's constitution set out in the School Governance (Constitution) (England) Regulations 2012 do not apply.

The IEB will take on the responsibilities of a normally constituted governing body, including the management of the budget, curriculum, staffing, pay and performance management and the appointment of the headteacher and deputy headteacher. Where the school in question is a foundation or voluntary school, and the IEB members will also be acting as charity trustees, the IEB members must carry out their duties under charity law – those duties are described further in Chapter 6 of this guidance. Any obligations on the governing body in relation to maintaining the religious ethos of a maintained school will also apply to the IEB.

An IEB may recommend to a local authority that a maintained school be closed. It may also recommend that the Secretary of State give a direction to a local authority regarding the closure of a maintained school. It cannot however, publish proposals for closure

⁴² Local authorities and RSCs should be mindful of weekends, bank holidays and school holidays when deciding on the length of the consultation.

⁴³ See under 'Further sources of information'.

itself. Where, following the statutory consultation and other procedures, it is agreed that the school will be closed, the IEB should continue to hold office until the implementation date of the proposal. The IEB may also seek an academy order from the Secretary of State which enables the maintained school to convert to an academy. Where a maintained school has been issued with an academy order, requiring that school to become a sponsored academy, the IEB will have the same duties to support that process as an ordinary governing body⁴⁴.

Membership of the IEB

As set out in Schedule 6 to the 2006 Act, the number of interim executive members must not be less than two. Once the IEB has been established, further interim executive members can be appointed at any time. The RSC can also direct the local authority as to the membership and the terms of appointment of an IEB appointed by that authority.

An IEB should be a focused group appointed for the full period of time expected to make sufficient improvements in the school. Members of an IEB should be chosen on a case-by-case basis, depending on the needs of the school, but should normally include individuals with financial skills and experience of transformational educational improvement. Where an academy order has already been made and a proposed academy trust identified, the trust should be represented on the IEB. If a proposed academy trust is identified in an academy order during the operation of the IEB, a trust representative should join the IEB at that point.

Although it is not prohibited by law, in most cases we would not expect existing governors who are vacating office to be nominated as IEB members. Local authorities who are considering doing this should discuss the particular circumstances of the school with the RSC. The IEB may however arrange for the discharge of their functions by other people as they see fit⁴⁵. In this way, the IEB could continue to benefit from the experience of existing governors and help engage future governors. The local authority or RSC can nominate one of the members of the IEB to act as Chair.

The local authority or RSC should produce a written notice of appointment for each member of the IEB. Copies of this notice should be sent to: all other members of the IEB; the maintained school's existing governing body; the RSC (where it is a local authority appointed IEB); and, in the case of foundation or voluntary schools, the Diocese or other appropriate authority. A local authority may choose to pay interim executive members such remuneration and allowances as they consider appropriate.

Interim executive members may be removed by whoever appointed them (the local authority or the RSC). This may be for incapacity, misbehaviour, or where their written notice of appointment provides for termination.

⁴⁴ Under section 5B of the Academies Act 2010 as inserted by the Education and Adoption Act 2016.

⁴⁵ Under paragraph 11(2) of Schedule 6 of the 2006 Act

Power of the local authority to suspend the delegated authority for the governing body to manage a maintained school's budget

Section 66 of the 2006 Act enables a local authority to suspend the governing body's right to a delegated budget by giving the governing body of the maintained school notice in writing. This applies where a maintained school is eligible for intervention and the school has a delegated budget within the meaning of Part 2 of the School Standards and Framework Act 1998. Using this power allows local authorities to secure control over staffing and spending decisions to secure improvements. There is no requirement for the local authority to consult before exercising this power.

A copy of the notice must be given to the head teacher of the maintained school and the governing body. If the local authority or the RSC has appointed an IEB, the local authority cannot suspend the school's right to a delegated budget during the period when the governing body is constituted as an IEB.

Power of the Secretary of State to direct a local authority on the appointment of interim executive members

Where a local authority has appointed an IEB, the RSC may, on behalf of the Secretary of State, direct the local authority as to:

1. who the interim executive members should be;
2. how many members the local authority can appoint;
3. what the terms of appointment should be; and
4. the termination of any appointment.

This power will enable the RSC to contribute to the make-up and the arrangements of the IEB where it is felt that the local authority is best placed to take the IEB forward.

The Secretary of State will not exercise this power in relation to a school that is eligible for intervention in relation to educational standards unless Ofsted has rated the school inadequate.

