



Department
for Education

Schools causing concern

Guidance on intervention

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Key principles

The Department for Education remains committed to providing a clear and simple accountability system for schools¹. In practice this means that:

- Regions group (RG)² will only mandate academy conversion, governance change or academy trust transfer of a school in relation to educational standards if Ofsted has judged it Inadequate, or if the school has met the coasting definition (Schools that are not making necessary improvements) **and** RG has assessed that the school would benefit from such interventions.
- RG will not use warning notices on the grounds of low standards of pupil performance apart from in exceptional circumstances.
- RG will not conduct uninvited visits to schools.
- High quality, effective governance is key to the success of any school. As such, the department is committed to ensuring robust governance in all schools. Where breakdowns in governance occur, RG and Education and Skills Funding Agency (ESFA) will continue to use their powers to hold schools to account for their governance and financial management regardless of the school's Ofsted rating. Both maintained schools and academies will be held to account equally and RG will continue to challenge underperformance in both types of school.
- Unless a school is subject to intervention action or is run by a single academy trust, RG will continue to approach academy trusts, local authorities and (in the case of schools with a religious character) the relevant religious body, rather than individual schools.

¹ <https://www.gov.uk/government/publications/principles-for-a-clear-and-simple-school-accountability-system>

² Acting for and on behalf of the Secretary of State.

Summary

About this guidance

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

This guidance covers:

- maintained schools “causing concern” (within the meaning of section 44 of the Education Act 2005);
- maintained schools that are “eligible for intervention” (within the meaning of Part 4 of the Education Act 2006);
- other maintained schools about which the local authority and/or Secretary of State have serious concerns which need to be addressed³; and
- academies causing concern.

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

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

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

Effective from date

This guidance is effective from 1st January 2024.

³ Powers of intervention regarding Pupil Referral Units are included in the alternative provision statutory guidance: <https://www.gov.uk/government/publications/alternative-provision>

Expiry or review date

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

What legislation does this guidance refer to?

- School Standards and Framework Act 1998
- Education Act 2002, including Schedule 2
- Education Act 2005
- Education and Inspections Act 2006 (“the 2006 Act”)
- Apprenticeships, Skills, Children and Learning Act, 2009 (which amends the 2006 Act)
- The School Governance (Transition from an Interim Executive Board) (England) Regulations 2010 (“Transition Regulations”)
- Academies Act 2010
- Education Act 2011 (which amends the 2006 Act, and Schedule 14)
- Children and Families Act 2014
- Education and Adoption Act 2016 (which amends the 2006 Act and the Academies Act 2010)
- The Coasting Schools (England) Regulations 2022

Who is this guidance for?

- Local authorities, who must have regard to it as statutory guidance on how they use their powers of intervention in their maintained schools.
- RG who will be expected to follow this document as guidance on how they will exercise the Secretary of State’s powers of intervention in maintained schools causing concern and on how they will take formal action in academies causing concern.

- Dioceses, school foundations, governing bodies of maintained schools and academy trusts will also want to be aware of this guidance and the implications for their schools.
- Others, such as headteachers, school/ academy trust staff, parents and carers, who may find it useful.

Recent updates

Schools judged Inadequate solely due to safeguarding

This guidance has been updated to reflect changes Ofsted has made to its inspection process in relation to a school judged Inadequate solely due to ineffective safeguarding.

The updated text sets out that where a school is judged Inadequate for Leadership and Management, solely because of ineffective safeguarding (but judged Good or Outstanding in all other key areas), Ofsted will carry out a monitoring visit within 3 months of publication of the Inadequate judgement to determine whether improvements have been made. The monitoring visit will either confirm the school remains Inadequate or, if inspectors are satisfied that safeguarding is now effective and there has been no decline in the school's performance in other areas, regrade the school.

The inclusion of new text covering how Regions Group will use data in relation to schools causing concern

New text has been added to this guidance to help explain what kinds of data RG take into account when making decisions regarding schools causing concern. Please see the introduction for further detail.

Terminology

Maintained schools and academies

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

Standalone academy

In this guidance a 'standalone academy' means any academy that is run by a single academy trust (SAT) or is the only school in a multi-academy trust (MAT).⁴

Pupil referral units

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

Schools with a religious character

As set out in the School Standards and Framework Act 1998 (SSFA 1998), a school with a religious character is any school that has been designated as such by an order made by the Secretary of State⁵.

Trustees of the School

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

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

- Church of England
- Catholic Church
- other religious bodies

Academy trustee

An academy trustee refers to those who sit on the board of an academy trust. The academy trust board is the decision-making body of the academy trust and is accountable and responsible for the academy in the academy trust. Academy trustees are both the charity trustees and company directors of the academy trust.

In Church academies however, those on the board are referred to as 'directors' and the term 'trustees' is reserved for those on the board of the separate trust that owns the land.

Charity trustee

⁴ In the past some MATs were set up with only a single school in the expectation that additional schools would join in the future.

⁵ Section 69 of the School Standards and Framework Act 1998.

The academy trustees are also charity trustees⁶.

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

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

Schools that are not making necessary improvements

Throughout this guidance, we use the term ‘school not making necessary improvements’ where schools meet the following criteria:

- the school’s overall effectiveness at its most recent Ofsted inspection under section 5 of the Education Act 2005 was Requires Improvement (RI), **and**
- the school’s overall effectiveness was also below Good at the inspection under section 5 immediately prior to the most recent such inspection

The Secretary of State has powers to intervene in these schools, by virtue of the legislation on ‘coasting’ schools⁷. The definition of ‘coasting’ in regulations has been amended to match the definition of ‘schools that are not making necessary improvements’ set out above⁸. A reference in this guidance to schools that are not making necessary improvements should be read as meaning that such schools have met the statutory definition of ‘coasting’ and the legal powers to intervene apply.

⁶ See s.177 of the Charities Act 2011 which defines a charity trustee as ‘the persons having the general control and management of the administration of a charity’.

⁷ Section 60B of the Education and Inspections Act 2006 (inserted by section 1(3) of the Education and Adoption Act 2016 (c.6)); and section 2B(6) of the Academies Act 2010 (inserted by section 14 of the Education and Adoption Act 2016.)

⁸ [The Coasting Schools \(England\) Regulations 2022](#)

Chapter 1: Introduction

We are building a supportive schools' culture in which local authorities and RG work with school leaders to drive school improvement for the benefit of pupils and parents. At the same time, it is essential that action is taken wherever a school is judged Inadequate, is not making necessary improvements, or where there is financial mismanagement or failure of governance. Interventions are about acting decisively to address underperformance and financial or governance failures and helping schools to deliver the best outcomes for their pupils.

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

1. **Schools that have failed to comply with a warning notice** – Local authorities may give warning notices to their maintained schools where they have concerns about unacceptable educational performance, a breakdown in leadership and governance, or where the safety of pupils or staff may be being threatened. RG may give a warning notice to a maintained school where they have concerns about a breakdown in leadership and governance, or where the safety of pupils or staff may be being threatened. Where a maintained school does not comply with a warning notice, it will become eligible for formal intervention. The warning notice process for maintained schools is described in more detail in Chapter 2 of this guidance.
2. **Schools that have been judged Inadequate by Ofsted** – An academy order must, in line with statutory requirements, be issued for all maintained schools that have been judged Inadequate by Ofsted, requiring them to become sponsored academies. When an academy is judged Inadequate by Ofsted, RG have the power to terminate the funding agreement with the existing academy trust and move the academy to a new academy trust. The process for schools judged Inadequate by Ofsted is described in more detail in Chapter 2 (maintained schools) and Chapter 4 (academies) of this guidance.
3. **Schools that are not making necessary improvements** – RG may intervene in a school that has met the following criteria:
 - the school's overall effectiveness at its most recent Ofsted inspection under section 5 of the Education Act 2005 was Requires Improvement (RI), **and**
 - the school's overall effectiveness was also below Good at the inspection under section 5 immediately prior to the most recent such inspection

The measure applies to mainstream maintained schools and academies; pupil referral units (PRUs) and alternative provision (AP) academies; and maintained special schools and special academies. It does not apply to 16 – 19 providers or to maintained nursery schools. In any circumstances where a PRU, AP academy, maintained special school or special academy is assessed for suitability for intervention, extra consideration will be given to identifying the most suitable course of action and sponsor in relation to each school's specific context.

