



Department  
for Education

# **Schools causing concern**

**Intervening in failing, underperforming  
and coasting schools**

**Guidance for local authorities and RSCs**

**Draft for consultation**

## Contents

Summary	4
About this guidance	4
Expiry or review date	4
What legislation does this guidance refer to?	4
Who is this guidance for?	5
Chapter 1: Introduction	6
Chapter 2: Schools that have been judged inadequate by Ofsted	8
Chapter 3: Schools eligible for intervention due to falling within the ‘coasting’ definition	9
Communication with a coasting school	9
The process for how RSCs will determine the course of action for schools within the coasting definition	10
The factors RSCs may consider in determining the course of action for schools within the coasting definition	10
What action RSCs may take in coasting schools	12
Chapter 4: Schools eligible for intervention as a result of a warning notice	14
Teachers’ pay and conditions warning notices	14
Performance standards and safety warning notices	15
Low standards of performance	15
Breakdown in the way the school is managed or governed	17
The safety of pupils or staff at the school is threatened (whether by a breakdown of discipline or otherwise)	18
Issuing a warning notice	19
What actions local authorities and RSCs may take in schools that have failed to comply with a warning notice	20

## Draft

Chapter 5: Specific powers of local authorities and the Secretary of State in schools eligible for intervention	21
Local authority and Secretary of State power to require the governing body to enter into arrangements	22
Local authority and Secretary of State power to appoint additional governors	23
Local authority and Secretary of State powers to appoint an Interim Executive Board (IEB)	23
Power of the Secretary of State to direct a local authority on the appointment of interim executive members	26
Power of the Secretary of State to take over responsibility for interim executive members	27
Power of the local authority to suspend the delegated authority for the governing body to manage a school's budget	27
Power of the Secretary of State to make an academy order	28
Power of the Secretary of State to direct the closure of a school	30
Chapter 6: Other local authority duties	31
School performance	31
Special Educational Needs (SEN)	31
Safeguarding	31
Chapter 7: Governance	33
Further sources of information	34
Legislation	34
Other departmental resources	35

## 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 schools causing concern, to have regard to any guidance given from time to time by the Secretary of State.

This guidance covers “schools causing concern” (within the meaning of section 44 of the Education Act 2005) and schools that are “eligible for intervention” (within the meaning of Part 4 of the 2006 Act), but also other maintained schools about which the local authority and/or Secretary of State have serious concerns which need tackling.

The Education and Adoption Bill introduces new intervention powers for the Secretary of State and extends the types of maintained schools that are eligible for intervention to include coasting schools. These new intervention powers for the Secretary of State will be exercised by Regional Schools Commissioners (RSCs), and RSCs will be expected to follow this guidance in exercising those powers.

The guidance also provides non-statutory guidance on approaches which local authorities should take in overseeing effective governance in the schools which they maintain.

### 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 (“ASCL Act”) (amended the 2006 Act)
- The School Governance (Transition from an Interim Executive Board)(England) Regulations 2010 (“Transition Regulations”)

## Draft

- Academies Act 2010
- Education Act 2011 (amended the 2006 Act, and Schedule 14)
- Education and Adoption Bill 2015

### Who is this guidance for?

- Local authorities, who must have regard to it as statutory guidance.
- Regional Schools Commissioners (RSCs) will be expected to follow this document as guidance for how they will exercise the Secretary of State's powers of intervention in maintained schools.
- Dioceses, school foundations and governing bodies of maintained schools will also want to be aware of this guidance and the implications for their schools.
- Others, such as staff and parents at maintained schools, who may find it useful.

## Chapter 1: Introduction

This Government has made a clear commitment to extend opportunity and unlock potential. Every child, whatever their background, deserves the best start in life and an excellent education.

The Government is introducing, through the Education and Adoption Bill, new powers to intervene in failing schools from day one and to tackle, for the first time, schools that have been coasting. These powers will strengthen the Secretary of State's ability to deal with underperformance, and to do so more swiftly.

This guidance describes the three groups of schools which are eligible for intervention:

1. **Schools that have been judged inadequate by Ofsted** – An academy order will be issued for all such schools, requiring them to become sponsored academies. To minimise delays and ensure swift action, there will be a new duty on governing bodies and local authorities to facilitate academy conversion. The process for schools judged as inadequate by Ofsted is described in more detail in Chapter 2 of this guidance.
2. **Schools that are coasting** – Schools which fall within our definition of coasting will become eligible for intervention. Where a coasting school does not have a sufficient plan and the necessary capacity to bring about improvement, the RSC will use the powers of the Secretary of State to intervene. In many cases this intervention will be to ensure that the school receives the support and challenge it needs, but where necessary the RSC will be able to convert the school into an academy with the support of a sponsor. The process for schools falling within the coasting definition is described in more detail in Chapter 3 of this guidance.
3. **Schools that have failed to comply with a warning notice** – Local authorities and RSCs, acting on behalf of the Secretary of State, have powers to give warning notices to schools where they have concerns about unacceptable performance (e.g. below floor standards, or a sudden fall in performance), a breakdown in leadership and governance, or the safety of pupils or staff may be being threatened. Where a school does not comply with a warning notice it will become eligible for intervention. The warning notice process is described in more detail in Chapter 4 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 is also the guide for how RSCs will exercise the Secretary of State's powers to intervene in maintained schools. More information about the RSCs, how they operate and how they are supported by their Headteacher Boards can be found on the [GOV.UK website](#).

