



Department  
for Education

# **Schools causing concern**

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

**October 2022**

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## Key principles

The Government's 2019 Manifesto sets out the intention to intervene in schools where there is entrenched underperformance. The vast majority of schools in England are judged Good or Outstanding by Ofsted. However, in some areas a significant number of schools do not reach that standard. As part of the Government's commitment to levelling up, we have announced plans for Education Investment Areas (EIAs).<sup>1</sup> EIAs are 55 Local Authorities in England where school outcomes are the weakest. A key element of those plans is to ensure that schools that have been judged less than Good in their two most recent Ofsted inspections can benefit from the support of a strong multi-academy trust. By focusing school intervention in the areas that need it most, the new EIAs will help to deliver on the Manifesto commitment.

The Secretary of State has chosen to update the existing coasting schools regulations so that schools judged less than Good in their two most recent Ofsted inspections will now be covered by the coasting definition. Schools that meet this definition are referred to in this guidance as **schools that are not making necessary improvements**

Schools that are not making necessary improvements will be eligible for intervention action to support them to improve. Once eligible, the relevant Regional Director (RDs, formally known as regional schools commissioners) will assess each school on a case by case basis and 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. The Secretary of State's policy is that this support can generally best be provided by ensuring that all schools with consecutive less than 'Good' judgements are part of a strong multi-academy trust. Further details on how we may intervene to promote high standards in schools not making necessary improvements can be found on pages 6 - 8 of this guidance and in chapters 2, 3, 4 and 7.

The department remains committed to providing a clear and simple accountability system for schools.<sup>2</sup> To provide clarity for schools, we have set out below how accountability will now operate in light of the introduction of the new intervention measure. In practice this means that:

- RDs (formally known as regional schools commissioners)<sup>3</sup> will only mandate academy conversion, leadership change or academy trust transfer of a school in relation to educational standards if Ofsted has judged it

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<sup>1</sup> <https://www.gov.uk/government/news/package-to-transform-education-and-opportunities-for-most-disadvantaged>

<sup>2</sup> <https://www.gov.uk/government/publications/principles-for-a-clear-and-simple-school-accountability-system>

<sup>3</sup> Acting for and on behalf of the Secretary of State.

Inadequate, or if the school has met the new coasting definition (Schools that are not making necessary improvements) **and** the relevant RD has assessed that the school would benefit from such interventions.

- RDs will not use warning notices on the grounds of low standards of pupil performance apart from in exceptional circumstances.
- RDs 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, the RD 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 RDs 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, RDs 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.

### **Introduction of new powers in schools that are not making necessary improvements**

In order to promote high standards in schools and support the government's levelling up agenda, the Secretary of State has introduced a new intervention measure from 1<sup>st</sup> September 2022.

The new measure applies to a school if:

- 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 of the Education Act 2005 immediately before the most recent inspection.

The measure applies to mainstream maintained schools and academies; pupil referral units (PRUs) and 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, the relevant RD will assess each school on a case by case basis. The RD 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.

RDs will begin to consider intervention action in schools not making necessary improvements from the autumn term 2022. RDs will only consider taking action in schools with 2, 3 or 4 consecutive less than 'Good' judgments where they have had their most recent Ofsted inspection under Section 5 of the Education Act 2005 since 1 May 2021. Schools which have a long-term history of underperformance (5 or more consecutive Ofsted judgments of less than 'Good') may be considered for intervention regardless of the date of their last Ofsted inspection.

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

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', the RD will write to the trust confirming that the academy meets the definition, but will normally also notify the trust that no further action will be taken at present in view of the improvement. RDs will continue to monitor the academy and may take action if the academy does not continue to improve.

In February 2022, the Department identified 55 Education Investment Areas (EIAs). It is the Department's priority to intervene in these areas where standards are poorest to improve standards, bringing in our strongest academy trusts so that underperforming schools can access the support they need to improve. RDs will initially concentrate 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 RDs will consider intervention in schools elsewhere.

