



Department
for Education

Secretary of State for Education statutory intervention powers for the further education sector

**Sections 56A and 56E Further and
Higher Education Act 1992**

December 2022

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What is this guidance about?

This guidance provides information about the circumstances in which the Secretary of State's statutory intervention powers may be exercised. It also explains the processes that the Department for Education will follow when deciding whether use of the statutory intervention powers is appropriate and outlines what type of action the Secretary of State may take.

The Secretary of State's intervention powers are set out in sections 56A and 56E of the Further and Higher Education Act 1992 (FHEA 1992), as recently amended by the Skills and Post-16 Education Act 2022.

The powers apply to the further education sector¹. Section 56A applies to further education corporations (colleges) and designated institutions, and section 56E applies to sixth-form college corporations.

The approach to use of the statutory intervention powers, as set out in this guidance, is intended to be illustrative of the circumstances in which the powers may be exercised, rather than a comprehensive guide. It is necessary to maintain an element of discretion in managing statutory intervention, and each case will be considered on a case-by-case basis. The table on pages 10 - 14 sets out some examples of failures that could result in an institution coming within the scope of statutory intervention.

¹ Institutions within the further education sector as defined under section 91(3) Further and Higher Education Act 1992 as institutions conducted by further education corporations, designated institutions and sixth form colleges.

Who is this publication for?

This guidance is primarily aimed at governors, CEO/principals, finance directors and/or senior leadership teams of the following institutions:

- sixth form colleges
- further education colleges
- designated institutions

This guidance does not apply to 16 to 19 academies, 16 to 19 free schools or University Technical Colleges. These institutions are not part of the further education sector and are not in scope of these powers.

This document may also be of interest to provider and representative organisations such as the Catholic Education Service, Association of Colleges, the Sixth Form Colleges Association, as well as Mayoral Combined Authorities, the Greater London Authority, Local Enterprise Partnerships, the Office for Students, local authorities, and employers.

Terminology

Where this document refers to 'the department' or 'we' or taking action, this should be taken to mean the Department for Education, the Education and Skills Funding Agency (ESFA) or the FE Commissioner and Ministers within the department unless stated otherwise. These parties will work together to consider whether use of the statutory intervention powers is appropriate in the circumstances.

Use of the term 'college' in this document should be taken to mean a further education college (including specialist art or land-based college), a sixth-form college or a designated institution, unless stated otherwise.

Use of the term 'governing body' in this document means the corporation for further education colleges and sixth form colleges. For designated institutions it means any board of governors of the institution, or any persons responsible for the management of the institution.

Use of the term 'learner' in this document means any student, apprentice trainee or similar to whom the institution provides education, training or skills regardless how that learner is funded.

Review and expiry date

We intend to review this guidance as and when needed, with a formal review in 2025.

Policy background

The department's overall aim is to ensure that the further education sector is supported to achieve continuous improvement and improved outcomes for learners. Our aim is that fewer colleges should need any sort of intervention. Our active support aims to help good providers to become outstanding providers, and encourages our strongest providers to share skills and expertise with others through, for example, the national leaders of further education (NLFE) and national leaders of governance (NLG) programmes. More information can be found on our [help and support for colleges webpage](#).

In our Skills for Jobs White Paper, we committed to intervening quickly and decisively in cases of serious failure. Where any intervention is needed, this will be targeted to secure improvements for learners.

In most cases, intervention action will be undertaken through the administrative processes as set out in the [college oversight: support and intervention guidance](#)

Our expectation is that in most cases, use of the statutory intervention powers will be considered where active support or intervention through our administrative processes has not secured improvement. However, use of the powers may also be considered if administrative intervention procedures are not suitable in any given case.

In some circumstances, it may be appropriate to apply to place the college in education administration under the FE insolvency regime² as an alternative to the use of the Secretary of State's intervention powers where the triggers for insolvency have been met.

² [Technical and Further Education Act 2017 \(legislation.gov.uk\)](#)

What are the statutory intervention powers?

