

Schools causing concern - guidance for local authorities

About this guidance

This is statutory guidance given by the Department for Education, on behalf of the Secretary of State, relating to maintained schools causing concern.

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 schools causing concern as set out in Part 4 of the 2006 Act, to have regard to any guidance given from time to time by the Secretary of State. Local authorities must have regard to this guidance.

Expiry/Review Date

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

What legislation does this guidance relate to?

- **School Standards and Framework Act 1998**
- **Education and Inspections Act 2006** (“the 2006 Act”)
- **Apprenticeships, Skills, Children and Learning Act, 2009** (ASCL Act) (amended the 2006 Act)
- **The School Governance (Transition from an Interim Executive Board)(England) Regulations 2010** (Transition Regulations)
- **Academies Act 2010**
- **Education Act 2011** (amended the 2006 Act)

Who is this guidance for?

- Local authorities, who must have regard to it.
- Other persons or bodies who may find it useful.

Key points

- This guidance provides information on the legislative requirements for intervening in schools causing concern. All those using this guidance, particularly local authorities, who must have regard to it, should also be familiar with the actual wording of the legislation to which this guidance relates, in particular Part 4 of, and Schedule 6 to, the 2006 Act, but also the Academies Act 2010. This legislation has been amended by several, subsequent Acts, including recent changes made by the Education Act 2011.
- A school will be “eligible for intervention” under the 2006 Act if it has not complied with a warning notice and the local authority have also given the school written notice of their intention to exercise their intervention powers under Part 4 of the 2006 Act or where it has been judged by Ofsted to require significant improvement

(a “serious weaknesses” judgment under the September 2012 Ofsted framework) or “special measures.”

- Where schools are eligible for intervention local authorities may exercise their powers to: require the governing body to enter into specified arrangements with a view to improving the performance of the school; appoint additional governors; suspend the delegated budget of the school; appoint an Interim Executive Board.
- Where schools are eligible for intervention the Secretary of State has the power to appoint additional governors; appoint an Interim Executive Board, or direct the local authority to close a school. The Secretary of State also has the power under the Academies Act 2010 to make an Academy order, subject in certain cases to consultation (see further detail in section 4 of this guidance).
- For the purposes of this guidance “schools causing concern” are not just those schools “eligible for intervention” within the meaning of Part 4 of the 2006 Act (see definition above), but are also those about which the local authority and/or the Secretary of State have other serious concerns which need tackling, such as those consistently below the floor standards, those where there has been a serious drop in performance or where the performance is not meeting the expected standards of comparable schools. These are the types of situations where the local authority may want to consider giving those schools a warning notice, and then a further notice that they propose to use their intervention powers under the 2006 Act making the school eligible for intervention and subject to the intervention powers of the local authority and/or the Secretary of State.

Associated resources

AcADEMIES ACT 2010

APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009 (AMENDED THE 2006 ACT)

An Act to make provision for apprenticeships, education, training and children's services.

EDUCATION AND INSPECTIONS ACT 2006

EDUCATION ACT 2011 (AMENDED THE 2006 ACT)

SCHOOL GOVERNANCE (TRANSITION FROM AN INTERIM EXECUTIVE BOARD) (ENGLAND) REGULATIONS 2010

Download the School Governance Regulations 2010 from the Opsi website.

SCHOOL STANDARDS AND FRAMEWORK ACT 1998

The 1998 School Standards and Framework Act contains provisions for schools and nursery education. This covers further education for young people at school, and in FE institutions across the UK.

Section 1: Schools causing concern

Part 4 of, and Schedule 6 to, the 2006 Act set out that a school causing concern is one which is “eligible for intervention”. This is where a:

1. performance standards and safety warning notice has been given (section 60) with which the school has failed to comply and the local authority have also given the governing body a written notice that they propose to exercise one or more of their powers under Part 4 of the 2006 Act ;
2. teachers' pay and conditions warning notice has been given (section 60A)¹ with which the school has failed to comply and the local authority have also given written notice to the governing body that they propose to exercise one or more of their powers under Part 4 of the 2006 Act ;
3. a school requires significant improvement (section 61); and
4. a school requires special measures (section 62).

Schools eligible for intervention as a result of a performance standards and safety warning notice.

Performance standards and safety warning notices should be used as an early form of intervention, particularly where standards are unacceptably low and other tools and strategies have not secured improvement.