Further information about the location and selection of Education Investment Areas can be found [here](#).

The Secretary of State's powers to intervene in schools not making necessary improvements come from the legislation on 'coasting schools', and the definition of

'coasting' in regulations has been updated to capture underperforming schools, as defined above<sup>4</sup>. A reference in this guidance to 'schools not making necessary improvements' should be read as meaning that such schools have met the proposed new statutory definition of 'coasting'.

The actions an RD may take with schools not making necessary improvements may differ, depending on whether the school is an academy or a maintained school or PRU. The actions RDs can take are described in the relevant chapters of this guidance (chapter 3 for maintained schools, chapter 4 for academies, and chapter 7 for PRUs).

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<sup>4</sup> 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.)



# 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 addressed<sup>5</sup>; and
- academies causing concern.

It sets out the factors local authorities and RDs 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 RDs who are expected to follow this guidance. For the purpose of this guidance, it will generally be the RD who is referred to as using the Secretary of State’s described powers.

This guidance primarily sets out how local authorities and RDs will intervene at a school level. RDs 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 1<sup>st</sup> September 2022.

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<sup>5</sup> 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.
- RDs, 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.

## 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).<sup>6</sup>

### 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 State<sup>7</sup>.

### Trustees of the School

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<sup>6</sup> In the past some MATs were set up with only a single school in the expectation that additional schools would join in the future.

<sup>7</sup> Section 69 of the School Standards and Framework Act 1998.

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**

The academy trustees are also charity trustees<sup>8</sup>.

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**

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<sup>8</sup> 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'.

- the school's overall effectiveness was also below Good at the inspection under Section 5 immediately prior to the most recent such inspection

From 1 September 2022, the Secretary of State will have powers to intervene in these schools, by virtue of the legislation on 'coasting' schools. The definition of 'coasting' in regulations has been amended to match the definition of 'schools that are not making necessary improvements' given above. 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'.

## Chapter 1: Introduction

We are building a supportive schools' culture in which local authorities and RDs 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 RDs 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. RDs may give a warning notice to a maintained school where they have concerns about a breakdown in leadership and governance, or where the safety of pupils or staff may be being threatened. Where a maintained school does not comply with a warning notice, it will become eligible for formal intervention. The warning notice process for maintained schools is described in more detail in Chapter 2 of this guidance.
2. **Schools that have been judged Inadequate by Ofsted** – An academy order must, in line with statutory requirements, be issued for all maintained schools that have been judged Inadequate by Ofsted, requiring them to become sponsored academies. When an academy is judged Inadequate by Ofsted, the RD is able 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** – RDs 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 power to intervene in schools not making necessary improvements is discretionary and so once eligible, the relevant RD will assess each school on a case by case basis before deciding whether intervention and further support are necessary. RDs will only consider taking action in schools with 2, 3 or 4 consecutive less than Good judgments if they have received their most recent full Ofsted inspection since 1 May 2021. Schools where there is a long-term history of underperformance (5 or more consecutive below 'Good' judgements) may be considered for intervention regardless of the date of their last Ofsted inspection.

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 RDs 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.<sup>9</sup>

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

RDs 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 RDs, 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 RDs 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 alongside the relevant Memorandum of Understanding<sup>10</sup>, which describes in further detail how RDs 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

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<sup>9</sup> More information about RDs, 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>

<sup>10</sup> More information about the memoranda of understanding can be found here: <https://www.gov.uk/government/publications/church-schools-and-academies-memoranda-of-understanding>

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, RDs will take into account published attendance data (where available) alongside all other relevant information.<sup>11</sup>

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<sup>11</sup> 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>



## 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 RDs have specific powers they may use to bring about improvement. These powers are covered in more detail in chapter 3. Local authorities and RDs 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 RDs 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 so<sup>12</sup>; 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); or<sup>13</sup>

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<sup>12</sup> Low performance standards are explained in further detail in Section 60(3) of the Education and Inspections 2006 Act

<sup>13</sup> 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.<sup>14</sup>

In general, RDs 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 RDs will use their discretion to decide whether the use of formal powers is necessary.