## Draft

The respective intervention powers of local authorities and RSCs are described in Chapter 5 of this guidance.

This guidance describes the roles and responsibilities of RSCs and local authorities, and how they will work with others in the school system to ensure underperformance is challenged and schools are supported to improve – including Ofsted, governing bodies, foundation trusts, Dioceses and other religious bodies. The Government is committed to protecting the ethos of schools with a religious character, and RSCs will ensure that their intervention arrangements will safeguard the religious character and ethos of the school, working closely with the relevant religious body.

Statutory intervention powers only apply to maintained schools, with academies and free schools operating under a different legal framework. This guidance relates only to the exercise of those statutory powers, and therefore academies and free schools are not within its scope. Academies and free schools are held to account under their legal framework as rigorously as maintained schools. RSCs will scrutinise academies' performance and will require academies to take particular action or face termination of their funding agreement where they are in breach of it and such action is necessary.

## Chapter 2: Schools that have been judged inadequate by Ofsted

Schools that have been judged inadequate are:

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

For these schools, which have failed, action is needed urgently. The Secretary of State has a duty<sup>1</sup> to make an academy order for that school, to enable it to become an academy.

The RSC, acting on behalf of the Secretary of State, will take responsibility for ensuring that the school becomes a sponsored academy as swiftly as possible, including identifying the most suitable sponsor and brokering the new relationship between that sponsor and the school. Further details about academy orders are set out in Chapter 5 of this guidance.

In the case of voluntary schools with foundations and foundation schools which are eligible for intervention and subject to an academy order, the RSC is required to consult regarding the identity of the sponsor before entering into academy arrangements<sup>2</sup>. They must consult with the trustees of the school, the person or persons who appoint the foundation governors, and in the case of a school which has a religious character the appropriate religious body<sup>3</sup>. RSCs will ensure that any intervention arrangements will safeguard the religious character and ethos of these schools.

Where the school is the subject of an academy order because it is eligible for intervention, the governing body and the local authority will be under a duty to work towards the school's successful conversion into an academy by taking all reasonable steps towards that end<sup>4</sup>. RSCs can also 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 purpose<sup>5</sup>. If the RSC has identified a sponsor to run the school, and has notified the school of this, then the governing body and the local authority must take all reasonable steps to facilitate that sponsor taking responsibility for the school<sup>6</sup>.

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<sup>1</sup> Section 4(A1) of the Academies Act 2010, as inserted by the Education and Adoption Bill.

<sup>2</sup> For the purpose of this guidance we refer to the identity of 'the sponsor' but this is in fact the identity of the person with whom the academy arrangements are to be entered into.

<sup>3</sup> Section 5A of the Academies Act 2010, as inserted by the Education and Adoption Bill.

<sup>4</sup> Section 5B of the Academies Act 2010, as inserted by the Education and Adoption Bill.

<sup>5</sup> Section 5C of the Academies Act 2010, as inserted by the Education and Adoption Bill.

<sup>6</sup> For the purpose of this guidance we refer to 'the sponsor', for simplicity, but this is in fact the person with whom the academy arrangements are to be entered into.

## Chapter 3: Schools eligible for intervention due to falling within the ‘coasting’ definition

Coasting schools are a new group of schools which are eligible for intervention by RSCs, acting on behalf of the Secretary of State and by local authorities<sup>7</sup>. These are schools where performance data shows that, year on year, they are failing to ensure their pupils reach their potential. The definition of a coasting school is specified in regulations<sup>8</sup>.

### Communication with a coasting school

Coasting schools will be notified by RSCs that they are coasting. Once notified that it is coasting, a school will be eligible for intervention. Coasting schools will be identified for the first time once the performance tables containing final 2016 results for key stage 2 and key stage 4 have been published.

Prior to the publication of the final performance tables, schools, local authorities and RSCs receive provisional performance results. In some cases, RSCs may make contact with schools during this period, to begin informal discussions about their circumstances, but no school can be eligible for intervention until after the final performance tables are published.

Following publication of the final performance tables, the RSC will write to notify the school that it is coasting and is eligible for intervention. The RSC will set out in the notification letter what the school can expect to happen next, including the likely timescales. In the letter, the RSC may request to see the school’s current plan for improvement. They may also inform the school that they would like to meet the school’s leaders or governors, or that they intend to send a representative to do so.

Once the RSC has made their decisions about whether and what action must be taken in a school (see more on how RSCs will determine the action needed below), they will communicate this to the school in writing, specifying the action that must be taken and the timescales for that action, and any other arrangements.

The RSC will write to schools at such time as they no longer meet the coasting definition. They will then no longer be eligible for intervention on this basis.