The power to intervene in schools not making necessary improvements is discretionary and so once eligible, RG will assess each school on a case by case basis before deciding whether intervention and further support are necessary. RG will take into account any representations a maintained school's governing body and local authority or an academy's trust and, where relevant, the religious body, wish to make, before deciding whether intervention and further support are necessary.

This guidance is statutory for local authorities, and sets out their role in relation to maintained schools that are causing concern. It also describes how RG will exercise the Secretary of State's powers to intervene in maintained schools, and how they will take action in academies that are causing concern.⁹

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

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

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

The Government is committed to protecting the ethos of schools with a religious character, and RG will ensure that their intervention arrangements safeguard the religious character and ethos of such schools, working closely with the relevant religious body. For all Church of England and Catholic schools, this guidance should be read

⁹ More information about RG, how they operate and how they are supported by their Headteacher Boards can be found here: <https://www.gov.uk/government/organisations/schools-commissioners-group>

alongside the relevant Memorandum of Understanding¹⁰, which describes in further detail how RG and dioceses will work together to address underperformance concerns in those schools.

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

When considering whether to take intervention action in a school, RG will take into account published attendance data (where available) alongside all other relevant information¹¹.

Regions Group decision-making principles when considering the use of discretionary intervention powers

When considering the use of the Department's discretionary intervention powers, RG will have regard to relevant school performance data alongside a range of other quantitative and qualitative information about the school and its individual circumstances. In line with previous commitments, RG will not use 2020 or 2021 assessment, test or exam results data to hold schools to account¹².

RG will have regard to a broad range of information including, but not limited to, the following:

- assessment, test and exams results data;
- attendance and persistence absence data, based on the school census;
- exclusions data;
- information relating to the capacity and capability of leadership and governance, including the oversight and use of finances and the ability to deliver school improvement;
- any evidence relating to workforce recruitment and retention;
- parental preferences, in terms of the number of first-choice applications compared with the PAN;
- pupil destination data.

¹⁰ More information about the memoranda of understanding can be found here:

<https://www.gov.uk/government/publications/church-schools-and-academies-memoranda-of-understanding>

¹¹ More information on how the department will use attendance data can be found here:

<https://www.gov.uk/government/publications/working-together-to-improve-school-attendance>

¹² More information on performance data can be found here:

<https://www.gov.uk/government/publications/school-and-college-accountability-approach-2020-to-2022> and in the accountability measures technical guidance for each phase: [primary technical guidance](#), [secondary technical guidance](#) and [16-18 technical guidance](#)

Wherever possible, RG will rely on published data and any information already provided by schools and trusts by way of representations, and will not ask schools and trusts to provide new information.

Where a decision has been made to convert or transfer a school, RG will follow the principles set out in the commissioning guidance when considering which academy trust a school will join.

Chapter 2: Maintained schools ‘eligible for intervention’

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

- Has failed to comply with a warning notice; and/or
- Is judged Inadequate by Ofsted; and/or
- Has met the definition of a school not making necessary improvements and the governing body been notified by the Secretary of State that it has been identified as such.

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

Warning notices in maintained schools

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

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

1. the standards of performance of pupils at the school are unacceptably low and are likely to remain so¹³; 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); or¹⁴

¹³ Low performance standards are explained in further detail in Section 60(3) of the Education and Inspections 2006 Act

¹⁴ Warning notices issued for unacceptably low performance, a breakdown in management or a threat to staff or pupil safety are named in legislation as ‘performance standards and safety warning notices’.

4. The governing body have failed to comply with a provision of an order under section 122 of the Education Act 2002 (teachers' pay and conditions) that applies to a teacher at the school; or have failed to secure that the head teacher of the school complies with such a provision.¹⁵

In general, RG will only issue a warning notice to maintained schools under the following circumstances:

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

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

Roles of local authorities and Regions Group

Local authorities should use warning notices to hold their schools to account and should work together with RG where they judge that a warning notice is necessary¹⁶.

RG will issue a warning notice on grounds other than low standards of pupil performance where, in RG opinion, it is appropriate to act. Examples of this may include where the local authority has failed to act swiftly enough in a specific case, has generally not acted swiftly or robustly enough in the past, or lacks capacity to act. The Secretary of State's power to issue a warning notice takes precedence over the local authority's, so the RG can also act where the local authority issues a warning notice that RG does not consider to be robust enough, or where RG does not consider that the action required by a local authority warning notice is robust enough¹⁷.

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

In the case of a school with a religious character, the local authority or RG should raise concerns with the appropriate religious body at the earliest opportunity. RG will continue

¹⁵ Warning notices issued for these reasons are named in legislation as 'Teachers' pay and conditions warning notices'.

¹⁶ Where action is needed urgently, for example where the safety of pupils or staff is threatened, the local authority may reasonably take action without having to wait to discuss the case with the RD beforehand.

¹⁷ Section 60 (4A)-(4B) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

to have regard to the Church memoranda of understanding when issuing a warning notice.

Low standards of pupil performance

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

RG will only use the Secretary of State’s powers to issue warning notices to maintained schools on the grounds of low standards of pupil performance in exceptional circumstances. (The Secretary of State’s powers to issue warning notices to maintained schools on the grounds of low standards of pupil performance are separate from the powers to intervene in schools not making necessary improvements, as defined on page 9 of this document.)

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

Breakdown in the way a maintained school is managed or governed

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

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

The core strategic roles of a governing body are to:

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

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

- evidence of poor financial management and oversight, such as consistent overspending of the school's budget beyond agreed thresholds.
- high governor turnover;
- a significant, unexplained change to their constitution;
- the governing body having an excessive involvement in the day to day running of the school¹⁸;
- lack of appropriate engagement with data. This might include, but is not limited to, data on pupil learning and progress, or staff recruitment; and/or
- not sufficiently managing risks associated with strategic priorities and school improvement plans.

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

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

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

¹⁸ Governors should act in line with the 3 core functions of governance as set out in the governance handbook. Excessive involvement in the operational running of the school may impair a governor's ability to carry out their role properly and in line with the 3 core functions of governance. More information on governance and the core functions can be found in the Governance Handbook in the 'further sources of information' section of this guidance.

review of governance, before considering more formal intervention. Guidance is available on commissioning and conducting such external reviews¹⁹.

The Governance Handbook²⁰ provides further information about requirements and expectations of governors, and provides links to additional guidance, support and best practice.

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

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

Local authorities and RG should have regard to the statutory guidance on roles and responsibilities for safeguarding: 'Keeping Children Safe in Education' and 'Working Together to Safeguard Children'²¹. The guidance makes clear what all education institutions (including academies and free schools) should do to safeguard children in their care.