### **Roles of local authorities and RDs**

Local authorities should use warning notices to hold their schools to account and should work together with RDs where they judge that a warning notice is necessary<sup>15</sup>.

RDs will issue a warning notice on grounds other than low standards of pupil performance where, in the RD's opinion, it is appropriate to act. Examples of this may include where the local authority has failed to act swiftly enough in a specific case, has generally not acted swiftly or robustly enough in the past, or lacks capacity to act. The Secretary of State's power to issue a warning notice takes precedence over the local authority's, so the RD can also act where the local authority issues a warning notice that the RD does not consider to be robust enough, or where the RD does not consider that the action required by a local authority warning notice is robust enough<sup>16</sup>.

The local authority must give a copy of any warning notice they issue to the relevant RD; similarly, an RD 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 RD should raise concerns with the appropriate religious body at the earliest opportunity. RDs will continue

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<sup>14</sup> Warning notices issued for these reasons are named in legislation as 'Teachers' pay and conditions warning notices'.

<sup>15</sup> 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.

<sup>16</sup> 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.

RDs 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 12 of this document.)

RDs 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. RDs may issue warning notices on these grounds regardless of the school’s Ofsted rating. Examples of the circumstances in which warning notices might be issued on these grounds are set out in the following sections.

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

Another ground for issuing a warning notice is that there has been a serious breakdown in the way the school is managed or governed, which is prejudicing, or is likely to prejudice, pupils’ standards of performance. High quality and effective governance is key to the success of any school. As such, the department is committed to ensuring robust governance in all schools. Where a breakdown in governance occurs, the local authority and the RD 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 RDs 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 school<sup>17</sup>;
- 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 RD) 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 RD 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 RDs) have concerns about the quality of a maintained school's governance, they may consider recommending that the school commissions an external review of governance, before considering more formal intervention. Guidance is available on commissioning and conducting such external reviews<sup>18</sup>.

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<sup>17</sup> 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.

<sup>18</sup> See under 'Further sources of information' for departmental guidance on governance reviews.

The Governance Handbook<sup>19</sup> 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 RDs 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 RDs can act where local authorities fail to act swiftly or lack the capacity to do so.

Local authorities and RDs should have regard to the statutory guidance on roles and responsibilities for safeguarding: 'Keeping Children Safe in Education' and 'Working Together to Safeguard Children'<sup>20</sup>. 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 Act<sup>21</sup> (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 notice<sup>22</sup>. 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.

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

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<sup>19</sup> See 'Further sources of information' for link to the Governance Handbook.

<sup>20</sup> See 'Further sources of information' for link to safeguarding guidance

<sup>21</sup> 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.

<sup>22</sup> These are the local authority's powers to appoint additional governors (section 64) and to suspend the school's right to a delegated budget (section 66).

A local authority must send the RD a copy of any teachers' pay and conditions warning notice it issues<sup>23</sup>.

## Issuing a warning notice to a maintained school

Local authorities should work with RDs where they judge that a warning notice is necessary. Once it has been determined that a local authority or RD 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 RD 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 RD 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 governors<sup>24</sup>.

A copy of a warning notice must also be given to the relevant RD copying in [School.NOTIFICATIONS@education.gov.uk](mailto:School.NOTIFICATIONS@education.gov.uk), when it is a local authority making it, or a copy must be given to the local authority, when it is the RD making it<sup>25</sup>. All warning notices must be copied to Ofsted at the time of issuing using the email address [warningnotices@ofsted.gov.uk](mailto:warningnotices@ofsted.gov.uk)

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

If a local authority is notified that the RD has given a warning notice, the local authority may not give such a warning notice to the same maintained school without the RD's

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<sup>23</sup> Section 60A (6)(a) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

<sup>24</sup> Section 60(6) of the Education and Inspections Act 2006, as amended by the Education and Adoption Act 2016.