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<sup>7</sup> Section 60B of the Education and Inspections Act 2006, as inserted by the Education and Adoption Bill. Both RSCs, acting on behalf of the Secretary of State, and local authorities have intervention powers in schools notified as being coasting. We expect local authorities to work closely with RSCs about the arrangements for doing so. Therefore this guidance describes the RSC’s role, which local authorities would support.

<sup>8</sup> Coasting Schools England Regulations 2016 [Note: this is subject to final name of the regulations]

## **The process for how RSCs will determine the course of action for schools within the coasting definition**

RSCs have discretion to decide which schools within the definition of coasting have a sufficient plan and sufficient capacity to improve, which schools will need additional support and challenge in order to improve, and in which schools it will be necessary for the RSC to intervene. They will make their decisions with the support and advice of their Headteacher Board.

We want school leaders to take responsibility for improving schools. Schools that have fallen within the coasting definition will have the opportunity to demonstrate their plans to improve. The RSC will consider a school's capacity, and whether the school has a sufficient plan to bring about the necessary improvement, in order to decide whether intervention will be required.

The RSC will give consideration to any views or evidence provided by the local authority responsible for that school. RSCs may also want to work with local authorities where they are already providing help to a coasting school to ensure the necessary support is in place for the school to make sufficient improvement.

Where a coasting school is a school with a religious character, and therefore a religious body is responsible for the school, or there is a trust responsible for a foundation school, RSCs and local authorities will recognise these bodies and their responsibilities for ensuring high quality education in their schools and bringing about improvement where it is needed. RSCs and local authorities will take account of the views of these bodies when making decisions about what action may be necessary in a school, and seek to work collaboratively with them. Where an intervention is necessary, the RSC will ensure that the arrangements safeguard the religious character and ethos of the school, working closely with the relevant religious body.

## **The factors RSCs may consider in determining the course of action for schools within the coasting definition**

In making decisions about which coasting maintained schools require action, and what action is necessary for those schools, RSCs will take into consideration the characteristics of a coasting school, and seek to understand the school, its context, and what factors may have led it to meet the coasting definition. For example, a school may have a large Special Educational Needs (SEN) unit. In this circumstance, the RSC may wish to examine the data from the different parts of the school and not make their decisions solely on the basis of the overall results. They may also consider data and other evidence which might indicate the causes of the school's current underperformance, and therefore what the most appropriate action would be to bring about sufficient improvement.

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The following are indicative factors that RSCs may take into consideration, but it is not exhaustive.

### **Performance data and other quantitative information**

- Educational performance and progress data for that school, further to the data that meant the school was identified as coasting;
- In particular, the educational performance and progress data of pupils at the school with particular characteristics – such characteristics may include but not necessarily be limited to:
  - Pupils registered as eligible for free school meals in the last six years;
  - Pupils with special educational needs and disabilities (SEND);
  - Pupils with English as an additional language (EAL);
  - Pupils of low, middle and high abilities; and
  - The proportion of pupils of each gender, and whether the school is mixed or single sex.
- Other data about the school, such as pupil attendance.

### **The school's plan for improvement, and other qualitative information**

- The school's plan to bring about improvement of its educational performance and pupil progress, whether that plan is sufficient and has the rigour and credibility to bring about the necessary improvement of the school, and whether the school has the capacity to deliver against that plan;
- Recent judgements or assessments that Ofsted has made of the school. The RSC may use Ofsted's views about a school's current weaknesses and areas for improvement to determine the most appropriate additional support and challenge;
- The school's use of the pupil premium and how the school has evaluated the impact of that use.

Schools and local authorities should cooperate fully with the relevant RSC in providing whatever information the RSC believes relevant in order to make an assessment of the school and its capacity to improve.

The RSC will not delay making a decision because the school or local authority has failed to provide in a timely fashion information or representations requested by the RSC, and where there is no good reason for the delay. Ultimately, if there is any disagreement between an RSC and the school governing body, or the local authority about what should

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be taken into consideration and what conclusions should be drawn, the RSC's powers to intervene take precedence<sup>9</sup>, and the RSC will make the final judgement.

### What action RSCs may take in coasting schools

Once a school has been notified that it is coasting and is therefore eligible for intervention, there is a range of steps the RSC may take in that school.

The RSC may decide that:

#### **No further action by the RSC need be taken in that school, at this stage.**

The RSC may conclude that the school already has a sufficient plan for improvement in place, which is rigorous and credible, and that the school's leadership has the capability to deliver against this plan – or the plan may include bringing in additional support and challenge that the school has already identified for itself – and so the school will be allowed the time to do this.

#### **The school needs some additional support and challenge.**

The RSC may judge that additional support and challenge is necessary to enable the school to deliver sufficient improvement. The RSC will work with the school to identify where this may come from, and may recommend that the school should consider entering into particular arrangements to access this support, for example from system leaders such as those from within Teaching School Alliances or National Leaders of Education (NLEs), or partnerships with high performing local schools.