The Secretary of State may exercise statutory intervention powers if satisfied that any of the following circumstances are met:

- the institution's affairs have been or are being mismanaged by the governing body
- the governing body have failed to discharge any duty imposed on them by or for the purposes of any Act
- the governing body have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any Act
- the institution is performing significantly less well than it might in all the circumstances reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training
- the education or training provided by an institution did not, or does not, adequately meet local needs

Where one or more of the above circumstances apply, the Secretary of State may take the following actions:

- remove all or any members of the governing body
- appoint new members to the governing body if there are vacancies
- give the governing body a direction as the Secretary of State considers expedient relating to the exercise of their powers and performance of their duties. This may include a direction requiring the governing body to make collaboration arrangements³
- make a resolution for the governing body to be dissolved on a specified date
- transfer property, rights, or liabilities specified in the direction, and take any other specified steps in connection with the transfer

³ "Collaboration arrangements" are defined in s166 of the [Education and Inspections Act 2006 \(legislation.gov.uk\)](https://legislation.gov.uk)

How will decisions to exercise the powers be made?

As public funded bodies, institutions in the FE statutory sector are subject to scrutiny and regulation including from DfE and ESFA, Ofsted and their external auditor.

The government's expectation is that governing bodies recognise where there are risks of failure, and put systems and processes in place to mitigate risks and prevent organisational harm. When things go significantly wrong, governing bodies should report these to regulators and/or relevant parties and take swift action (including seeking support) to put things right and take steps to prevent failure from happening again.

Each case will need to be considered on its own facts, and therefore we do not intend to include a definitive list in this guidance indicating how the relevant circumstances for statutory intervention may be met. However, areas in which serious concerns may arise, and which could bring an institution within the scope of statutory intervention may include:

- safeguarding
- governance and leadership
- financial management and performance
- quality of education and performance
- local needs including those of learners and employers
- assets and information management

The table below sets out some examples of circumstances that could result in an institution coming into scope of statutory intervention. The table and the above bullet points are not designed to be an exhaustive list of circumstances. It is also the case that use of the statutory intervention powers will not always be the appropriate course of action where the relevant circumstances have been met.

Example of failure that may bring an institution/governing body in scope of statutory intervention	Circumstances for statutory intervention	Examples of sources of evidence that may be considered in establishing whether institution/governing body was in scope for statutory intervention
<p>Serious failures in the financial control of resources, repeated examples of fraud or misuse of resources</p> <p>Failure to rectify breaches, misconduct or mismanagement or to understand and put in place action(s) needed to address failures or to prevent misconduct or mismanagement from happening again</p>	<p>The institution's affairs have been or are being mismanaged by the governing body</p>	<p>FE Commissioner intervention assessment or another investigation report</p> <p>Audited accounts, internal or external audit report</p> <p>Findings of an investigation or enforcement action by the Charity Commission or any other regulatory body</p>

Example of failure that may bring an institution/governing body in scope of statutory intervention	Circumstances for statutory intervention	Examples of sources of evidence that may be considered in establishing whether institution/governing body was in scope for statutory intervention
<p>Serious failure in safeguarding learners, including failure to take appropriate safeguarding action, putting learners at risk – this could be a single incident or systematic behaviour or actions</p> <p>Health and safety failures resulting in a member of staff or a student suffering a serious injury, and significant failures in health and safety processes</p>	<p>The governing body have failed to discharge any duty imposed on them by or for the purposes of any Act</p>	<p>An investigation or inspection finds evidence of failures regarding safeguarding, a failure to comply with Keeping Children Safe in Education and/or Prevent Duty Guidance and information</p> <p>Whistleblowing report, anonymous allegation or complaint</p> <p>Ofsted reports serious concerns about safeguarding - for example a college does not have effective policies and processes to protect learners from harm</p> <p>An investigation or inspection or visit finds a culture of bullying, harassment and discrimination of learners or staff</p> <p>An investigation finds widespread unchallenged drug misuse or drug selling at a college</p> <p>Health and Safety Executive investigation report</p>