<sup>25</sup> Section 60(6A)-(6B) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

agreement. If the RD gives a warning notice, any earlier warning notice given to the same maintained school by the local authority will cease to have effect<sup>26</sup>. 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 RDs may take in maintained schools that have failed to comply with a warning notice**

When a governing body has failed to comply with a warning notice to the satisfaction of the RD or local authority within the compliance period, and the issuing local authority or RD has given reasonable written notice that they propose to intervene, a school is eligible for intervention and further action may be taken<sup>27</sup>.

The local authority or RD 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 Act<sup>28</sup> must be exercised within a period of two months following the end of the compliance period. If the local authority or the RD 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)<sup>29</sup>; and
2. any school Ofsted judges as requiring special measures (as addressed in section 62 of the 2006 Act).

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<sup>26</sup> Section 60(4A)-(4B) of the Education and Inspections Act, as inserted by the Education and Adoption Act 2016.

<sup>27</sup> 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.

<sup>28</sup> 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.

<sup>29</sup> This is also known as a 'serious weaknesses' judgement by Ofsted.

The Secretary of State has a duty<sup>30</sup> to make an academy order in respect of any maintained school judged as Inadequate by Ofsted, to enable it to become an academy and receive additional support from a sponsor.

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

In the case of a foundation or voluntary school that is eligible for intervention and subject to an academy order, the RD is required to consult about the identity of the person with whom academy arrangements are being entered into (called “the academy trust” in this guidance) before entering into such arrangements. The RD 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 body<sup>31</sup>. RDs will ensure that any arrangements will safeguard the religious character and ethos of these maintained schools<sup>32</sup>.

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. RDs can use the Secretary of State’s power to give the governing body or local authority a direction, or directions, to take specified steps for this purpose<sup>33</sup>. 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,<sup>34</sup> or for the transfer of other assets from the local authority or governing body<sup>35</sup>. The RD is able to set a date by which these steps must be taken<sup>36</sup>. If the RD has identified an academy trust to run that maintained school once it becomes an academy, and has notified the school of this, then the governing

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<sup>30</sup> Section 4(A1) of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

<sup>31</sup> Section 5A of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

<sup>32</sup> RDs 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.

<sup>33</sup> Section 5C of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

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

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

<sup>36</sup> Section 5C of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.



body and the local authority must take all reasonable steps to facilitate that academy trust taking responsibility for the school.

Once the RD has 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 academy<sup>37</sup>. This is described in more detail in Chapter 4.

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

## **Maintained schools that are not making necessary improvements**

From 1<sup>st</sup> September 2022, the Secretary of State will have a discretionary power to intervene in maintained schools that are coasting (not making necessary improvements).

### **Eligibility for intervention**

RDs will only notify maintained schools 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. Schools 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**

From the autumn term 2022 the RD (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 12) notifying them that the school has met the new coasting definition. The effect of this letter is that the school becomes eligible for intervention. The RD will set out in the notification letter the likely timescales for further communication. Letters will be copied to the local authority and, where relevant, the religious body.

In order to prioritise support in the areas that need it most, RDs will consider whether

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<sup>37</sup> Section 5E of the Academies Act, as inserted by the Education and Adoption Act 2016.

schools that are located in Education Investment Areas (EIAs) require intervention and further support first. From the autumn term 2022, all schools in EIAs notified that they are coasting (not making necessary improvements) will receive a second letter informing them that they are now eligible for intervention and the governing body will be invited to make representations. This letter will also be copied to the local authority and, where relevant, the religious body.

Schools located outside of EIAs will be informed in their initial notification letter when to expect further correspondence.

### **Process for intervention**

When a school becomes eligible for intervention, the RD 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. The RD 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 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 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 ).