#### **The governing body of the school should be required to enter into arrangements.**

The RSC may use the Secretary of State's power to direct a school eligible for intervention to enter into arrangements which will support the school to bring about sufficient improvement.

#### **Additional governors or an Interim Executive Board (IEB) are needed.**

The RSC may judge that the governance of the school needs improvement. If the school (and/or the relevant authority, on behalf of the school) is unable or unwilling to bring about changes in governance itself, the RSC will exercise the Secretary of State's powers to appoint additional governors, or to replace the governing body by appointing an IEB.

#### **A sponsored academy solution is necessary.**

The RSC may decide that a transformative structural change is necessary to bring about sufficient improvement of the school, and will therefore exercise the Secretary of State's power to make an academy order.

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<sup>9</sup> Section 60(4A)-(4B) and sections 70A-70C ('Interaction between different intervention powers etc.') of the Education and Inspections Act 2006, as inserted by the Education and Adoption Bill.

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Once the RSC has made decisions about what action should be taken in a school, they will communicate this to the school in writing.

The specific powers of the Secretary of State that the RSC may use are described in more detail in Chapter 5. For certain powers, there are requirements about who must be consulted – this is described in more detail at Chapter 5. In circumstances where a school has a religious character, RSCs will take into account the views of the relevant religious body, and in particular will ensure that any necessary intervention identified will safeguard and maintain the religious character and ethos of the school.

Whatever action the RSC has decided to take, the RSC will continue to monitor the school's performance and progress and keep under review whether additional action is needed. The RSC may specify to the school timescales by which they will expect action to have been taken or improvement to have been made, and what further action the RSC will be minded to take if the school has not taken those actions or made sufficient improvement within that time. The RSC is able to revise their decision or make a new decision about a coasting school at any time – for example if new information or a change in circumstances should come to light. The full range of intervention options will continue to be available to the RSC to use at any stage.

## Chapter 4: Schools eligible for intervention as a result of a warning notice

There may be schools which have not been judged to be inadequate or that do not meet the coasting definition, but are otherwise causing concern. The school's performance data may be below floor standards, may show a sudden drop or inconsistency, or there may be concerning gaps in performance between pupils with particular characteristics. There may have been changes in the leadership or governance of the school, or leaders or governors may be failing to exercise their strategic role or certain duties.

RSCs, acting on behalf of the Secretary of State, and local authorities have powers to issue warning notices to schools that are causing concern. It is expected that local authorities will use their powers to issue warning notices frequently, as part of their responsibility to ensure improvements in standards in schools. When they do so they must give a copy of the warning notice to the RSC.

There are two types of warning notice:

- Section 60A of the 2006 Act sets out the provisions relating to **teachers' pay and conditions warning notice**. This section provides that the local authority may issue such a warning notice.
- Section 60 of the Education and Inspections Act 2006 sets out the provisions relating to **performance standards and safety warning notice**. This section provides that either the local authority or the Secretary of State (and therefore RSCs on behalf of the Secretary of State) may issue such a warning notice.

### Teachers' pay and conditions warning notices

Under section 60A of the Education and Inspections Act 2006, 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.

It should be noted that when a schools becomes eligible for intervention due to non-compliance with a teachers' pay and conditions warning notice, the intervention powers listed in Chapter 5 may be used, except the powers under sections 63, 66A and 68 of the Education and Inspections Act 2006, which cannot.<sup>10</sup> The powers under sections 64 and 66 of that Act must be used within a period of two months following the end of the

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<sup>10</sup> These are the local authority's and Secretary of State's power to require the governing body to enter into arrangements (section 63 and 66A) and the Secretary of State's power to direct the closure of the school (section 68). Chapter 5 of this guidance explains the intervention powers in more detail.

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compliance period specified in the teachers' pay and conditions warning notice.<sup>11</sup> If the local authority fails to exercise these powers within this time, these powers can no longer be exercised and a new teachers' pay and conditions warning notice must be given in order to do so.

RSCs do not have the power to issue teachers' pay and conditions warning notices. A local authority is required to send the RSC a copy of any teachers' pay and conditions warning notice it issues<sup>12</sup>.

## Performance standards and safety warning notices

Both local authorities and RSCs (acting on behalf of the Secretary of State) have powers to issue warning notices to schools where there are concerns about performance standards and safety. Such a warning notice may be given by a local authority or an RSC in one of three circumstances:

1. the standards of performance of pupils at the school are unacceptably low and are likely to remain so;
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).

A performance standards and safety warning notice should be used where there is reasonable evidence to justify both the concerns and the belief that the school is reluctant or unable to address those concerns successfully within a reasonable time frame without the warning notice being issued. In considering whether it is appropriate to give a warning notice, the local authority or RSC will consider a range of quantitative and qualitative information to form a complete picture of a school's performance.

## Low standards of performance

The detail of what constitutes "low standards of performance" is set out in section 60(3) of the 2006 Act, specifying that this is by reference to any one or more of the following:

- I. the standards that the pupils might in all the circumstances reasonably be expected to attain; or

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<sup>11</sup> 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). Chapter 5 of this guidance explains the intervention powers in more detail.