Power of the Secretary of State to take over responsibility for interim executive members

Under section 70C of the 2006 Act⁴⁶, where a local authority has already appointed an IEB, the RSC may take over responsibility for arrangements in connection with the IEB members. If this happens, the notice given by the local authority to the governing body (setting out that it will consist of interim executive members), and any further actions taken by the local authority in respect of the IEB, will be treated as having been given by the RSC.

Power of the Secretary of State to direct the closure of a maintained school

Section 68 of the 2006 Act enables the Secretary of State to direct a local authority to close a maintained school that is eligible for intervention⁴⁷. This will usually be done where there is no prospect of the maintained school making sufficient improvement through other means of support. Before this power can be exercised, the Secretary of State must consult:

1. the local authority and the governing body of the school;
2. in the case of a Church of England or Roman Catholic Church school, the appropriate diocesan authority;
3. in the case of any other foundation or voluntary school the person or persons by whom the foundation governors are appointed; and
4. such other persons as the Secretary of State considers appropriate.

It is recommended that where appropriate any site trustees (who own the school site) or other relevant religious authorities should also be consulted.

If the direction to close a maintained school has been given, the local authority will be expected to meet any costs of terminating staff contracts and make appropriate arrangements for the pupils' continuing education, whether in a replacement school, or through transition to an alternative existing school.

Local authorities and RSCs should be aware that there is a presumption against the closure of rural schools. If the maintained school in question is designated as rural, local

⁴⁶ As inserted by the Education and Adoption Act 2016.

⁴⁷ Except a maintained school that is eligible for intervention as the result of a teachers' pay and conditions warning notice.

authorities have a statutory duty to consider all alternatives to closure (e.g. amalgamation, academy conversion) prior to publishing proposals for closure⁴⁸.

Power of the Secretary of State to make an academy order

Using the Secretary of State's powers under Section 4 of the Academies Act 2010, RSCs can make an academy order in respect of a maintained school either on the application of a school's governing body or if the school is eligible for intervention within the meaning of Part 4 of the 2006 Act.

Where a maintained school is judged inadequate by Ofsted the RSC is **under a duty** to make an academy order. Before the RSC exercises this duty, they may consider the viability of the school. The RSC may also choose to make an academy order where a maintained school has failed to comply with a warning notice issued on the grounds of a serious breakdown in the way the school is managed or governed or where the safety of pupils or staff at the school is threatened. RSCs will only issue academy orders to maintained schools that become eligible for intervention after failing to comply with a warning notice issued on the grounds of low standards of pupil performance in the most exceptional of circumstances.

If an academy order is made in respect of a school, the RSC must give a copy of the order to:

1. the governing body of the school;
2. the headteacher;
3. the local authority; and
4. in the case of a foundation or voluntary school that has a foundation:
 - (I) the trustees of the school;
 - (II) the person or persons by whom the foundation governors are appointed; and,
 - (III) in the case of a school which has a religious character, the appropriate religious body.

Consultation

⁴⁸ More information regarding school closure can be found here:

<https://www.gov.uk/government/publications/school-organisation-maintained-schools>

For a maintained school which has been judged inadequate by Ofsted:

There is no requirement for a consultation to be carried out by the governing body or by the academy trust on whether the conversion should take place. There is no requirement for the RSC to consult on whether the maintained school should convert to an academy.

Where such a maintained school is a foundation or voluntary school that has a foundation, the RSC must consult the following regarding the *identity of the academy trust*⁴⁹:

- (I) the trustees of the school;
- (II) the person or persons by whom the foundation governors are appointed; and
- (III) in the case of a school which has a religious character, the appropriate religious body.

For a maintained school that is eligible for intervention other than because it was judged inadequate by Ofsted:

There is no requirement for a consultation to be carried out by the governing body or by the academy trust on whether the conversion should take place.

Where such a maintained school is not a foundation or voluntary school that has a foundation, there is no requirement for the RSC to consult on whether the school should convert to an academy.

Where such a maintained school is a foundation or voluntary school that has a foundation, the RSC must consult:

- (I) the trustees of the school;
- (II) the person or persons by whom the foundation governors are appointed; and
- (III) in the case of a school which has a religious character, the appropriate religious body.