A performance standards and safety warning notice may be given by a local authority in one of three circumstances. Where:

1. the standards of performance of pupils at the school are unacceptably low and are likely to remain so unless the authority exercise their powers under Part 4 of the 2006 Act; 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).

The definition of what constitutes low standards of performance is set out in section 60 (3) of the 2006 Act. This is where they are low by reference to any one or more of the following:

1. the standards that the pupils might in all the circumstances reasonably be expected to attain;
2. where relevant, the standards previously attained by them; or
3. the standards attained by pupils at comparable schools.

Cases where schools are performing below the floor standards would be covered by point 1 above. There is a clear expectation that in those cases, where the school has a history of performing below floor, conversion to an Academy with a strong sponsor will be the normal route to secure improvement. It should be noted that local authorities are not limited to giving a performance and standards warning notice only to those schools which are persistently below the floor. If standards in the schools need to be challenged for another reason (e.g. there has been a sudden drop in performance or a school consistently performs below the level expected) then a warning notice may be a suitable tool if the local authority believes it meets the criteria set out above.

A school is eligible for intervention and intervention powers may be exercised in the case where a performance standards and safety warning notice has been given and has not been complied with and where the local authority have also given the school written notice that they propose to exercise one or more of their powers under Part 4 of the 2006 Act.

¹ This guidance is not concerned with warning notices given under section 60A of the 2006 Act only those given under section 60 of the 2006 Act

Schools eligible for intervention as they have been judged as requiring significant improvement or special measures

If, following an inspection under section 5 of the Education Act 2005, Ofsted considers a school to be inadequate (Grade 4), it will give a judgement that the school requires either 'significant improvement' (described as a school with 'serious weaknesses') or 'special measures'. Where a school is eligible for intervention by virtue of this judgement, it is not necessary for the LA to give a warning notice to the school. If the school has already been given a warning notice by a local authority, this judgment means the school is eligible for intervention whether or not the period of compliance in the warning notice has expired or the governing body has made representations or intend to make representations to Ofsted.

There is a clear expectation that in these cases, where the school has been judged by Ofsted to have "serious weaknesses" or require "special measures", conversion to an Academy with a strong sponsor will be the normal route to secure improvement.

From September inspectors will make a judgment on LAs' statements of action. This judgement will be made at the first monitoring inspection of all schools judged to require special measures and those that have been judged to have serious weaknesses (HMI will review the statement of action together with a representative of the LA, the headteacher and Chair of the governing body as part of that first monitoring inspection).

Associated resources

Floor standards 2010 key stage 2

Floor standards 2010 key stage 4

KS1 to 2 progress measures guidance 2011 (PDF, 55 Kb)

PDF, 55 Kb

KS2 to 4 progress measures guidance 2011 (PDF, 27 Kb)

PDF, 27 Kb

Ofsted: monitoring inspections for maintained schools

Information about the types of monitoring inspections carried out in maintained schools.

Section 2: Giving a warning notice

Section 60 of the 2006 Act sets out the provisions relating to performance, standards and safety warning notices. A performance standards and safety warning notice should be used where there is evidence to justify both the local authority's concerns and the school's reluctance or inability to address those concerns successfully within a reasonable time frame. Before deciding to give such a warning notice, local authorities must draw on a suitable range of quantitative and qualitative information to form a complete picture of a school's performance.

Giving a performance standards and safety warning notice

When used effectively many local authorities have found that giving warning notices has had a positive impact on schools causing concern, often providing a catalyst for more focused and appropriate action from both the leadership team and the governing body. It is expected that local authorities will use these powers on a more frequent basis prior to more formal intervention being required.

A performance standards and safety warning notice must be given in writing to the governing body of the school and must set out:

1. the matters on which the local authority's concerns are based. These should be set out in some detail and explain the facts that exist in that particular school and the circumstances which are giving the local authority cause for concern;
2. the action which the governing body is required to take in order to address the concerns raised;
3. the initial compliance period beginning with the day when the warning notice is given and ending 15 working days following that day, during which time the governing body is to address the concerns set out in the warning notice, or make representations to Ofsted against the warning notice; and
4. the action which the local authority is minded to take (under one or more of sections 63 to 66 of the 2006 Act 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 must also give a copy to the head teacher; and in the case of a Church of England Church 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 governors.