<sup>12</sup> Section 60A (6)(za) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Bill.

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- II. where relevant, the standards previously attained by them; or
- III. the standards attained by pupils at comparable schools.

Local authorities and RSCs will judge that a school should be determined as showing sufficiently “low standards of performance” that a warning notice should be issued by taking into consideration a number of factors which will include the following:

- Standards below the floor<sup>13</sup>;
- Low standards achieved by disadvantaged pupils<sup>14</sup>;
- Variations in performance and progress between pupils of different characteristics;
- A sudden drop in performance;
- Sustained historical underperformance, including where the coasting definition may not apply to a school, for example because it is an infant school, but there is concern about persistent poor performance;
- Recent judgements and assessments made by Ofsted about the school and its capacity to improve.

In making these decisions, local authorities and RSCs will exercise their judgement in identifying whether some or all of these factors are relevant to their considerations, and also to consider additional factors.

Local authorities or RSCs may use Ofsted’s views about a school’s current problems and areas for improvement to inform whether a warning notice should be issued, and to inform what action should be taken to address those problems. Local authorities and RSCs are able to issue warning notices to maintained schools in their area that have been judged as requires improvement by Ofsted, in order to drive their improvement, if they judge this to be appropriate.

Ultimately, if there is any disagreement between the RSC and the local authority about issuing a warning notice, the Secretary of State’s powers to issue a notice takes precedence over the local authority’s<sup>15</sup>, and therefore the RSC will make the final judgement.

There will be an expectation that local authorities and RSCs should issue a performance standards and safety warning notice unless there is a particular reason **not** to do so, and should do so swiftly. For example, they should not delay issuing a warning notice until a

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<sup>13</sup> This includes standards below the 16-19 minimum standards. A link to information about the expected levels of school performance (floor standards) is provided under ‘Further sources of information’.

<sup>14</sup> Disadvantaged pupils specifically refers to those for whom the pupil premium provides support; namely, pupils eligible for free school meals at any point in the last 6 years, looked after children and children who left care through adoption, special guardianship orders or child arrangements orders.

<sup>15</sup> Section 60 (4A)-(4B) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Bill.

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school has been persistently low performing over a period – they are able to, and should, issue a warning notice in response to a sudden drop in performance.

### **Low standards achieved by disadvantaged pupils**

Local authorities and RSCs should consider issuing a warning notice to schools that have not responded robustly or rapidly enough to a recommendation by Ofsted to commission an external review of the use and impact of the Pupil Premium. Such recommendations are normally made as part of section 5 inspections in schools judged requires improvement by Ofsted where the standard of performance of disadvantaged pupils is judged to be unacceptably low.

Schools do not need to wait for an Ofsted inspection recommendation to seek an external review of the Pupil Premium. Local authorities or RSCs may consider recommending this to schools themselves where they have concerns.

Guidance is available from the National College for Teaching and Leadership on commissioning and conducting external reviews on the impact of the Pupil Premium<sup>16</sup>.

### **Breakdown in the way the school is managed or governed**

Local authorities and RSCs should provide additional support or consider issuing a warning notice, depending on the severity of the case, to maintained schools 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 strategic role of a governing body is to:

1. Ensure clarity of vision, ethos and strategic direction;
2. Hold the headteacher 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 well spent.

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

- high governor turnover;
- a significant, unexplained change to their constitution; and/or

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<sup>16</sup> See under 'Further sources of information' for the National College for Teaching and Leadership guidance on pupil premium reviews.

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- the governing body having an excessive involvement in the day to day running of the school.

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

In the case of a school with a religious designation, the local authority or RSC should raise concerns about governance with the relevant religious authority at the earliest opportunity, where this is appropriate.

Local authorities and RSCs should also consider issuing warning notices to maintained schools that have not responded robustly or rapidly enough to a recommendation by Ofsted to commission a robust and objective external review of their governance arrangements. Such recommendations are normally made as part of section 5 inspections in schools requiring improvement where governance is judged to be weak.

Schools do not need to wait for an Ofsted inspection recommendation to seek an external review of their governance arrangements. Local authorities or RSCs may consider issuing such a recommendation where they have concerns about the quality of a maintained school's governance, before considering more formal intervention.

Guidance is available from the National College for Teaching and Leadership on commissioning and conducting such external reviews<sup>17</sup>.

### **The safety of pupils or staff at the 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 the school is threatened, whether by a breakdown of discipline or otherwise, they should issue a warning notice.

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

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<sup>17</sup> See under 'Further sources of information' for the National College for Teaching and Leadership guidance on governance reviews.

## Issuing a warning notice

Once a local authority or RSC has determined that they will issue a warning notice, they must give this in writing to the governing body of the school and must set out:

1. the matters on which their concerns are based;
2. the action which the governing body is required to take in order to address the concerns raised;
3. the period within which the governing body must comply or secure compliance with that action (the compliance period);
4. the action which the local authority or RSC is minded to take if the governing body does not take the required action.