Teachers' pay and conditions warning notices

Under section 60A of the 2006 Act, local authorities have a power to issue a teachers' pay and conditions warning notice to their maintained schools. Failure to comply or secure compliance with the notice within the specified period will mean that the school becomes eligible for intervention under sections 64-66 of the 2006 Act²² (addressed in more detail in Chapter 4). These powers must be used within a period of two months following the end of the compliance period specified in the teachers' pay and conditions warning notice²³. If the local authority fails to exercise these powers within this time, they can no longer be exercised and a new teachers' pay and conditions warning notice must be given in order to do so.

¹⁹ See under 'Further sources of information' for departmental guidance on governance reviews.

²⁰ See 'Further sources of information' for link to the Governance Handbook.

²¹ See 'Further sources of information' for link to safeguarding guidance

²² These are the local authority's powers to appoint additional governors (section 64), to provide for the governing body to consist of interim executive members (section 65) and to suspend the school's right to a delegated budget (section 66). Chapter 3 of this guidance explains these intervention powers in more detail.

²³ These are the local authority's powers to appoint additional governors (section 64) and to suspend the school's right to a delegated budget (section 66).

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

A local authority must send RG a copy of any teachers' pay and conditions warning notice it issues²⁴.

Issuing a warning notice to a maintained school

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

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

In addition to giving the governing body a warning notice, the local authority or RG must give a copy to the headteacher; and in the case of a Church of England school or a Roman Catholic school, the appropriate diocesan authority; and in the case of a foundation or voluntary school, the person who appoints the foundation governors²⁵.

A copy of a warning notice must also be given to the relevant region in RG copying in School.NOTIFICATIONS@education.gov.uk, when it is a local authority making it, or a copy must be given to the local authority, when it is RG making it²⁶. All warning notices must be copied to Ofsted at the time of issuing using the email address warningnotices@ofsted.gov.uk.

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

²⁴ Section 60A (6)(a) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

²⁵ Section 60(6) of the Education and Inspections Act 2006, as amended by the Education and Adoption Act 2016.

²⁶ Section 60(6A)-(6B) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

If a local authority is notified that RG has given a warning notice, the local authority may not give such a warning notice to the same maintained school without RG's agreement. If RG gives a warning notice, any earlier warning notice given to the same maintained school by the local authority will cease to have effect²⁷. Whichever has given a warning notice should keep the other informed about what action the maintained school has taken to address the concern, whether they consider the school to have complied with the warning notice, and what, if any, interventions will be made as a result.

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

When a governing body has failed to comply with a warning notice to the satisfaction of RG or local authority within the compliance period, and the issuing local authority or relevant region in RG has given reasonable written notice that they propose to intervene, a school is eligible for intervention and further action may be taken²⁸.

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

The powers in sections 63, 64, 66 and 66A of the 2006 Act²⁹ must be exercised within a period of two months following the end of the compliance period. If the local authority or RG fails to exercise these powers within this time, these powers can no longer be exercised and a new warning notice must be given in order to do so.

Maintained schools judged Inadequate by Ofsted

Schools that have been judged Inadequate are:

1. any school Ofsted judges as requiring significant improvement (as addressed in section 61 of the Education and Inspections Act 2006)³⁰; and
2. any school Ofsted judges as requiring special measures (as addressed in section 62 of the 2006 Act).

²⁷ Section 60(4A)-(4B) of the Education and Inspections Act, as inserted by the Education and Adoption Act 2016.

²⁸ Section 60(1)(d) and 60A(1)(d) of the Education and Inspections Act 2006 as amended by the Education and Adoption Act 2016. Chapter 3 of this guidance explains the intervention powers in more detail.

²⁹ These powers are as follows: Section 63 contains the power to require the governing body to enter into arrangements; Section 64 contains the power to appoint additional governors; Section 66 contains the power to suspend the delegated budget and Section 66A contains the Secretary of States power to require governing body to enter into arrangements.

³⁰ This is also known as a 'serious weaknesses' judgement by Ofsted.

The Secretary of State has a duty³¹ to make an academy order in respect of any maintained school judged as Inadequate by Ofsted, to enable it to become an academy and receive additional support from a sponsor.

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

Where a maintained school is judged Inadequate for Leadership and Management, solely due to safeguarding, (but judged Good or Outstanding in other key areas) Ofsted will carry out an early monitoring visit within 3 months of publication of the Inadequate judgement to determine whether improvements have been made. Where inspectors are due to return to a school in these circumstances, the timeframe for the implementation of an academy order will allow for reinspection. The monitoring visit will either confirm the maintained school remains inadequate or, if inspectors are satisfied that safeguarding is now effective and there has been no decline in the school's performance in other areas, regrade the school. Where an academy order has been made and the school is subsequently regraded, the governing body may apply to the Secretary of State to revoke the academy order (see page 34).

In the case of a foundation or voluntary school that is eligible for intervention and subject to an academy order, RG is required to consult about the identity of the person with whom academy arrangements are being entered into (called "the academy trust" in this guidance) before entering into such arrangements. RG will consult with the trustees of the school, the person or persons who appoint the foundation governors, and in the case of a school that has a religious character the appropriate religious body³². RG will ensure that any arrangements will safeguard the religious character and ethos of these maintained schools³³.

If a maintained school is the subject of an academy order made under section 4(A1) or (1)(b) of the Academies Act 2010, the governing body and the local authority will be under a duty to facilitate the maintained school's conversion into an academy by taking all reasonable steps towards that end. This means local authorities cannot charge for the costs associated with the conversion. During the interim period between a maintained school receiving an academy order and the school re-opening as an academy the local authority retains the responsibility for the school's performance, including provision for school improvement. RG can use the Secretary of State's power to give the governing

³¹ Section 4(A1) of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

³² Section 5A of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

³³ RG should have regard to the Church schools Memoranda of Understanding. A link to the memoranda can be found in the 'further sources of information' section of this guidance.

body or local authority a direction, or directions, to take specified steps for this purpose³⁴. This can include requiring the governing body or local authority to prepare a draft of a scheme for the transfer of local authority-owned land that is no longer, or about to be no longer, used for the purposes of the school,³⁵ or for the transfer of other assets from the local authority or governing body³⁶. RG is able to set a date by which these steps must be taken³⁷. If RG have identified an academy trust to run that maintained school once it becomes an academy, and have notified the school of this, then the governing body and the local authority must take all reasonable steps to facilitate that academy trust taking responsibility for the school.

Once RG have identified the academy trust for a maintained school that was rated Inadequate, that academy trust has a duty to communicate to parents information about their plans for improving that school, before it is converted into an academy³⁸. This is described in more detail in Chapter 4.

Maintained schools that are not making necessary improvements

The Secretary of State has a discretionary power to intervene in maintained schools that are coasting (not making necessary improvements).

The Department has identified 55 Education Investment Areas (EIAs)³⁹. RG has initially concentrated consideration of intervention in schools that are not making necessary improvements that are within one of the EIAs. However, schools outside these areas that are not making necessary improvements may also benefit from the support of a strong multi-academy trust and so RG will consider intervention in schools outside of EIAs.

Eligibility for intervention

RG will notify maintained schools that they have met the definition of a school that is coasting (not making necessary improvements) , have 2,3 or 4 consecutive Ofsted judgments of less than Good and have received their most recent Ofsted inspection under section 5 of the Education Act 2005 since 1 May 2021. Schools where there is a long-term history of underperformance (5 or more consecutive less than Good Ofsted

³⁴ Section 5C of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

³⁵ Part 1 Schedule 1 to the Academies Act 2010.