When considering performance data, the RD will take into account the Department's commitments around using performance data in response to the COVID-19 Pandemic. This includes a commitment not to use 2020 or 2021 assessment, test or exam results data to hold schools to account. When considering data based on results from assessment, tests or exams taken in academic year 2021/22 the RD will treat this data with caution, including using it only to compare a school's results to the local or national averages for 21/22, not using it to compare two schools to each other, and not directly

comparing 21/22 data to data from previous years.<sup>38</sup>

The RD will also consult 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, the RD 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 the RD 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 the RD decides to make an academy order, the RD, 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, the RD 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 24 of this guidance.

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<sup>38</sup> For more information about how the department will use accountability performance data please visit: <https://www.gov.uk/government/publications/coronavirus-covid-19-school-and-college-performance-measures>

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 RDs will work closely and co-operatively to support improvement in maintained schools that are causing concern. Where a maintained school is eligible for intervention<sup>39</sup> 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.<sup>40</sup>

In accordance with section 70A of the 2006 Act<sup>41</sup> the local authority must notify the relevant RD each time they intend to use their intervention powers, copying in [School.NOTIFICATIONS@education.gov.uk](mailto:School.NOTIFICATIONS@education.gov.uk)

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<sup>39</sup> As defined by section 60B of the Education and Inspection Act 2006, as inserted by the Education and Adoption Act 2016

<sup>40</sup> Or in the case of an Inadequate school, duty.

<sup>41</sup> As inserted by the Education and Adoption Act 2016.

Local authorities should obtain consent from the RD before appointing an Interim Executive Board (IEB). The RD will also notify the local authority before requiring the governing body to enter into arrangements, appointing additional governors, appointing an IEB<sup>42</sup> or when the Secretary of State directs a local authority to close a maintained school.

When a local authority has been notified that the RD intends to exercise the Secretary of State's intervention powers in a maintained school, the local authority may not use its intervention powers in relation to that school until the RD notifies the local authority that it may do so<sup>43</sup>.

This Chapter describes each power, the consultations the local authority or RD 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 RDs respectively, to require a maintained school that is eligible for intervention<sup>44</sup> 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.

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<sup>42</sup> Section 70A of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

<sup>43</sup> Section 70B of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

<sup>44</sup> Except a school that is eligible for intervention as the result of a teachers' pay and conditions warning notice.

Prior to requiring the governing body to enter into arrangements, the relevant body must consult the governing body of the school, the appropriate diocesan authority (in the case of a Church of England or Roman Catholic school) and in the case of any other foundation or voluntary school, the person or persons by whom foundation governors are 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) days<sup>45</sup>.

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

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

Before making any appointment, the RD must consult:

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

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

Where the RD 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

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<sup>45</sup> Local authorities and RDs should be mindful of weekends, bank holidays and school holidays when deciding on the length of the consultation.

of foundation governors equal to those appointed by the local authority, in order to preserve their majority. However, legislation provides that where the RD has used this power, the relevant appointing bodies are not authorised to appoint foundation governors for the purpose of outnumbering the other governors including those appointed by the RD<sup>46</sup>.

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

Section 65 of the 2006 Act enables the local authority to apply to the RD for consent to constitute the governing body of a maintained school as an IEB, and section 69 enables the RD 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 RDs should work together in circumstances where an IEB may be put in place. Local authorities and RDs should assess each individual case and decide who is best placed to implement and take responsibility for the IEB. RDs have the power to appoint additional members to a local authority IEB and, if necessary, take control of the IEB using the powers set out in this chapter.

### **Consultation**

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

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

This requirement for the RD to consult the bodies in 2, 3 and 4 above does not apply if the local authority has already done so as part of their own proposal to appoint an IEB. There is no requirement for the RD to consult about appointing an IEB if an academy

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<sup>46</sup> Section 67(6)(b) of the Education and Inspections Act 2006.



order has effect in respect of the maintained school<sup>47</sup>. In these circumstances the RD will give advance notice to those listed above that the governing body will be replaced by an IEB on a specified date. There is no statutory time scale in which the consultation process must be completed. It is likely that the time scale will vary depending on the circumstances in which the IEB is required. We would expect a normal consultation process to last for a period of 10 (ten) days<sup>48</sup>.