In addition to giving the governing body a warning notice, a copy must be given to the headteacher; 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<sup>18</sup>.

At the time that the warning notice is given to the governing body, a copy must also be given to the relevant RSC, when it is a local authority making it, or a copy must be given to the local authority, when it is the RSC making it<sup>19</sup>.

If a local authority is notified that the RSC has given a warning notice, the local authority may not give a warning notice to the same school unless or until the RSC informs them that they may. If the RSC gives a warning notice, any earlier performance standards and safety warning notice given to the same school by the local authority will cease to have effect<sup>20</sup>.

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

Warning notices issued by RSCs will be published online.

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<sup>18</sup> Section 60 of the Education and Inspections Act 2006.

<sup>19</sup> Section 60(6A)-(6B) of the Education and Inspections Act 2006, inserted by the Education and Adoption Bill.

<sup>20</sup> Section 60(4A)-(4B) of the Education and Inspections Act, as inserted by the Education and Adoption Bill.

## **What actions local authorities and RSCs may take in schools that have failed to comply with a warning notice**

When a school 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 subsequently given reasonable written notice that they propose to intervene, a school is eligible for intervention and further action may be taken.<sup>21</sup>

The local authority or RSC will have specified in the warning notice what action they were minded to take if the school failed to comply. This may be to use their intervention powers as described in Chapter 5 of this guidance.

It should be noted that for some intervention powers, the power must be exercised within a period of two months following the end of the compliance period – those are the powers in sections 63, 64, 66 and 66A of the Education and Inspections Act 2006.<sup>22</sup> If the relevant authority 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.

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<sup>21</sup> See section 60(1)(d) of the Education and Inspections Act 2006 as amended by the Education and Adoption Bill

<sup>22</sup> These are the local authority's powers to require the governing body to enter into arrangements (section 63), to appoint additional governors (section 64) and to suspend the school's right to a delegated budget (section 66); and the Secretary of State's power to require the governing body to enter into arrangements (section 66A). Chapter 5 of this guidance explains the intervention powers in more detail.

## Chapter 5: Specific powers of local authorities and the Secretary of State in schools eligible for intervention

Where a school is eligible for intervention (i.e. when it has been judged inadequate by Ofsted, has been notified that it is coasting, or has failed to comply with a warning notice) there are a number of powers the local authority and 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**:

- 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.

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

- 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<sup>23</sup> (or duty) to make an academy order.

The Secretary of State's powers will generally be exercised by Regional Schools Commissioners (RSCs), acting on behalf of the Secretary of State. Therefore, for the purpose of this guidance, the RSC will be referred to as using the described powers.

The local authority must notify the relevant RSC each time they intend to use their intervention powers and obtain consent from the RSC before appointing an Interim Executive Board (IEB). The RSC will also notify the local authority before requiring the governing body to enter into arrangements, appointing additional governors, appointing an IEB<sup>24</sup> or when the Secretary of State directs the closure of a school.

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<sup>23</sup> Or in the case of an inadequate school, duty.

<sup>24</sup> Section 70A of the Education and Inspections Act 2006, as inserted by the Education and Adoption Bill.

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When a local authority has been notified that the RSC intends to exercise the Secretary of State's intervention powers, 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 so<sup>25</sup>.

### **Local authority and Secretary of State power to require the governing body to enter into arrangements**

Section 63 enables a local authority, and section 66A of the 2006 Act enables the RSC, to require a school which is eligible for intervention<sup>26</sup> to enter into contracts or arrangements with a view to improving the performance of the school. A notice may require the 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.

Before a power to require the governing body to enter into arrangements can be exercised, the relevant authority 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.

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 of the case.

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<sup>25</sup> Section 70B of the Education and Inspections Act 2006, as inserted by the Education and Adoption Bill.

<sup>26</sup> Except a school that is eligible for intervention as the result of a teachers' pay and conditions warning notice.

## **Local authority and Secretary of State power to appoint additional governors**

Section 64 enables a local authority, and section 67 of the 2006 Act enables the RSC, to appoint additional governors where a school is eligible for intervention. This will usually be used when they would like a school to be provided with additional expertise.

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 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.

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 of the case. 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 exercised their power to appoint additional governors, the appropriate appointing authority in relation to that school may appoint an equal number of foundation governors to those appointed by the local authority, in order to preserve their majority. However, where the RSC has exercised their power, the voluntary aided school is not authorised to appoint foundation governors for the purpose of outnumbering the other governors including those appointed by the RSC<sup>27</sup>.

Where the RSC's power has been exercised, the RSC may pay any governor appointed such remuneration and allowances as is considered appropriate. Where the RSC has exercised this power, the local authority may not exercise their power to suspend the governing body's right to a delegated budget.

## **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 acting on behalf of the Secretary of State for consent to constitute the governing body as an IEB, and section 69 enables the RSC acting on behalf of the Secretary of State to require the

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<sup>27</sup> Section 67(6)(b) of the Education and Inspections Act 2006.

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governing body of a school to be constituted as an IEB. Both of these powers must be exercised in accordance with Schedule 6 of the 2006 Act.