³⁶ Section 8 Academies Act 2010.

³⁷ Section 5C of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

³⁸ Section 5E of the Academies Act, as inserted by the Education and Adoption Act 2016.

³⁹ Further information about the [location and selection of Education Investment Areas](https://www.gov.uk/government/publications/education-investment-areas-selection-methodology) is available here: <https://www.gov.uk/government/publications/education-investment-areas-selection-methodology>

judgments) will be notified that they have met the definition of a school that is coasting (not making necessary improvements) regardless of the date of their last Ofsted inspection.

Communication

RG (acting on behalf of the Secretary of State) will send a letter to the governing body of an eligible maintained school that is not making necessary improvements (as defined on page 9) notifying them that the school has met the coasting definition. The effect of this letter is that the school becomes eligible for intervention. The letter will invite the governing body to make representations. Letters will be copied to the local authority and, where relevant, the religious body. In the case of a foundation or voluntary school, the trustees of the school or the person or persons who appoint the foundation governors will also be copied. Where a maintained school is already in the process of converting to become an academy or the school has been approved for closure, the letter will not ask the governing body to make representations and RG will instead continue to monitor progress to ensure the conversion or closure process is completed.

Process for intervention

When intervention in an eligible school is considered, RG will assess the capacity of the school to achieve rapid and sustained improvements and whether intervention should be recommended to support the school to improve. RG will consider the school's specific circumstances, including but not limited to:

- Inspection evidence relating to the school and its predecessor institutions, in particular, evidence concerning the quality of leadership and management, including both graded inspections under section 5 of the Education Act 2005, and monitoring inspections under section 8 of the Education Act 2005;
- the trajectory of school inspection outcomes and whether RG have confidence that any initial improvements will continue without intervention;
- Performance data and other quantitative information, where it is available;
- The local context and any additional information provided by the school and Local Authority on receipt of notification of the school's eligibility for intervention (and, where relevant, information provided by the relevant religious body)

RG will also continue to engage with the relevant local authority and in the case of a

foundation or voluntary school, the trustees of the school, the person or persons who appoint the foundation governors, and (in the case of a school that has a religious character) the appropriate religious body. When considering the use of intervention powers in Church schools, RG will continue to have regard to the Church memoranda of understanding.

It is the Secretary of State's policy that all schools should be able to benefit from being part of a strong multi-academy trust. Therefore, there will be a presumption in favour of issuing the maintained school with an academy order so that it may join a strong multi-academy trust unless exceptional circumstances apply. The best course of action will always be informed by an assessment of the particular circumstances of the school, and the needs of its pupils.

However, this presumption is rebuttable. There may be cases where RG does not consider it necessary to issue an academy order to a maintained school not making necessary improvements. In each case, the particular circumstances of the school, and the needs of its pupils, will be assessed in the round, in order to establish the best course of action.

In any circumstances where a maintained special school is assessed for suitability for intervention, extra consideration will be given to identifying the most suitable course of action and sponsor in relation to each school's specific context.

Where RG decide to make an academy order, RG, acting on behalf of the Secretary of State, will take responsibility for ensuring that the maintained school becomes a sponsored academy as swiftly as possible. Where schools have a religious character, RG will ensure that the arrangements safeguard the religious character and ethos of the school, working closely with the appropriate religious body and having regard to the Church memoranda of understanding. Further details about academy orders are set out in Chapter 3 of this guidance.

If a maintained school is the subject of an academy order made under section 4(A1) or (1)(b) of the Academies Act 2010, the governing body and the local authority will be under a duty to facilitate the maintained school's conversion into an academy by taking all reasonable steps towards that end. More information on the duty to facilitate is given on page 20 of this guidance.

As set out in chapter 3 of this guidance, the Secretary of State will only revoke academy orders in exceptional circumstances and not just because a school's Ofsted rating has improved.

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

Local authorities and RG will work closely and co-operatively to support improvement in maintained schools that are causing concern. Where a maintained school is eligible for intervention⁴⁰ there are a number of statutory powers the local authority and the Secretary of State may use to support school improvement.

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

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

Section 64 – power to appoint additional governors;

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

Section 66 – power to suspend the delegated budget.

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

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

Section 67 – power to appoint additional governors;

Section 68 – power to direct closure of a school;

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

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

Section 4 Academies Act – power to make an academy order.⁴¹

In accordance with section 70A of the 2006 Act⁴² the local authority must notify the relevant region in RG each time they intend to use their intervention powers, copying in School.NOTIFICATIONS@education.gov.uk

⁴⁰ As defined by section 60B of the Education and Inspection Act 2006, as inserted by the Education and Adoption Act 2016

⁴¹ Or in the case of an Inadequate school, duty.

⁴² As inserted by the Education and Adoption Act 2016.

Local authorities should obtain consent from RG before appointing an Interim Executive Board (IEB). RG will also notify the local authority before requiring the governing body to enter into arrangements, appointing additional governors, appointing an IEB⁴³ or when the Secretary of State directs a local authority to close a maintained school.

When a local authority has been notified that RG intends to exercise the Secretary of State's intervention powers in a maintained school, the local authority may not use its intervention powers in relation to that school until RG notifies the local authority that it may do so⁴⁴.

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

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

Sections 63 and 66A of the 2006 Act enable a local authority and RG respectively, to require a maintained school that is eligible for intervention⁴⁵ to enter into arrangements with a view to improving the performance of the school. A notice may require the maintained school:

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

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

Prior to requiring the governing body to enter into arrangements, the relevant body must consult the governing body of the school, the appropriate diocesan authority (in the case

⁴³ Section 70A of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

⁴⁴ Section 70B of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

⁴⁵ Except a school that is eligible for intervention as the result of a teachers' pay and conditions warning notice.

of a Church of England or Roman Catholic school) and in the case of any other foundation or voluntary school, the person or persons by whom foundation governors are appointed. There is no statutory time scale in which the consultation process is to be completed and time scales may vary depending on the circumstances of the case. We would expect a normal consultation process to last for a period of 10 (ten) days⁴⁶.

Local authority and Secretary of State powers to appoint additional governors

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

Before making any appointment, RG must consult:

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

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

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

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

In the case of a voluntary aided school, where a local authority has used their power to appoint additional governors, the appropriate appointing authority may appoint a number of foundation governors equal to those appointed by the local authority, in order to preserve their majority. However, legislation provides that where RG has used this

⁴⁶ Local authorities and RG should be mindful of weekends, bank holidays and school holidays when deciding on the length of the consultation.

power, the relevant appointing bodies are not authorised to appoint foundation governors for the purpose of outnumbering the other governors including those appointed by RG⁴⁷.

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

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

Consultation

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

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

This requirement for RG to consult the bodies in 2, 3 and 4 above does not apply if the local authority has already done so as part of their own proposal to appoint an IEB. There is no requirement for RG to consult about appointing an IEB if an academy order has effect in respect of the maintained school⁴⁸. In these circumstances RG will give advance notice to those listed above that the governing body will be replaced by an IEB on a

⁴⁷ Section 67(6)(b) of the Education and Inspections Act 2006.

⁴⁸ RG should continue to have regard for both of the church MOUs. The MOUs require continuing engagement with the relevant diocese regardless of whether an academy order is in place.

specified date. There is no statutory time scale in which the consultation process must be completed. It is likely that the time scale will vary depending on the circumstances in which the IEB is required. We would expect a normal consultation process to last for a period of 10 (ten) days⁴⁹.