Sponsored and Converter Academies

⁴⁹ In relation to this requirement to consult, for the purpose of this guidance we refer to the identity of 'the academy trust' but this is in fact the identity of the person with whom the arrangements are to be entered into, as described in Section 5A of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

An academy is considered a sponsored academy where an RSC makes an academy order for a school that is eligible for intervention, or where a school has applied to become an academy but where the RSC does not consider the school strong enough to convert without the additional support of a sponsor. The sponsor identified to support a maintained school required to become an academy will be under a duty⁵⁰ to communicate to parents information about their plans for improving the school, before the school is converted into a sponsored academy.

A converter academy is one that converts after an application by the governing body of the school and the RSC considers the school is strong enough to do so without additional support. The method by which a school converts and whether it is classed as a sponsored or a converter academy has implications for the treatment of surplus and deficit balances⁵¹.

Power of the Secretary of State to revoke an academy order

Section 5D of the Academies Act 2010 enables RSCs to revoke an academy order that was made because a maintained school is eligible for intervention. This power can be used at the discretion of the Secretary of State and it will only be used in exceptional circumstances and not simply because a school's Ofsted rating has improved. In circumstances where the maintained school is not viable and the decision has been taken to revoke the academy order, then the local authority will be expected to close the maintained school following the statutory school closure process and if necessary, ministers may use the power to direct them to do so. Ministers will make decisions on any revocations of academy orders.

⁵⁰ Section 5E of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

⁵¹ The Treatment of surplus and deficit balances when maintained schools become academies: <https://www.gov.uk/government/publications/academy-conversion-surplus-and-deficit-balance-transfer-process>

Chapter 4: Academies causing concern

The department will hold academies to account just as robustly as they would maintained schools. In particular, RSCs or the ESFA as appropriate will take action wherever an academy is judged inadequate by Ofsted, or where financial mismanagement and/or governance failure is identified. A range of information is systematically collected and shared with RSCs and the ESFA, who will agree a robust and joined up approach to addressing underperformance. Where concerns are identified, the department will take action in line with the funding agreement of the academy in question.

Termination warning notices in academies

Arrangements for academies to be issued with a warning notice where they have not been judged inadequate by Ofsted, but are otherwise causing concern, are specified in their academy funding agreements. Such warning notices can usually be given on the grounds that:

1. the Academy Trust has breached the provisions of its funding agreement;
2. there has been a serious breakdown in the way the Academy is managed or governed; or
3. the safety of pupils or staff is threatened, including by a breakdown of discipline.

The ESFA can give a Financial Notice to Improve (FNtI) where there is evidence of financial mismanagement or related poor governance arrangements. Detail on what could constitute a serious breakdown in management or governance, or the safety of pupils or staff being threatened are similar to those for maintained schools and more information can be found on pages 14-16. An academy's funding agreement may also allow an RSC to issue a warning notice for educational standards that are unacceptably low. However, unless Ofsted has already judged the academy as inadequate, the RSC will issue a termination warning notice⁵² only in exceptional circumstances, such as where educational underperformance is linked to financial mismanagement and/or governance failure. If the academy has been rated as 'requires improvement' by Ofsted, then the department will instead extend an optional offer of support. The department may, however, intervene in a school judged as 'requires improvement' on the basis of other evidence, such as evidence of a breakdown in governance.

The RSC (on behalf of the Secretary of State) will consider any representations from the Academy Trust received by the date specified in the Termination Warning Notice. If the

⁵² The Secretary of State will consider the use of their termination powers as set out in the Funding Agreement if requested to do so in writing by the Diocesan Authority in accordance with Section 12 of the Church Supplemental Agreement.

academy trust fails to carry out the actions set out in a termination warning notice the RSC may issue a termination notice.

Where a local authority has concerns about standards, management or governance, or safety in an academy, it should alert the relevant RSC.

Warning notices issued to academy trusts by RSCs are published online⁵³, as well as being shared with Ofsted at the time of issuing.

Academies judged inadequate

The RSC will respond just as swiftly if an academy has been judged inadequate by Ofsted as they would for a maintained school.

As set out in the Education and Adoption Act 2016⁵⁴, regardless of the terms in an academy's funding agreement, the RSC (on behalf of the Secretary of State) can terminate the funding agreement of an academy that has been judged inadequate. This is a power rather than a duty, meaning the RSC may decide to implement other measures to improve the school, rather than terminate its funding agreement, to bring about a change of trust, for example, where a change of academy trust would prevent the consolidation of improvements in a school.

Where termination is appropriate, the RSC on behalf of the Secretary of State must first give the academy trust an opportunity to make representations.