If the RSC consents to the local authority appointing an IEB, Schedule 6 allows the RSC to give the local authority directions about who the interim executive members should be, how many members to appoint, what the term of appointment should be and the termination of any appointment.

See under 'Further sources of information' for good practice guidance on IEBs.

## Consultation

Before the local authority or the RSC can exercise this intervention 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 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 for the RSC 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.

There is 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 have been carried out within 10 (ten) days.

Local authorities must use the IEB application form on the DfE website<sup>28</sup> and should follow the accompanying instructions for the completion of an IEB application form.

When it has been decided that an IEB will be appointed, 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, but may not always do so.

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<sup>28</sup> See under 'Further sources of information'.

## 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 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, the curriculum, staffing, pay and performance management and the appointment of the headteacher and deputy headteacher. Any obligations on the governing body in relation to maintaining the religious ethos of a school will also apply to the IEB.

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. Where a school has been found by Ofsted to be inadequate, an academy order will be issued requiring the school to become a sponsored academy. In such case, the IEB would have the same duties to support that process as an ordinary governing body<sup>29</sup>.

## 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. Also, the RSC can direct the local authority as to the membership and the terms of appointment of an IEB appointed by that authority.

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<sup>29</sup> Under section 5B of the Academies Act 2010 as inserted by the Education and Adoption Bill.

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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, 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 sponsor identified, we would expect that the sponsor should be represented on the IEB. If a sponsor is agreed during the operation of the IEB we would expect that a sponsor representative would join the IEB at that point.

Members of an IEB 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). Local authorities who are considering doing this should discuss the particular circumstances of the school with the RSC.

The IEB may arrange for the discharge of their functions by 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 or RSC is able to 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 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 is considered appropriate.

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

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

Using the Secretary of State's power under Schedule 6 of the 2006 Act, where a local authority has appointed an IEB, the RSC may direct the local authority as to:

1. who the interim executive members should be;
2. how many members the local authority can appoint;

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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.

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

Under section 70C of the 2006 Act<sup>30</sup>, 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 then the notice given by the local authority to the governing body (setting out that it will consist of interim executive members) will be treated as having been given by the RSC and anything else done by or in relation to the local authority in respect of the IEB will be treated as having been done by or in relation to the RSC.

### **Power of the local authority to suspend the 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.

Using this power allows local authorities to secure control over staffing and spending decisions to secure improvements. Therefore, it may be particularly effective where the governing body is providing insufficient challenge and support to the headteacher or senior management team of the school, or where management of the budget is providing a distraction from improvement priorities for governors.

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 or the RSC has appointed an IEB, during the period when the governing body is constituted as an IEB the local authority cannot suspend the school's right to a delegated budget.

There is no requirement for the local authority to consult before exercising this power.

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<sup>30</sup> As inserted by the Education and Adoption Bill.

## 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 may 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.

The RSC is under a duty to make an academy order in respect of a school that has been judged inadequate by Ofsted<sup>31</sup>. The RSC may make an academy order in respect of a school that has become eligible for intervention because it has been notified that it is coasting or because it has failed to comply with a warning notice. The academy order enables the school to convert to academy status with the support of a sponsor, ensuring the school is supported to turn its performance around.

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

For a school that is eligible for intervention there is no requirement for a consultation to be carried out **by the governing body or sponsor** on whether the conversion should take place.

For a school that is eligible for intervention because it has been judged inadequate by Ofsted, or for a school eligible for intervention for other reasons and which 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.

For a school that is eligible for intervention for **any reason other than that it is inadequate** and which is a foundation or voluntary school that has a foundation, the RSC must consult:

- (I) the trustees of the school;

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<sup>31</sup> Section 4(A1) of the Academies Act 2010, as inserted by the Education and Adoption Bill.

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- (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.

In the case of voluntary or foundation schools which are subject to an academy order **because they were judged inadequate by Ofsted**, the RSC must consult with the following **regarding the identity of the sponsor**<sup>32</sup>:

- (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.

To minimise any delays to the academy conversion process, when an academy order has been made in relation to a school that is eligible for intervention, the governing body and local authority are under a duty to take all reasonable steps to facilitate the conversion of the school into an academy<sup>33</sup>.

Where an academy order has been made because a school is eligible for intervention the RSC can direct the governing body or local authority to take specific steps to facilitate conversion. 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 which is no longer, or about to be no longer, used for the purposes of the school<sup>34</sup>, or for the transfer of other assets from the local authority or governing body<sup>35</sup>. The RSC is able to set a date by which these steps must be taken<sup>36</sup>.

The RSC has the power to revoke an academy order made because a school is eligible for intervention<sup>37</sup>. This power will only be used in very exceptional circumstances – for example, should the school not be viable and therefore it is most appropriate that it should close.

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<sup>32</sup> In relation to this requirement to consult, for the purpose of this guidance we refer to the identity of ‘the sponsor’ 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 Bill.

<sup>33</sup> Section 5B of the Academies Act 2010, as inserted by the Education and Adoption Bill.