Local authorities must use the IEB application form on the DfE website⁵⁰ following the accompanying instructions.

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

Delegated budget

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

The role and duties of the IEB

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

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

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

⁴⁹ Local authorities and RG should be mindful of weekends, bank holidays and school holidays when deciding on the length of the consultation.

⁵⁰ See under 'Further sources of information'.

the governing body in relation to maintaining the religious ethos of a maintained school will also apply to the IEB.

An IEB may recommend to a local authority that a maintained school be closed. It may also recommend that the Secretary of State give a direction to a local authority regarding the closure of a maintained school. It cannot however, publish proposals for closure itself. Where, following the statutory consultation and other procedures, it is agreed that the school will be closed, the IEB should continue to hold office until the implementation date of the proposal. The IEB may also seek an academy order from the Secretary of State which enables the maintained school to convert to an academy. Where a maintained school has been issued with an academy order, requiring that school to become a sponsored academy, the IEB will have the same duties to support that process as an ordinary governing body⁵¹.

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. RG can also direct the local authority as to the membership and the terms of appointment of an IEB appointed by that authority.

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

Although it is not prohibited by law, in most cases we would not expect existing governors who are vacating office to be nominated as IEB members. Local authorities that are considering doing this should discuss the particular circumstances of the school with RG. The IEB may however arrange for the discharge of their functions by other people as they see fit⁵². In this way, the IEB could continue to benefit from the experience of existing governors and help engage future governors. The local authority or RG can nominate one of the members of the IEB to act as Chair.

The local authority or RG should produce a written notice of appointment for each member of the IEB. Copies of this notice should be sent to: all other members of the IEB; the maintained school's existing governing body; the RD (where it is a local authority

⁵¹ Under section 5B of the Academies Act 2010 as inserted by the Education and Adoption Act 2016.

⁵² Under paragraph 11(2) of Schedule 6 of the 2006 Act

appointed IEB); and, in the case of foundation or voluntary schools, the Diocese or other appropriate authority. A local authority may choose to pay interim executive members such remuneration and allowances as they consider appropriate.

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

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

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

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

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

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

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

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

The Secretary of State will not exercise this power in relation to a school that became eligible for intervention after failing to comply with a warning notice issued on the grounds of low standards of performance, except in exceptional circumstances.

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

Under section 70C of the 2006 Act⁵³, where a local authority has already appointed an IEB, RG may take over responsibility for arrangements in connection with the IEB members. If this happens, the notice given by the local authority to the governing body (setting out that it will consist of interim executive members), and any further actions taken by the local authority in respect of the IEB, will be treated as having been given by RG.

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

Section 68 of the 2006 Act enables the Secretary of State to direct a local authority to close a maintained school that is eligible for intervention⁵⁴. This will usually be done where there is no prospect of the maintained school making sufficient improvement through other means of support. Before this power can be exercised, the Secretary of State must consult:

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

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

If the direction to close a maintained school has been given, the local authority will be expected to meet any costs of terminating staff contracts and make appropriate

⁵³ As inserted by the Education and Adoption Act 2016.

⁵⁴ Except a maintained school that is eligible for intervention as the result of a teachers' pay and conditions warning notice.

arrangements for the pupils' continuing education, whether in a replacement school, or through transition to an alternative existing school.

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, RG can make an academy order in respect of a maintained school either on the application of a school's governing body or if the school is eligible for intervention within the meaning of Part 4 of the 2006 Act.

Where a maintained school is judged Inadequate by Ofsted RG is **under a duty** to make an academy order. Before the RG exercises this duty, they may consider the viability of the school. RG may also choose to make an academy order where a maintained school has failed to comply with a warning notice.⁵⁵ Where RG has assessed that intervention is required in a maintained school that is not making necessary improvements, RG will normally expect to make an academy order in relation to the school unless exceptional circumstances apply, taking into account any representations made by the school, local authority and, where relevant, the relevant religious body.

If an academy order is made in respect of a school, RG 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 maintained school which has been judged Inadequate by Ofsted:

⁵⁵ RG will only issue academy orders to maintained schools that become eligible for intervention after failing to comply with a warning notice issued on the grounds of low standards of pupil performance in the most exceptional of circumstances.

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

Where such a maintained school is a foundation or voluntary school that has a foundation, RG must consult the following regarding the *identity of the academy trust*⁵⁶:

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

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

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

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

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

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

Sponsored and Converter Academies

An academy is considered a sponsored academy where RG makes an academy order for a school that is eligible for intervention, or where a school has applied to become an

⁵⁶ In relation to this requirement to consult, for the purpose of this guidance we refer to the identity of ‘the academy trust’ but this is in fact the identity of the person with whom the arrangements are to be entered into, as described in Section 5A of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

academy but where RG does not consider the school strong enough to convert without the additional support of a sponsor. The sponsor identified to support a maintained school required to become an academy will be under a duty⁵⁷ to communicate to parents information about their plans for improving the school, before the school is converted into a sponsored academy.

A converter academy is one that converts after an application by the governing body of the school and RG considers the school is strong enough to do so without additional support. The method by which a school converts and whether it is classed as a sponsored or a converter academy has implications for the treatment of surplus and deficit balances⁵⁸.

Power of the Secretary of State to revoke an academy order

Section 5D of the Academies Act 2010 enables the Secretary of State to revoke an academy order that was made because a maintained school is eligible for intervention. This power can be used at the discretion of the Secretary of State and it will only be used in exceptional circumstances and not just because a school's Ofsted rating has improved. It is the Secretary of State's view that schools in general should benefit from being part of an academy trust. In the Secretary of State's view, transferring underperforming maintained schools to academy trusts is the most effective means of securing their rapid improvement. Ministers will make decisions on any revocations of academy orders.

Examples of "exceptional circumstances" include where:

1. The Secretary of State considers that the school would not be viable as an academy (in these cases, we would expect the local authority to close the maintained school and the Secretary of State can direct them to do so if necessary); or
2. The maintained school has been re-inspected by Ofsted and judged **Good** or **Outstanding**, and the Secretary of State is satisfied that the improvement can be sustained without the support of a strong sponsor. Ofsted's findings will be one of a number of sources of information the Secretary of State will consider when deciding whether improvement can be sustained without the support of a strong sponsor; or

⁵⁷ Section 5E of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

⁵⁸ The Treatment of surplus and deficit balances when maintained schools become academies:

<https://www.gov.uk/government/publications/academy-conversion-surplus-and-deficit-balance-transfer-process>

3. The maintained school was rated Inadequate by Ofsted solely due to **safeguarding** but after an early Ofsted monitoring visit, inspectors have regraded the school to be either Good or Outstanding. To consider revocation the Secretary of State will need to be satisfied that the safeguarding concerns have been addressed and improvements can be sustained.

The examples above are not exhaustive and the Secretary of State will consider each case on its individual merits, taking account of any reasons put forward by the governing body as to why revocation is in the best interests of the pupils served by the maintained school. The Secretary of State will only consider revoking an academy order at the request of the maintained school's governing body, except where the maintained school would in the Secretary of State's view not be viable as an academy, and the local authority asks for the order to be revoked so that the maintained school can be closed. In these circumstances the local authority will be expected to close the maintained school following the statutory school closure process and if necessary, ministers may use the power to direct them to do so.