Example of failure that may bring an institution/governing body in scope of statutory intervention	Circumstances for statutory intervention	Examples of sources of evidence that may be considered in establishing whether institution/governing body was in scope for statutory intervention
<p>The governing body is taking a decision or action that is not compatible with their charitable objects, for example, misuse of assets, property and/or resources</p>	<p>The governing body have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any Act</p>	<p>Audited accounts, internal or external audit report</p> <p>FE Commissioner intervention assessment, ESFA or another investigation report</p> <p>Findings of an investigation or enforcement action by the Charity Commission or any other regulatory body</p> <p>Whistleblowing report, anonymous allegation or complaint</p>

Example of failure that may bring an institution/governing body in scope of statutory intervention	Circumstances for statutory intervention	Examples of sources of evidence that may be considered in establishing whether institution/governing body was in scope for statutory intervention
<p>An extended period of under-performance including lack of consistency and/or fluctuating outcomes for learners and lack of action or ineffective action taken to address serious concerns raised by Ofsted or FE Commissioner</p>	<p>Significant underperformance or failure to provide an acceptable standard of education and training</p>	<p>Ofsted judgement for overall effectiveness</p> <p>FE Commissioner intervention assessment</p> <p>Information and data indicating poor student outcomes, inadequacy in meeting learners' needs</p> <p>Published performance data</p>

Example of failure that may bring an institution/governing body in scope of statutory intervention	Circumstances for statutory intervention	Examples of sources of evidence that may be considered in establishing whether institution/governing body was in scope for statutory intervention
<p>Progression of learners to employment or further study is exceptionally poor, reflecting widespread weaknesses in the curriculum offer, including the failure to adequately reflect priorities set out in the local skills improvement plan, and poor collaboration with employers and other providers</p>	<p>Education or training provided by an institution is failing or has failed, to adequately meet local needs</p>	<p>Ofsted inspection report</p> <p>Information from published accountability data on outcomes for learners, including qualifications, employment and progression to further learning</p> <p>Evidence from a relevant Mayoral Combined Authority or Employer Representative Body of failure within the local area to deliver against agreed priorities, including those set out in the local skills improvement plan</p> <p>Delivery of relevant objectives set out in any Accountability Agreement</p>

How will the process work?

Assessment

It will be for the Secretary of State to assess and decide whether one or more of the circumstances for intervention have been met and the appropriate course of action.

This decision will be based on an assessment of a range of available evidence, for example reports and/or information from teams or officials within the department including the FE Commissioner's team, DfE territorial teams, and the ESFA. This evidence may be supplemented by other sources, for example Ofsted inspection reports, auditor reports, and information from other commissioning, funding, oversight, and/or regulatory bodies.

This assessment will be specific to each individual case. This is because each use of statutory intervention powers is likely to require a tailored approach, to achieve a solution that puts the interests of learners first. Use of the powers will not always be appropriate even where the relevant circumstances have been met.

Consultation

The Secretary of State must consult the Competition and Markets Authority before giving a direction for the transfer of property, rights or liabilities.

In relation to certain sixth form colleges, the Secretary of State must consult the trustees and individuals who appoint or nominate foundation governors. Those sixth form colleges are named under the Specified Sixth Form College Corporation Order 2010⁴.

Minded to intervene letter

Once the Secretary of State has considered the available evidence and any supporting information, a decision on whether to propose use of the statutory intervention powers will be made.

Provided that more urgent action is not considered necessary on the facts of the case, the Secretary of State will write to the governing body notifying them of their concerns,

⁴ SI 2010/625

and inform the governing body that the Secretary of State is minded to exercise the statutory intervention powers.

The “minded to” letter will invite representations from the governing body within a set timeframe (usually 10 working days).

The Secretary of State will consider any representations received and then make a decision as to how to proceed.

In exceptional circumstances, where there is an immediate, serious or exceptional risk to learners or to public funding, and urgent action is required, the Secretary of State may wish to take action with more urgency than the above approach would allow.