<sup>34</sup> Part 1 Schedule 1 to the Academies Act 2010.

<sup>35</sup> Section 8 Academies Act 2010.

<sup>36</sup> Section 5C of the Academies Act 2010, as inserted by the Education and Adoption Bill.

<sup>37</sup> Section 5D of the Academies Act 2010, as inserted by the Education and Adoption Bill.

## **Power of the Secretary of State to direct the closure of a school**

Section 68 of the 2006 Act enables the Secretary of State to direct a local authority to cease to maintain a school where that school is eligible for intervention<sup>38</sup>.

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 existing school.

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

## Chapter 6: Other local authority duties

### School performance

Local authorities' statutory responsibilities for educational excellence are set out in section 13A of the Education Act 1996. That duty states that a local authority must exercise its education functions with a view to promoting high standards.

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

- Understand the performance of maintained schools in their area, using data to identify those schools that require improvement and intervention;
- Take swift and effective action when underperformance occurs in a maintained school, working with the relevant RSC and using their intervention powers where this will improve leadership and standards;
- Encourage good and outstanding maintained schools to take responsibility for their own improvement and to support other schools, and enable other schools to access such support; and
- Alert the relevant RSC when they have concerns about standards, leadership or governance in an academy or free school.

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.

### Special Educational Needs (SEN)

Local authorities have responsibilities towards those children and young people (under age 25) in their areas who have, or may have, special educational needs (SEN) and must exercise their functions to identify children and young people with SEN. These SEN duties apply regardless of where the child is educated.

### Safeguarding

Local authorities have overarching duties under the Children Act 1989 in respect of the safeguarding of children in need, or those suffering or at risk of suffering significant harm, regardless of where those individual children are educated or found. To comply with these duties, local authorities may need to work with maintained schools, academy trusts, religious bodies (where appropriate) or independent schools (wherever the

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individual child concerned is educated) to investigate what action they need to take to safeguard such a child.

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 reported to the relevant RSC or the Education Funding Agency (EFA) who have responsibility to take any necessary improvement action and to monitor the situation.

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 and Safeguarding in Schools Division at the Department for Education, who have responsibility for enforcing the independent school standards and taking regulatory action as 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. In addition to the Schools Causing Concern guidance there are two other statutory guidance documents that provide guidance on the roles and responsibilities for safeguarding: 'Keeping Children Safe in Education' and 'Working Together to Safeguard Children'. The guidance makes clear what all education institutions (including academies and free schools) should do to safeguard children in their care.

## Chapter 7: Governance

### Non-statutory guidance relating to governance

Local authorities should take an active interest in the quality of governance in maintained schools. To prevent schools becoming eligible for intervention local authorities should promote and support high standards of governance. To do so, they should: be champions for high quality in 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 governors' oversight of finance, safety or performance standards.

Local authorities should also be able to provide governors with high quality training that is necessary to prevent schools from becoming eligible for intervention or at least be able to signpost governors to such training. Section 22 of the Education Act 2002 and the Ofsted inspection framework for local authority school improvement arrangements place strong duties and expectations on local authorities in relation to promoting and providing appropriate training programmes for governors. Local authorities should note that governing bodies have the power to suspend governors who refuse to undertake necessary training.

Local authorities should have arrangements in place for maintaining records of governors in maintained schools. This should include contact details for chairs of governing bodies, to aid communication with those accountable for schools. It should also enable the carrying out of any necessary due diligence. Ideally, the records should also include schools' registers of interests and enable identification of 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 their schools to publish full details of their governors on the school website (in line with their statutory duties) to ensure transparency to parents and to aid oversight.

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 EFA.

## Further sources of information

### Legislation

- The Education and Adoption Bill (which amends the 2006 Act and the Academies Act 2010)
- [The Education Act 2011](#) (which amended the 2006 Act and also the Academies Act 2010 in respect of land transfers to academies. Schedule 14 applies)
- [The Academies Act 2010](#)
- [The Apprenticeships, Skills, Children and Learning Act 2009](#) (amended the 2006 Act) - makes provision for apprenticeships, education, training and children's services.
- [The 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](#)
- [The School Governance \(Role, Procedures and Allowances\) \(England\) Regulations 2013](#) – associated departmental guidance can be found on the DfE website [here](#).
- [The 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.

### Guidance

- [Working Together to Safeguard Children](#) statutory guidance
- [Keeping Children Safe in Education](#) statutory guidance
- [External reviews of school governance](#) NCTL guidance
- [External reviews of the pupil premium](#) NCTL guidance
- [Interim Executive Board application](#) Application form and guidance
- [Ofsted: Handbook for inspecting schools in England under section 8 of the Education Act 2005.](#)

## Draft

- [The framework for the inspection of local authority arrangements for supporting school improvement](#)

### **Other departmental resources**

- [Expected levels of school and college performance \(floor standards\)](#)
- [Performance tables – user guide and resources \(includes progress measures\)](#)
- [Regional Schools Commissioners \(RSCs\)](#)



Department  
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