Chapter 4: Academies causing concern

The department will hold academies to account just as robustly as they would maintained schools. In particular, RG (with the ESFA as appropriate) will assess what action is necessary wherever an academy is judged Inadequate by Ofsted, is not making necessary improvements, or where financial mismanagement and/or governance failure is identified. A range of information is systematically collected and shared with RG and the ESFA, who will agree a robust and joined up approach to addressing underperformance. Where concerns are identified, the department will take action in line with the funding agreement of the academy in question.

Termination warning notices in academies

Arrangements for academies to be issued with a termination warning notice (TWN) where they have not been judged Inadequate by Ofsted and have not met the definition of a school that is not making necessary improvements, but are otherwise causing concern, are specified in their academy funding agreements. Such warning notices can usually be given on the grounds that:

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

A Notice to Improve (Ntl) may be issued where there is evidence of financial mismanagement or related poor governance arrangements. Detail on what could constitute a serious breakdown in management or governance, or the safety of pupils or staff being threatened are similar to those for maintained schools and more information can be found on pages 14-16.

An academy's funding agreement may also allow RG to issue a warning notice for educational standards that are unacceptably low. However, RG will only issue this kind of TWN in exceptional circumstances.⁵⁹

⁵⁹ The Secretary of State will consider the use of their termination powers as set out in the Funding Agreement if requested to do so in writing by the Diocesan Authority in accordance with Section 12 of the Church Supplemental Agreement.

RG (on behalf of the Secretary of State) will consider any representations from the academy trust received by the date specified in the TWN. If the academy trust fails to carry out the actions set out in a TWN, RG may issue a termination notice.

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

TWNs issued to academy trusts by RG are published online⁶⁰, as well as being shared with Ofsted at the time of issuing.

Academies judged Inadequate

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

As set out in the Academies Act 2010⁶¹, regardless of the terms in an academy's funding agreement, RG (on behalf of the Secretary of State) can terminate the funding agreement of an academy that has been judged Inadequate. This is a power rather than a duty. RG may decide to implement other measures to improve the academy, rather than terminate its funding agreement to bring about a change of academy trust, for example, where a change of academy trust would prevent the consolidation of improvements in an academy.

Where an academy has been judged Inadequate, there is a policy presumption in favour of issuing the academy trust with a TWN. The notice will give the academy trust the opportunity to make representations before any decision on termination is made.

Where an academy is judged Inadequate for Leadership and Management, solely due to safeguarding (but judged Good or Outstanding in other key areas), Ofsted will carry out an early monitoring visit within 3 months of publication of the Inadequate judgement to determine whether improvements have been made. The monitoring visit will either confirm the academy remains Inadequate or, if inspectors are satisfied that safeguarding is now effective and there has been no decline in the academy's performance in other areas, regrade the academy. If the academy receives an improved Ofsted inspection, RG may decide to withdraw the TWN.

Where a Church Supplemental Agreement has been entered into, alongside the funding agreement, RG will also notify the appropriate diocesan body and consider its representations. RG must comply with any other terms specified in the Church Supplemental Agreement regarding termination. When considering the use of

⁶⁰ Via: <https://www.gov.uk/government/collections/letters-to-academies-about-poor-performance>

⁶¹ Sections 2A and 2D of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

intervention powers in Church academies causing concern, RG will continue to have regard to the Church memoranda of understanding. A link to the memoranda can be found in the 'further sources of information' section of this guidance.

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

Academies that are not making necessary improvements

the Secretary of State has a discretionary power to intervene in academies that are coasting (not making necessary improvements).

The Department has identified 55 Education Investment Areas (EIAs)⁶². RG has initially concentrated consideration of intervention in schools that are not making necessary improvements that are within one of the EIAs. However, schools outside these areas that are not making necessary improvements may also benefit from the support of a strong multi-academy trust and so RG will consider intervention in schools outside of EIAs.

Eligibility for intervention

Judgments of below 'Good' that are issued to predecessor schools will count towards the measure of when an academy is coasting (not making necessary improvements). This includes judgments issued to maintained schools (prior to their conversion to academy status), and judgments issued to academies when they were part of a different academy trust (prior to academy transfer).⁶³

RG will not intervene in relation to an academy that has not yet received a graded inspection under section 5 of the Education Act 2005 in its current academy trust, other

⁶² Further information about the [location and selection of Education Investment Areas](https://www.gov.uk/government/publications/education-investment-areas-selection-methodology) is available here: <https://www.gov.uk/government/publications/education-investment-areas-selection-methodology>

⁶³ Predecessor schools will be determined using the department's central register of schools, Get information about schools (GIAS).

than in exceptional circumstances. For example, where there are wider concerns about the capacity and capability of the academy trust.

RG will only consider intervention in academies that have 2, 3 or 4 consecutive less than Good Ofsted judgments if they have received their most recent Ofsted inspection under section 5 of the Education Act 2005 since 1 May 2021. RG will consider intervention in academies where there is a long-term history of underperformance (5 or more consecutive less than Good Ofsted judgments) regardless of the date of their last Ofsted inspection.

Communication

RG (acting on behalf of the Secretary of State) will send a letter to the academy trust of an academy that is not making necessary improvements (as defined on page 9) notifying them that the academy has met the new coasting definition and inviting the academy trust to make representations. In such cases, the Secretary of State may have the power to terminate the academy's funding agreement. Where relevant, letters will be copied to the religious body.

Where an academy is already in the process of joining another academy trust approved by the department or the school has been approved for closure, the letter will not ask for representations at this time and RG will instead continue to monitor progress to ensure the transfer or closure process is completed.

Where an academy meeting the new coasting definition has had its first inspection in a trust following conversion or transfer and has improved from 'Inadequate' to 'Requires Improvement', RG will write to the trust confirming that the academy meets the definition. However, the letter will normally also notify the trust that no further action will be taken at present in view of the improvement and the letter will not ask for representations at this time. RG will continue to monitor the academy and may take action if the academy does not continue to improve.

Process for intervention

Before taking any further action in academies not making necessary improvements, the RG will assess the capacity of the academy trust to achieve rapid and sustained improvements and whether intervention should be recommended to support the academy to improve. The RG will consider the academy's specific circumstances, including but not limited to:

- Inspection evidence relating to the academy and its predecessor institutions, in particular evidence concerning the quality of leadership and management, including both graded inspections under section 5 of the Education Act 2005, and monitoring inspections under section 8 of the Education Act 2005;

- the trajectory of academy inspection outcomes, including those of its predecessor schools, and whether RG has confidence that the current academy trust can sustain any improvements without intervention;
- Performance data and other quantitative information, where it is available;
- The local context and any additional information provided by the academy trust (and where relevant, the religious body) on receipt of notification of their eligibility for intervention.

If RG considers that intervention in the academy is appropriate, they will issue a Termination Warning Notice (TWN). It is the Secretary of State's policy that all schools should benefit from being part of a strong multi-academy trust. Where a standalone academy (as defined on page 9) meets the definition of not making necessary improvements there will be a presumption in favour of RG issuing a TWN with a view to transferring the academy to a strong multi-academy trust.

However, this presumption is rebuttable. There may be cases where RG does not consider it necessary to issue a TWN to a standalone academy not making necessary improvements. In each case, the particular circumstances of the academy, and the needs of its pupils, will be assessed in the round, in order to establish the best course of action.

All academies' funding agreements allow the RG (on behalf of the Secretary of State) to terminate the funding agreement where the academy is coasting (not making necessary improvements)⁶⁴. Before terminating the funding agreement on these grounds, RG must first issue a TWN requiring the academy trust to take specified action to improve the academy by a specified date. By way of illustration, this could include:

- entering into a partnership with a provider of school improvement support by a given date
- providing a plan to improve areas of weakness, with milestones to be agreed with RG, and subsequently implementing that plan. In standalone academies this may include taking steps to join a strong multi-academy trust
- other activity aimed at improving weaknesses in the academy's educational provision, financial management or governance.