Where a Church Supplemental Agreement has been entered into, alongside the funding agreement, the RSC will also notify the appropriate diocesan authority and consider its representations. The RSC must comply with any other terms specified in the Church Supplemental Agreement regarding termination. When considering the use of intervention powers in Church academies causing concern, the RSC should continue to have regard for the Church memoranda of understanding. A link to the memoranda can be found in the 'further sources of information' section of this guidance.

When an academy has been judged inadequate, the RSC may identify a new academy trust to take on responsibility for the academy, and will enter into a new funding agreement in respect of that academy (this is sometimes referred to as an academy transfer). RSCs will assess these cases on an individual basis, and may not effect a transfer. If the academy that was judged inadequate was previously a 'standalone' academy, this will generally mean it will join a strong trust that has been assessed as having the capacity to improve the school. The academy will continue to function, and the RSC and the new academy trust will work to ensure minimal disruption to pupils' education during the transition. In some exceptional cases, where the academy is not

⁵³ Via: <https://www.gov.uk/government/collections/letters-to-academies-about-poor-performance>

⁵⁴ Sections 2A and 2D of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

considered viable in the long term, the RSC can move to terminate the funding agreement in order to close it.

Financial intervention in academies

The Education and Skills Funding Agency (ESFA) are responsible for the effectiveness of the financial system for academies. High standards of governance and financial management are key to the effective running of an academy trust and underpin the trust's ability to support schools in delivering the best educational outcomes. The ESFA will work alongside Regional Schools Commissioners and other parts of the department to help build a strong system of financial management. Where instances of governance and financial underperformance arise, the ESFA will take action to bring about improvements. Guidance for academies concerning financial management, control and reporting requirements can be found in the Academies Financial Handbook⁵⁵.

Where the ESFA has concerns about financial management and/or governance in an academy trust it may issue a Financial Notice to Improve (FNtI). All Financial Notices to Improve are published online. The trust must comply with the FNtI. Failure to comply will be deemed a breach of the funding agreement. In exceptional circumstances, the funding agreement may be terminated due to non-compliance with an FNtI. More information concerning financial intervention and FNtIs can be found in the Academies Financial Handbook.

⁵⁵ More information on the academies financial handbook can be found here: <https://www.gov.uk/government/publications/academies-financial-handbook>

Chapter 5: Other local authority duties

School performance

A local authority must exercise its education functions with a view to promoting high standards⁵⁶.

Beyond this statutory guidance, local authorities have considerable freedom as to how they deliver their statutory responsibilities. Local authorities should act as champions of high standards of education across their schools, and in doing so should:

- Understand the performance of maintained schools in their area, using data as a starting point to identify any that are underperforming, while working with them to explore ways to support progress;
- Work closely with the relevant RSC, diocese and other local partners to ensure schools receive the support they need to improve;
- Where underperformance has been recognised in a maintained school, proactively work with the relevant RSC, combining local and regional expertise to ensure the right approach, including sending warning notices and using intervention powers where this will improve leadership and standards; and
- Encourage good and outstanding maintained schools to take responsibility for their own improvement; support other schools; and enable other schools to access the support they need to improve.

The School Improvement Monitoring and Brokering Grant⁵⁷ is provided to local authorities to assist them to fulfil these responsibilities. Local authorities should focus their activity on the schools they maintain rather than academies which are accountable to the Secretary of State. However, should a local authority have any concerns about an academy's standards, leadership or governance, they should raise these directly with the relevant RSC.

RSCs will apply the same rigour to the academies and free schools in their regions, as local authorities should apply to maintained schools in their area, and will similarly champion education excellence.

⁵⁶ Section 13A of the Education Act 1996.

⁵⁷ More information on the School Improvement Monitoring and Brokering Grant can be found here: <https://www.gov.uk/government/publications/school-improvement-monitoring-and-brokering-grant-allocations>

Special Educational Needs and Disabilities (SEND)

Local authorities are subject to a range of duties under the Children and Families Act 2014⁵⁸ and the Equality Act 2010 relating to children and young people with special educational needs (SEN) and disabilities (SEND). Information on local authority responsibilities in relation to children with SEND can be found in the SEND Code of Practice⁵⁹.

Local authorities must keep their educational and training provision and social care provision for children and young people with SEN or disabilities under review.