All warning notices must be copied to Ofsted at the same time using the email address:
warningnotices@ofsted.gov.uk

Where a performance standards and safety warning notice has been given which has not been complied with to the satisfaction of the local authority within the compliance period, the local authority must also give the school reasonable notice in writing that they propose to exercise one or more of their powers under Part 4 of the 2006 Act. When a school has failed to comply with a warning notice and the local authority have also given a further written notice, a school is eligible for intervention.²

Making representations against the warning notice

The warning notice must state that the governing body of a school can make representations in writing to Ofsted. The 2006 Act does not specify the grounds for making representations, but it could be that the school believes that the local authority have:

1. Given the warning notice without sufficient objective evidence

² See section 60(1)(e) of the Education and Inspections Act 2006

2. Proposed action that is disproportionate to the scale of the issues facing the school.

The representations must be made in writing within 15 working³ days of receipt of the warning notice. It should be sent to warningnotices@ofsted.gov.uk and copied to the local authority.

Ofsted must consider any representations and may confirm the warning notice or not. This will usually be within a period of 10 working days after receipt of the representations, although this is not set out in legislation.

If Ofsted confirms the warning notice, the school is eligible for intervention after 15 working days beginning with the day on which Ofsted confirms the warning notice.

Irrespective of whether the governing body have made representations to Ofsted, the governing body may make a complaint to the Secretary of State under section 496 and/or 497 of the Education Act 1996. This enables the Secretary of State to make a direction, if expedient to do so, where he is satisfied that a local authority have acted, or are proposing to act, unreasonably with respect to the exercising of a power or performance of a duty under the 1996 Act, or certain other Acts which are read together with the 1996 Act (including the 2006 Act), or where the local authority have failed to discharge a duty.

Power of the Secretary of State to direct the local authority to consider giving and to give a warning notice

The Secretary of State has the power to direct a local authority to first consider giving a warning notice in specified terms and then, to direct the local authority to give a warning notice in those terms where a local authority have decided not to do so.

A direction to give a performance standards and safety warning notice in the terms specified may be given if the Secretary of State thinks there are reasonable grounds for the local authority to do so and:

1. the local authority have not given a warning notice to the governing body; or
2. the local authority have done so, but in inadequate terms; or
3. the local authority have given a warning notice to the governing body but Ofsted have failed or declined to confirm it; or
4. the school has become eligible for intervention, but the period of two months following the end of the compliance period has ended.

The local authority may then decide to give the warning notice to the governing body in the specified terms and must give the Secretary of State a written response to the direction confirming this within 10 working days beginning with the day on which the direction was given. They must then give a performance standards and safety warning notice to the governing body within 5 working days from the day on which a response is given to the Secretary of State and on the same day give the Secretary of State a copy of the notice.

If the local authority decides not to give a warning notice, then they must respond to the Secretary of State within 10 working days¹ beginning with the day on which the direction was given setting out the reasons for that decision. If having considered these reasons, the Secretary of State believes that a warning notice is still necessary then the local authority will be directed to give a warning notice in those specified terms. The local authority must then give this performance standards and safety warning notice to the governing body within 5 working days beginning with the date when the direction is given.

Once this warning notice has been given, the school has 15 working days to comply with the terms of the warning notice or make representations to Ofsted as with any other warning notice given.

³ Working day does include the school holidays. See the definition in section 60(10) of the Education and Inspections Act 2006

The local authority must judge whether the school has complied with the terms of the warning notice. If the local authority concludes that the school has failed to comply with the warning notice and has also given written notice to the governing body that they propose to exercise one or more of their intervention powers, then it is “eligible for intervention” as set out in Part 4 of, and Schedule 6 to, the 2006 Act, and the intervention powers of the Secretary of State and the local authority may be exercised.

The Secretary of State may also request Ofsted to inspect and report on a school where there are serious concerns under provisions in the Education Act 2005.

¹The 2006 Act states that “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c.80) in England.

Associated resources

Appropriate forms of evidence for issuing a performance standards and safety warning notice (Word, 39 Kb)

Section 3: Powers and types of intervention - LAs

Where a school is eligible for intervention there are a number of powers the local authority or the Secretary of State may use to drive school improvement. These interventions are set out in sections 63-66 of the 2006 Act in respect of local authorities and sections 67 to 69 in respect of the Secretary of State.