⁶⁴ Sections 2B and 2D of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

The TWN will also require the academy trust to respond to RG, either by making representations, or by agreeing to take the specified action by the specified date.

If the academy trust does not fulfil the conditions of a TWN or respond by the dates specified, RG may terminate the academy's funding agreement and transfer the academy to a new academy trust. Before deciding to terminate the academy's funding agreement, RG will consider any representations and information that have been received in response to the TWN.

In any circumstances where a special academy is assessed for suitability for intervention, extra consideration will be given to identifying the most suitable course of action and sponsor in relation to each academy's specific context.

Where a Church supplemental agreement is in place alongside the academy's funding agreement, RG will copy in the appropriate diocesan body to all letters sent to the academy trust regarding an academy that is not making necessary improvements. RG will also extend all invitations to make representations in relation to an academy that is not making necessary improvements to the relevant diocesan authority. When considering the use of intervention powers in Church academies causing concern, RG will continue to have regard to the Church memoranda of understanding.

Trust-level Intervention

High standards of governance and financial management are key to the effective running of an academy trust and underpin the trust's ability to support academies in delivering the best educational outcomes. Academy Trusts are bound by their funding agreements to follow the requirements of, and have regard to the guidance in, the Academy Trust Handbook⁶⁵. The handbook sets out the department's intervention powers and makes clear that where ESFA or RG have concerns about financial management and/or governance in an academy trust a Notice to Improve (Ntl) may be issued.

All NtIs are published online⁶⁶. The academy trust must comply with the Ntl. Failure to comply will be deemed a breach of the funding agreement. In exceptional circumstances, the funding agreement may be terminated due to non-compliance with an Ntl. More information concerning financial intervention and NtIs can be found in the Academy Trust Handbook. The Handbook includes examples of the when an Ntl may be issued, which include trustees lacking the skills, knowledge and experience to exercise effective oversight of the trust's operations and performance, including educational performance.

⁶⁵ Also known as the Academies financial handbook. More information on the Academy Trust Handbook can be found here: <https://www.gov.uk/government/publications/academies-financial-handbook>

⁶⁶ Published NtIs can be found here: <https://www.gov.uk/government/collections/academy-trust-notice-to-improve>

The department will engage with the sector in developing its approach to trust-level intervention, including the process to be followed by RG and the evidence that they will rely on to determine the strength of trustees' oversight of educational performance.

Chapter 6: Other local authority duties

School performance

A local authority must exercise its education functions with a view to promoting high standards⁶⁷.

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

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

Local authorities are permitted to de-delegate from maintained schools' budget shares to fund this core school improvement activity.

As set out above, these core school improvement activities extend beyond exercising of statutory intervention powers but do not extend to a duty to provide or fund school improvement services themselves; and relate only to schools they maintain, rather than academies which are accountable to the Secretary of State. However, should a local authority have any concerns about an academy's standards, leadership or governance, they should raise these directly with RG.

RG will apply the same rigour to the academies and free schools in their regions, as local

⁶⁷ Section 13A of the Education Act 1996.

authorities should apply to maintained schools in their area, and will similarly champion education excellence.

Special Educational Needs and Disabilities (SEND)

Local authorities are subject to a range of duties under the Children and Families Act 2014⁶⁸ and the Equality Act 2010 relating to children and young people with special educational needs (SEN) and disabilities (SEND). Information on local authority responsibilities in relation to children with SEND can be found in the SEND Code of Practice⁶⁹.

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

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

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

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

Alternative Provision

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

⁶⁸ Children and Families Act 2014, Part 3, Section 22.

⁶⁹ More information on the SEND Code of Practice can be found here:

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

of a fixed period exclusion or if they are directing pupils off-site in order to help improve their behaviour.

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

Safeguarding

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

Where a local authority has concerns about an academy or free school's safeguarding arrangements or procedures (arising as a result of investigations about individual children or otherwise), these concerns should be raised to the DfE as the body with responsibility for ensuring that academy trusts comply with their Funding Agreements. Details of the concern should be submitted through the online [enquiry form](#)⁷⁰ [where it will be directed to the appropriate regional team](#).

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

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

'Keeping Children Safe in Education'⁷¹ is statutory guidance to which schools and colleges must have regard when carrying out their duties to safeguard and promote the

⁷⁰ The DfE enquiry form can be found here: <https://www.gov.uk/contact-dfe>. When completing the form on the behalf of an LA, please select the "disclosure in the public interest" option and "No" to the question "Do you wish to remain anonymous".

⁷¹ *Keeping Children Safe in Education*: <https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

welfare of children. 'Working Together to Safeguard Children' is statutory guidance on multi-agency working to safeguard and promote the welfare of children⁷².

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

⁷² *Working Together to Safeguard Children*: <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

Chapter 7: Governance

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

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

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

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

Section 22 of the Education Act 2002 provides that local authorities should ensure that training they consider necessary to discharge their duties is made available to every governor, free of charge. It is also possible for governing bodies to suspend governors who refuse to undertake necessary training⁷³.

As a result, local authorities should have arrangements in place for maintaining up to date records of governors in maintained schools. This should include contact details for chairs of governing bodies to aid direct communication with those who are accountable for maintained schools. It should also enable them to carry out any necessary due diligence including identifying governors who sit on more than one governing body. Information held by the local authority should also be made available to the Department for Education upon request. Local authorities should also encourage transparency around maintained school governance arrangements including through information published on maintained school websites in line with statutory guidance⁷⁴ and

⁷³ More information on suspending governors can be found in the governance handbook. A link to the handbook can be found in the 'further sources of information' section of this guidance.

⁷⁴ More information on the constitution of governing bodies of maintained schools can be found here: <https://www.gov.uk/government/publications/constitution-of-governing-bodies-of-maintained-schools>

compliance with maintained schools' duties under s538 of the Education Act 1996 to populate all of the governance fields on Get Information About Schools⁷⁵ (GIAS).

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

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

Schools causing concern and charity law

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

The Charity Commission can exercise powers of investigation and enforcement over these charities where the Secretary of State, as Principal Regulator, requests that the Commission investigates a concern that the department has identified. This means that, in consultation with the Principal Regulator, the Charity Commission may investigate and, if a serious failure to comply with charity law is found, will have the necessary enforcement powers to act if sanctions are required. A memorandum of understanding is in place, which sets out how the Department and the Charity Commission work together, including principles for managing referrals.⁷⁶

The members of the governing body of a foundation or voluntary school, and academy trustees, are charity trustees in law and have a number of duties under charity law, which overlap their duties as school governors and academy trustees. These are summarised and explained in Charity Commission guidance, *The Essential Trustee*⁷⁷.

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

⁷⁵ Schools must also ensure that they are providing accurate details on GIAS. It is important for schools to keep their GIAS record updated with their latest governance arrangements; this enables the Department to quickly and accurately identify individuals who have a role in governance. More information on updating your GIAS record can be found here: <https://www.get-information-schools.service.gov.uk/guidance>

⁷⁶ <https://www.gov.uk/government/publications/memorandum-of-understanding-charity-commission-and-the-department-for-education>.