Use of powers

If, after considering any representations received and all the relevant available evidence, the Secretary of State still considers that use of the powers is necessary, the Secretary of State will notify the governing body of the action that is being taken, and the reasons.

Where a new member or members of the governing body are being appointed, the department will set out the details of the new appointment(s) in a letter to the chair of the governing body or another suitable person in the event that there is no chair in post. The Secretary of State will appoint new members for a specified minimum period of time.

The department will appoint a named official as the main point of contact to oversee all aspects of the statutory intervention process and report progress to Ministers.

Legal requirement to comply

Governing bodies are legally required to comply with any directions given to them.

The governing body and leadership team will be expected to actively engage with the process. This would include, for example, providing information requested promptly, allowing full access to all necessary files, records, services and facilities, and engaging with third-party organisations as needed.

Publication and sharing of information

The department will publish directions, notices of intervention and any updated notice to improve.

In addition, any letters that the Secretary of State may wish to send may also be copied to relevant stakeholders and other bodies.

Varying or revoking a direction

A direction may be varied or revoked⁵.

A direction requiring a college to transfer property, rights or liabilities could in some circumstances be issued while a merger partner is still being decided. In such cases, the direction could be varied at a later date to include the details of the confirmed merger partner.

A decision as to whether it is appropriate to revoke a direction will be at the discretion of the Secretary of State. The Secretary of State will consider each case on its merits, including taking advice from the FE Commissioner and taking account of any reasons put forward by the governing body as to why revocation would be in the best interests of learners.

If a direction is revoked, the department's expectation would be that the governing body would continue to engage with the FE Commissioner's team and/or other department or ESFA officials so that improvements are delivered in a timely way.

⁵ Under section 89(5) FHEA 1992, s.570 of the Education Act 1996 (revocation and variation) applies to directions given under FHEA 1992.

Oversight, monitoring and support

Following any exercise of the statutory intervention powers, the department will put in place arrangements for oversight, monitoring, support and communication. These will usually be led by the relevant DfE territorial teams who retain overall responsibility for day-to-day case management. The DfE territorial teams will work together with the FE Commissioner to ensure there are coherent arrangements for working with governing bodies and college leaders following use of the statutory intervention powers.

For institutions already in intervention through our administrative regime, the oversight, monitoring, support arrangement put in place during the administrative intervention process will remain in place. Where appropriate, an updated Notice to Improve will be issued and there may be additional conditions added to the funding agreement.

For institutions that become subject to use of the statutory intervention powers the arrangements for oversight, monitoring, and support will be similar to those used for administrative intervention. These are set out in the College oversight: support and intervention guidance, which is updated from time to time.

Relevant links and documentation

Charity trustee: The essential trustee: what you need to know, what you need to do (CC3) <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>

College oversight: support and intervention - guidance setting out how the government will actively support and intervene to improve financial resilience and quality in colleges. [College oversight: support and intervention - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/college-oversight-support-and-intervention)

Further and Higher Education Act 1992 (as amended): legislation on statutory intervention and the FE statutory sector.
<https://www.legislation.gov.uk/ukpga/1992/13/contents/enacted>

Governance guidance: guidance setting out the legal and regulatory requirements and recommended practice that apply to further education (FE) and sixth-form college corporations

<https://www.gov.uk/government/publications/further-education-corporations-and-sixth-form-college-corporations-governance-guide--2>

Keeping children safe in education: statutory guidance for schools and colleges on safeguarding children and safer recruitment.
<https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

Local skills improvement plans: statutory guidance for the development and review of local skills improvement plans (LSIPs).
<https://www.gov.uk/government/publications/local-skills-improvement-plans>

Memorandum of Understanding: Charity Commission and the Department for Education: an agreement setting out the relationship between the commission and the Department for Education.

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

Review of education or training in relation to local needs: guidance for the governing bodies of institutions in further education statutory sector on carrying out Section 52b (Further and Higher Education Act 1992) review on how well the education or training provided by the institution meets local needs. [Review of education or training in relation to local needs - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/review-of-education-or-training-in-relation-to-local-needs)



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