Local authority powers of intervention

1. To require the governing body to enter into arrangements.

Section 63 enables a local authority to require a school which is eligible for intervention to enter into arrangements with a view to improving the performance of the school. The local authority may give the governing body a notice requiring them:

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.

Timeframe

Where the school is eligible for intervention as a result of being given a performance standards and safety warning notice, this power must be exercised *within a period of two months following the end of the compliance period*. If the local authority fails to exercise this power within this time, it can no longer be exercised and a new warning notice must be given in order to do so.

Consultation

Before the local authority can exercise this intervention power they must consult:

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

A consultation must be undertaken when proposals are at a formative stage and include sufficient detail to allow those consulted to give a considered response. A final decision can only be taken after consideration has been given to any representations received. There is no statutory time scale in which the consultation process is to be completed. We would expect a normal consultation process to take about 14 days but this may vary depending on the circumstances of the case.

2. The appointment of additional governors

Section 64 enables a local authority to appoint additional governors where a school is eligible for intervention. The local authority is likely to appoint additional governors when they would like a school to be provided with additional expertise and may appoint as many additional governors as they think fit. In the case of a voluntary aided school where the local authority have exercised the power to appoint additional governors, the appropriate appointing authority in relation to that school may appoint an equal number of governors to those appointed by the local authority.

Timeframe

Where the school is eligible for intervention as a result of being given a performance standards and safety warning notice, this power must be exercised *within a period of two months following the end of the compliance period*. If the local authority fails to exercise this power within this time, a new warning notice must be given in order to do so. Where the local authority appoints additional governors there is no requirement to consult.

3. The appointment of an Interim Executive Board (IEB)

Section 65 of the 2006 Act enables the local authority to apply to the Secretary of State for consent to constitute the governing body as an IEB in accordance with Schedule 6 to the 2006 Act. An IEB can be used to accelerate improvement in standards and attainment and provide challenge to the leadership of the school to secure rapid improvement or where there has been a serious breakdown of working relationships within the governing body of the school.

Timeframe

This power may be exercised at any time a school is eligible for intervention and is not subject to the time limitation set out above in respect of other intervention powers.

Consultation

Before the local authority can exercise this intervention power they must consult:

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

A fair consultation must be undertaken when proposals are at a formative stage and include sufficient detail to allow those consulted to give a considered response. A final decision should only be taken after consideration of any representations received. There is again no statutory time scale in which the consultation process is to be completed and it is likely that this will vary depending on the circumstances in which the IEB is required. We would expect a normal consultation process to take about 14 days but this may vary depending on the circumstances of the case.

IEB applications should be made using the form on the DfE website and should follow the guidance for the completion of an IEB application form.

After obtaining consent in writing from the Secretary of State, the local authority must write to the governing body to give them notice that the IEB will be established. This notice should specify a date when the IEB will commence and will usually also give a date when the IEB will cease but may not always.

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 when the IEB commences its work. If a notice has been given to the normally constituted governing body specifying a date when it is proposed to withdraw the right to a delegated budget, the notice will cease to be valid from the date of commencement of the IEB.

The role and duties of the IEB

The IEB's main function is to secure a sound basis for future improvement in the school and this should include the promotion of high standards of educational achievement.

The IEB is the governing body of the school and any reference in the Education Acts to a governor or foundation governor has effect as a reference to an interim executive member. During the interim period, when the governing body is constituted as an IEB, the requirements concerning the governing bodies 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, the curriculum, staffing, pay and performance management and the appointment of the headteacher and deputy headteacher. An IEB may recommend to a local authority, or recommend that the Secretary of State give a direction to a local authority, that a school should be closed. However, the IEB cannot itself publish proposals for closure. If, 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 school to convert to an Academy.

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. An IEB should be a small, focused group appointed for the full period which it is expected to take to turn the school around. Members of an IEB should be chosen on a case by case basis, depending on the needs of the school and existing governors may be appointed to the IEB. We expect members of an IEB to bring a fresh outlook to the governance arrangements of the school, marking a clear break from the previous management of the school. In most cases, therefore, we would not expect existing governors who are vacating office to be nominated as IEB members (although this is not prohibited by the law). LAs who are considering doing this should contact the DfE to discuss the particular circumstances of the school.

The IEB may arrange for the discharge of their functions to other people as they see fit (under paragraph 11(2) of Schedule 6 to the of the 2006 Act). In this way the IEB could continue to benefit from the experience of existing governors and help engage future governors.