⁷⁷ The Charity Commission's guidance 'The Essential Trustee' can be found here: <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>

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

The role of the academy trustee is crucial in the effective governance of academies, and requires the highest level of conduct. The Department may refer cases involving misconduct on the part of academy trustees to the Insolvency Service for consideration under the Company Directors Disqualification Act 1986. The Memorandum of Understanding between the Department and the Insolvency Service sets out how we will work together to coordinate regulatory operations.⁷⁸

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

⁷⁸ <https://www.gov.uk/government/publications/memorandum-of-understanding-dfe-and-the-insolvency-service>

Chapter 8: Pupil referral Units

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

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

- The power to direct closure of a PRU⁷⁹;
- The power to appoint an interim executive board (IEB)⁸⁰;
- A power to make an academy order in PRUs that are not making necessary improvements (as defined on page 9);
- A duty to make an academy order in PRUs judged Inadequate by Ofsted⁸¹.

RG may establish an IEB in a PRU where it has received an Inadequate judgment from Ofsted, where the PRU has met the definition of a school not making necessary improvements (and has been informed it is so), or where the Secretary of State is satisfied that:

- the standards of performance of pupils at the PRU are unacceptably low, and are likely to remain so⁸²;

⁷⁹ Section 68 of the Education and Inspections Act 2006 read together with paragraph 23 of Schedule 1 to the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, as amended by regulation 3 of the Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012.

⁸⁰ Section 69 of the Education and Inspections Act 2006 read together with regulations 2 and 24 of the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007, as amended by regulation 2 of the Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012.

⁸¹ Section 4 of the Academies Act 2010 read together with paragraph 23C of Schedule 1 to the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 as amended by regulations 2 and 4 of the Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2012 and regulations 2 and 3 of the Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2016.

⁸² Low performance standards are explained in further detail in regulation 2(2)(a) of the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007 as amended by regulation 2 of the Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012.

- the quality of provision for pupils at the PRU is unacceptably low⁸³;
- there has been a serious breakdown in the way the PRU is conducted which is prejudicing, or likely to prejudice, such standards of performance; or
- the safety of pupils or staff of the PRU is threatened (whether by a breakdown of discipline or otherwise).

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

Where a PRU is judged Inadequate for Leadership and Management, solely due to safeguarding, but judged Good or Outstanding in other key areas, Ofsted will carry out an early monitoring visit within 3 months of publication of the Inadequate judgement to determine whether improvements have been made. Where inspectors are due to return to a PRU in these circumstances, the timeframe for the implementation of an academy order will allow for reinspection. The monitoring visit will either confirm the PRU remains inadequate or, if inspectors are satisfied that safeguarding is now effective and there has been no decline in the PRU's performance in other areas, regrade the PRU.

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

The Secretary of State has a power to revoke academy orders issued to PRUs who are eligible for intervention. The policy for the use of this power is the same as that for maintained schools and is set out on page 34.

Pupil referral units not making necessary improvements

The Secretary of State has a discretionary power to intervene in PRUs that are coasting (not making necessary improvements).

⁸³ Low quality of provision is explained in further detail in regulation 2(2)(b) of the Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007 as amended by regulation 2 of the Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012.

The Department has identified 55 Education Investment Areas (EIAs)⁸⁴. RG has initially concentrated consideration of intervention in PRUs that are not making necessary improvements that are within one of the EIAs. However, PRUs outside these areas that are not making necessary improvements may also benefit from the support of a strong multi-academy trust and so RG will consider intervention in PRU outside of EIAs.

Eligibility for intervention

RG will only notify PRUs that they have met the definition of a school that is coasting (not making necessary improvements) and have 2,3 or 4 consecutive Ofsted judgments of less than Good if they have received their most recent Ofsted inspection under section 5 of the Education Act 2005 since 01 May 2021. PRUs where there is a long-term history of underperformance (5 or more consecutive less than Good Ofsted judgments) will be notified that they have met the definition of a school that is coasting (not making necessary improvements) regardless of the date of their last Ofsted inspection.

Communication

RG (acting on behalf of the Secretary of State) will send a letter to the management committee of a PRU that is not making necessary improvements (as defined on page 9) notifying them that the school has met the new coasting definition. The effect of this letter is that the PRU will become eligible for intervention. The letter will invite the governing body to make representations. Where relevant, letters will be copied to the religious body.

Where a PRU is already in the process of converting to become an alternative provision academy or the PRU has approved for closure, a second letter will not be sent and RG will instead continue to monitor progress to ensure the conversion or closure process is completed.

Process for intervention

Where a PRU is not making necessary improvements and RG considers that intervention action is appropriate, RG will inform the management committee of the presumption in favour of making an AP academy order, and will consider any representations received from the management committee before taking action.

When intervention in a PRU eligible for intervention is considered, RG will assess the capacity of the PRU to achieve rapid and sustained improvements and whether

⁸⁴ Further information about the [location and selection of Education Investment Areas](https://www.gov.uk/government/publications/education-investment-areas-selection-methodology) is available here: <https://www.gov.uk/government/publications/education-investment-areas-selection-methodology>

intervention should be recommended to support the PRU to improve. RG will consider the PRU's specific circumstances, including but not limited to:

- Inspection evidence relating to the PRU and its predecessor institutions, in particular evidence concerning the quality of leadership and management, including both graded inspections under section 5 of the Education Act 2005, and monitoring inspections under section 8 of the Education Act 2005;
- The trajectory of the PRU's inspection outcomes and whether the RD has confidence that any initial improvements will continue without intervention;
- Performance data and other quantitative information, where it is available;
- The local context and any additional information provided by the management committee on receipt of notification of their eligibility for intervention (and, where relevant, the relevant religious body).

RDs will consider the views and evidence put forward by the local authority responsible for the PRU, before intervening in an underperforming PRU.

In each case, the particular circumstances of the PRU, and the needs of its pupils, will be assessed in the round, in order to establish the best course of action.

Where RDs decide to make an AP academy order, the RD, acting on behalf of the Secretary of State, will take responsibility for ensuring that the PRU becomes an AP academy as swiftly as possible, including by identifying a suitable academy sponsor and brokering the new relationship between that academy trust and the PRU.

Further information

Legislation

- [Education and Adoption Act 2016](#) (which amends the Education and Inspections Act 2006 and the Academies Act 2010)
- [Education Act 2011](#) (which amended the 2006 Act and also the Academies Act 2010 in respect of land transfers to academies. Schedule 14 applies)
- [Academies Act 2010](#)
- [Apprenticeships, Skills, Children and Learning Act 2009](#) (amended the 2006 Act) - makes provision for apprenticeships, education, training and children's services.
- [Education and Inspections Act 2006](#)
- [Education Act 2002 Schedule 2](#) Effect on Staffing on suspension of delegated budget
- [School Governance \(Transition from an Interim Executive Board\) \(England\) Regulations 2010](#)
- [School Governance \(Role, Procedures and Allowances\) \(England\) Regulations 2013](#) – [associated departmental guidance](#) is available.
- [School Standards and Framework Act 1998](#) - contains provisions for schools and nursery education. This covers further education for young people at school, and in FE institutions across the UK.
- [Education and skills Acts 2008](#)
- [Company Directors Disqualification Act 1986](#)
- [The Coasting Schools \(England\) Regulations 2022](#)

Other relevant departmental advice and statutory guidance

- [Governance Handbook](#)
- [Working Together to Safeguard Children](#)
- [Keeping Children Safe in Education](#)
- [External reviews of school governance](#)
- [External reviews of the pupil premium](#)
- [Interim Executive Board](#)

Other departmental resources

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

- [Regions Group \(RG\)](#)



Department
for Education

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