Local authorities must carry out their functions with a view to identifying all the children and young people in their area who have or may have SEN or have or may have a disability. In addition, where a child or young person is brought to their attention, the local authority must decide whether to carry out an Education, Health and Care (EHC) needs assessment and, if necessary, issue an EHC plan. If they issue an EHC plan, the local authority must secure the special educational provision specified in it and must maintain the plan. Local authorities fund any additional costs of this provision from the high needs block of the Dedicated Schools Grant (DSG).

In performing all these functions local authorities are subject to duties in the Equality Act 2010, including the Public Sector Equality Duty.

Where, in fulfilling its statutory duties to keep special educational provision under review or to secure provision in an EHC plan, a local authority identifies concerns over the standards, management or governance, or safety of a maintained school or academy, they should raise them with the maintaining LA or the RSC.

Alternative Provision

When children of compulsory school age are not receiving suitable education, for example as a result of a permanent exclusion or where a child has health-related needs that mean they are unable to attend a mainstream school full-time, the local authority has a duty under the Education Act 1996 to arrange it. Schools may also commission places in PRUs, for example if they are arranging suitable full-time education from the sixth day of a fixed period exclusion or if they are directing pupils off-site in order to help improve their behaviour.

Where, in fulfilling its statutory duties to secure alternative provision, a local authority identifies concerns over the standards, management, governance, or safety of a PRU or AP academy, they should raise them with the maintaining local authority and the RSC.

⁵⁸ Children and Families Act 2014, Part 3, Section 22.

⁵⁹ More information on the SEND Code of Practice can be found here:

<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

Safeguarding

Local authorities have overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area, regardless of the types of educational settings they attend. There are a number of statutory duties under the 1989 and 2004 Children Acts which make this clear. In order to fulfil these duties effectively, local authorities need to work in partnership with all schools (including independent schools), appropriate religious bodies and further education and sixth form colleges in their area.

Where a local authority has concerns about an academy or free school's safeguarding arrangements or procedures (arising as a result of investigations about individual children or otherwise), these concerns should be raised to the Education and Skills Funding Agency (ESFA) who have responsibility for ensuring that academy trusts comply with their Funding Agreements. Details of the concern should be submitted to the ESFA on its online [enquiry form](#)⁶⁰.

Where a local authority has a concern about an independent school's safeguarding arrangements or procedures (arising as a result of investigations about individual children or otherwise), these concerns should be reported to the Independent Education Division at the DfE, who have responsibility for enforcing the independent school standards and taking regulatory action where necessary.

Where a local authority has a concern about safeguarding at a maintained school, the authority can use its intervention powers as set out in this guidance.

'Keeping Children Safe in Education'⁶¹ is statutory guidance to which schools and colleges must have regard when carrying out their duties to safeguard and promote the welfare of children. 'Working Together to Safeguard Children' is statutory guidance on multi-agency working to safeguard and promote the welfare of children⁶².

Schools' governing bodies and proprietors should ensure that the school or college contributes to multi-agency working in line with statutory guidance *Working Together to Safeguard Children* (2018). Schools and colleges should work with local safeguarding partners – the local authority, police and health services - to promote the welfare of children and protect them from harm.

⁶⁰ The ESFA enquiry form can be found here: <https://www.gov.uk/contact-dfe>

⁶¹ *Keeping Children Safe in Education*: <https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

⁶² *Working Together to Safeguard Children*: <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

Chapter 6: Governance

Full details of the duties on both governing bodies of maintained schools and academy trusts in relation to governance are set out in the Governance Handbook, which also includes key principles of effective governance (see 'Further sources of information'). We expect governing bodies to ensure parents are updated on support that is provided to address concerns about performance, whether through the local authority or RSC.

Additional non-statutory guidance relating to local authority oversight of governance in maintained schools

Local authorities should take an active interest in the quality of governance in maintained schools. Local authorities should promote and support high standards of governance, recognising where a school could improve and encouraging governing bodies to do so. They should be champions for high quality school governance; help ensure that governors have the necessary skills; and have in place appropriate monitoring arrangements to identify signs of failure in relation to governing bodies' oversight of finance, safety or performance standards.

Maintained schools should have a code of conduct setting high standards for the role, conduct and professionalism of their governors. This includes an expectation that they undertake any training or development activity needed to fill skills gaps to contribute to the effective governance of the school.

Section 22 of the Education Act 2002 provides that local authorities should ensure that training they consider necessary to discharge their duties is made available to every governor, free of charge. It is also possible for governing bodies to suspend governors who refuse to undertake necessary training⁶³.