The local authority is able to nominate one of the members of the IEB to act as Chair

Interim executive members may be removed in limited circumstances. This can be for incapacity or misbehaviour or where their written notice of appointment provides for termination by the appropriate authority on notice. The appropriate authority may be the local authority or the Secretary of State depending on who made the original appointment.

The local authority 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

school's existing governing body; the Secretary of State; and, in the case of foundation or voluntary schools, the diocesan or other appropriate appointing authority. A local authority or the Secretary of State may choose to pay interim executive members such remuneration and allowances as is considered appropriate.

4. The suspension of delegated authority for the governing body to manage a 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 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.

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

Timeframe

Where a school is eligible for intervention as a result of being given a performance standards and safety warning notice, this power must be exercised *within a period of two months following the end of the compliance period*. If the local authority fails to exercise this power within this time, a new warning notice must be given in order to do so. There is no requirement for the local authority to consult before exercising this power.

Associated resources

Interim Executive Board application form (Word, 39 Kb)

Local authorities can apply to replace the governing body of a school causing concern with an Interim Executive Board.

Word, 39 Kb

Section 4: Secretary of State's powers

1. Power to appoint additional Governors

Section 67 of the 2006 Act allows the Secretary of State to appoint additional governors at any time a maintained school is eligible for intervention; the Secretary of State may appoint any such number of additional governors as he sees fit.

Before making any appointment, the Secretary of State 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 Church 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.

The Secretary of State may pay any governor appointed such remuneration and allowances as is considered appropriate. Where the Secretary of State has exercised this power, the local authority may not exercise their power to suspend the governing body's right to a delegated budget.. , The legislation provides that a voluntary aided school is not authorised to appoint foundation governors for the purpose of outnumbering the other governors appointed by the Secretary of State.

2. Power to direct the closure of a school

The Secretary of State may direct a local authority to cease to maintain a school where that school is eligible for intervention other than by virtue of section 60A of the 2006 Act. (non-compliance with teachers pay and conditions)

This will usually be done where there is no prospect of the school making sufficient improvements. 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 school or a 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.

If the direction to close a 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 school.

3. Power to provide for the governing body to consist of interim executive members

Under Section 69 of the 2006 Act the Secretary of State may require the governing body of a school to be constituted as an IEB in accordance with Schedule 6 to the 2006 Act where the school is eligible for intervention.

Before this power can be exercised the Secretary of State 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 Church 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.

This requirement to consult the bodies in 2, 3 and 4 above does not apply if the local authority has already done so in respect of their own proposal to appoint an IEB or if an Academy order has effect in respect of the school.

4. Power to make an Academy order

Section 4 of the Academies Act 2010 permits the Secretary of State to make an Academy order in two circumstances: firstly, on the application of a school's governing body; or secondly, if the school is eligible for intervention within the meaning of Part 4 of the 2006 Act .

Before making an Academy order in respect of a foundation or voluntary school with a foundation that is eligible for intervention, the Secretary of State must consult:

- (a) the trustees of the school
- (b) the person and persons by whom the foundation governors are appointed and
- (c) in the case of a school which has a religious character, the appropriate religious body.

If an Academy order is made in respect of a school, the Secretary of State must give a copy of the order to:

- a) the governing body of the school;
- b) the headteacher; and
- c) the local authority; and
- d) in the case of a foundation or voluntary school that has a foundation
 - (I) the trustees of the school
 - (ii) the person and 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.

Under section 5 of the Academies Act 2010 before a maintained school can convert into an Academy, the governing body must consult on the question of whether conversion should take place.

In the case of a school eligible for intervention under Part 4 of the 2006 Act, the consultation may be carried out by the governing body of the school (or an IEB where appointed) or the person with whom the Secretary of State proposes to enter into Academy arrangements in respect of the school or an educational institution that replaces it.

The expectation is that a persistently underperforming school or a school that is in Ofsted category will become an Academy. Any such Academy would be a “sponsored” Academy, meaning that the school would adopt governance arrangements, involving a strong external body, that will ensure

that the school is supported in turning its performance around (an organisation or a sponsoring school).

The expectation would be that any strong school which was proposing to act as a sponsor would themselves also be an Academy or willing to become an Academy in order to take on the sponsorship role. Being an Academy will allow the sponsoring school to use its Academy freedoms to secure rapid improvement in both the school it is sponsoring, as well as its own school