As a result, local authorities should have arrangements in place for maintaining up to date records of governors in maintained schools. This should include contact details for chairs of governing bodies to aid direct communication with those who are accountable for schools. It should also enable them to carry out any necessary due diligence including identifying governors who sit on more than one governing body. Information held by the local authority should also be made available to the Department for Education upon request. Local authorities should also encourage transparency around school governance arrangements including through information published on school websites in line with statutory guidance⁶⁴ and compliance with schools' duties under s538 of the

⁶³ More information on suspending governors can be found in the governance handbook. A link to the handbook can be found in the 'further sources of information' section of this guidance.

⁶⁴ More information on the constitution of governing bodies of maintained schools can be found here: <https://www.gov.uk/government/publications/constitution-of-governing-bodies-of-maintained-schools>

Education Act 1996 to populate all of the governance fields on Get Information About Schools⁶⁵ (GIAS).

In carrying out these responsibilities in respect of voluntary and foundation schools, local authorities will also need to work closely with religious bodies or other bodies who appoint the governors.

Where a local authority has concerns about the governance of an academy or free school in their area, they should raise this with the relevant RSC or the ESFA.

Schools causing concern and charity law

Academy trusts, and the governing bodies of foundation and voluntary schools are all charities, and must comply with charity law. They are exempt from registration and direct regulation by the Charity Commission and are instead overseen by a Principal Regulator – the Secretary of State. As Principal Regulator the Secretary of State has a duty to promote charity law compliance by the charity trustees with their legal obligations in a trust's management and administration. Enforcement powers rest with the Charity Commission.

The Charity Commission can exercise powers of investigation and enforcement over these charities where the Secretary of State, as Principal Regulator, requests that the Commission investigates a concern that the department has identified. This means that, in consultation with the Principal Regulator, the Charity Commission may investigate and, if a serious failure to comply with charity law is found, will have the necessary enforcement powers to act if sanctions are required. A memorandum of understanding is in place, which sets out how the Department and the Charity Commission work together, including principles for managing referrals.⁶⁶

The members of the governing body of a foundation or voluntary school, and academy trustees, are charity trustees in law and have a number of duties under charity law, which overlap their duties as school governors and academy trustees. These are summarised and explained in Charity Commission guidance, *The Essential Trustee*⁶⁷.

If a school is causing concern or is eligible for intervention, the charity trustees may also be in breach of one or more of their charity law duties. It is important to remember, however, that the charity trustees continue to be bound to comply with charity law. RSCs

⁶⁵ Schools must also ensure that they are providing accurate details on GIAS. It is important for schools to keep their GIAS record updated with their latest governance arrangements; this enables the Department to quickly and accurately identify individuals who have a role in governance. More information on updating your GIAS record can be found here: <https://www.get-information-schools.service.gov.uk/guidance>

⁶⁶ <https://www.gov.uk/government/publications/memorandum-of-understanding-charity-commission-and-the-department-for-education>.

⁶⁷ The Charity Commission's guidance 'The Essential Trustee' can be found here: <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>

and local authorities should bear this in mind when exercising powers of intervention, and as far as possible take an approach that allows charity trustees to comply with their duties and take an active role in resolving the concern.

The role of trustee is crucial in the effective governance of academies, and requires the highest level of conduct. The department may refer cases involving misconduct on the part of trustees and/or directors to the Insolvency Service for consideration under the Company Directors Disqualification Act 1986. The Memorandum of Understanding between the department and the Insolvency Service sets out how we will work together to coordinate regulatory operations.⁶⁸

The Department also has its own powers, under section 128 of the Education and Skills Act 2008, to sanction individuals engaged in misconduct by barring them from involvement in the management of education institutions. We will always first consider using these powers where there is evidence to suggest that individuals have engaged in misconduct and are unsuitable to be involved in the management of schools.

⁶⁸ <https://www.gov.uk/government/publications/memorandum-of-understanding-dfe-and-the-insolvency-service>

Chapter 7: Pupil referral units

Pupil Referral Units (PRUs) are maintained by the local authority (although they are not included within the definition of a 'maintained school'). PRUs are set up to provide education for pupils of compulsory school age outside mainstream or special schools, who would not otherwise receive suitable education for any reason. This includes permanently excluded pupils, pupils with health needs preventing school attendance, or those without a school place. Schools may also commission places in PRUs, for example if they are arranging suitable full-time education from the sixth day of a fixed period exclusion or if they are directing pupils off-site in order to help improve their behaviour.

Regulations give the Secretary of State specific powers of intervention in PRUs. These powers are:

- The power to direct closure of a PRU⁶⁹;
- The power to appoint an interim executive board (IEB)⁷⁰;
- A duty to make an academy order in PRUs judged inadequate by Ofsted⁷¹.

The RSC may establish an IEB in a PRU where it has received an inadequate judgment from Ofsted or the Secretary of State is satisfied that:

- the standards of performance of pupils at the PRU are unacceptably low, and are likely to remain so⁷²;
- the quality of provision for pupils at the PRU is unacceptably low⁷³;
- there has been a serious breakdown in the way the PRU is conducted which is prejudicing, or likely to prejudice, such standards of performance; or

⁶⁹ Section 68 of the Education and Inspections Act 2006 read together with paragraph 23 of Schedule 1 to the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, as amended by regulation 3 of the Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012.

⁷⁰ Section 69 of the Education and Inspections Act 2006 read together with regulations 2 and 24 of the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007, as amended by regulation 2 of the Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012.

⁷¹ Section 4 of the Academies Act 2010 read together with paragraph 23C of Schedule 1 to the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 as amended by regulations 2 and 4 of the Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2012 and regulations 2 and 3 of the Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2016.

⁷² Low performance standards are explained in further detail in regulation 2(2)(a) of the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007 as amended by regulation 2 of the Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012.

⁷³ Low quality of provision is explained in further detail in regulation 2(2)(b) of the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007 as amended by regulation 2 of the Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012.

- the safety of pupils or staff of the PRU is threatened (whether by a breakdown of discipline or otherwise).

Where a PRU has received an Ofsted inadequate judgement, the RSC will take responsibility for ensuring that the PRU becomes a sponsored Alternative Provision (AP) academy as swiftly as possible. This includes identifying the most suitable sponsor and brokering the new relationship between that sponsor and the PRU.

The PRU's management committee will not be required to conduct a consultation but, along with the local authority that maintains the PRU, will be under a duty to take all reasonable steps to facilitate the conversion of the PRU into an AP academy. Where necessary, the Secretary of State for Education will be able to direct the PRU's management committee or the local authority to take specified steps within a set timescale to enable the PRU to become an AP academy.

Further sources of information

Legislation

- [Education and Adoption Act 2016](#) (which amends the Education and Inspections Act 2006 and the Academies Act 2010)
- [Education Act 2011](#) (which amended the 2006 Act and also the Academies Act 2010 in respect of land transfers to academies. Schedule 14 applies)
- [Academies Act 2010](#)
- [Apprenticeships, Skills, Children and Learning Act 2009](#) (amended the 2006 Act) - makes provision for apprenticeships, education, training and children's services.
- [Education and Inspections Act 2006](#)
- [Education Act 2002 Schedule 2](#) Effect on Staffing on suspension of delegated budget
- [School Governance \(Transition from an Interim Executive Board\) \(England\) Regulations 2010](#)
- [School Governance \(Role, Procedures and Allowances\) \(England\) Regulations 2013](#) – associated departmental guidance can be found on the DfE website [here](#).
- [School Standards and Framework Act 1998](#) - contains provisions for schools and nursery education. This covers further education for young people at school, and in FE institutions across the UK.
- [Education and skills Acts 2008](#)
- [Company Directors Disqualification Act 1986](#)

Guidance

- [Governance Handbook](#) Departmental advice
- [Working Together to Safeguard Children](#) Statutory guidance
- [Keeping Children Safe in Education](#) Statutory guidance
- [External reviews of school governance](#) Departmental guidance
- [External reviews of the pupil premium](#) Departmental guidance

- [Interim Executive Board](#) Application form and guidance

Other departmental resources

- [Performance tables – user guide and resources \(includes progress measures\)](#)
- [School and college performance tables: statements of intent](#)
- [Church school memoranda of understanding](#)
- [Regional Schools Commissioners \(RSCs\)](#)



Department
for Education

© Crown copyright 2019

This publication (not including logos) is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3

email psi@nationalarchives.gov.uk

write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

About this publication:

enquiries www.education.gov.uk/contactus

download www.gov.uk/government/publications

Reference: DFE-00325-2018



Follow us on Twitter:
[@educationgovuk](https://twitter.com/educationgovuk)



Like us on Facebook:
facebook.com/educationgovuk