Local authorities must use the IEB application form on the DfE website<sup>49</sup> following the accompanying instructions.

When the decision has been taken to appoint an IEB, the local authority or RD 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

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<sup>47</sup> RDs 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.

<sup>48</sup> Local authorities and RDs should be mindful of weekends, bank holidays and school holidays when deciding on the length of the consultation.

<sup>49</sup> See under 'Further sources of information'.

be acting as charity trustees, the IEB members must carry out their duties under charity law – those duties are described further in Chapter 6 of this guidance. Any obligations on the governing body in relation to maintaining the religious ethos of a maintained school will also apply to the IEB.

An IEB may recommend to a local authority that a maintained school be closed. It may also recommend that the Secretary of State give a direction to a local authority regarding the closure of a maintained school. It cannot however, publish proposals for closure 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 body<sup>50</sup>.

### **Membership of the IEB**

As set out in Schedule 6 to the 2006 Act, the number of interim executive members must not be less than two. Once the IEB has been established, further interim executive members can be appointed at any time. The RD 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 the RD. The IEB may however arrange for the discharge of their functions by other people as they see fit<sup>51</sup>. In this way, the IEB could continue to benefit from the experience of existing governors and help engage future governors. The local authority or RD can nominate one of the members of the IEB to act as Chair.

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<sup>50</sup> Under section 5B of the Academies Act 2010 as inserted by the Education and Adoption Act 2016.

<sup>51</sup> Under paragraph 11(2) of Schedule 6 of the 2006 Act

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

Interim executive members may be removed by whoever appointed them (the local authority or the RD). 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 the RD has appointed an IEB, the local authority cannot suspend the school's right to a delegated budget during the period when the governing body is constituted as an IEB.

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

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

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

This power will enable the RD 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 Act<sup>52</sup>, where a local authority has already appointed an IEB, the RD may take over responsibility for arrangements in connection with the IEB members. If this happens, the notice given by the local authority to the governing body (setting out that it will consist of interim executive members), and any further actions taken by the local authority in respect of the IEB, will be treated as having been given by the RD.

## **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 intervention<sup>53</sup>. 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.

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<sup>52</sup> As inserted by the Education and Adoption Act 2016.

<sup>53</sup> Except a maintained school that is eligible for intervention as the result of a teachers' pay and conditions warning notice.

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

Local authorities and RDs should be aware that there is a presumption against the closure of rural schools. If the maintained school in question is designated as rural, local authorities have a statutory duty to consider all alternatives to closure (e.g. amalgamation, academy conversion) prior to publishing proposals for closure<sup>54</sup>.

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

Where a maintained school is judged Inadequate by Ofsted the RD is **under a duty** to make an academy order. Before the RD exercises this duty, they may consider the viability of the school. The RD may also choose to make an academy order where a maintained school has failed to comply with a warning notice.<sup>55</sup> Where an RD has assessed that intervention is required in a maintained school that is not making necessary improvements, the RD 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, the RD 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:

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<sup>54</sup> More information regarding school closure can be found here:

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

<sup>55</sup> RDs 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.

- (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:**

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

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

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

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

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

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

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

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<sup>56</sup> 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.

- (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 an RD makes an academy order for a school that is eligible for intervention, or where a school has applied to become an academy but where the RD 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 duty<sup>57</sup> to communicate to parents information about their plans for improving the school, before the school is converted into a sponsored academy.

A converter academy is one that converts after an application by the governing body of the school and the RD 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 balances<sup>58</sup>.

## **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.

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

<sup>58</sup> 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>

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
3. The maintained school was rated Inadequate by Ofsted solely on **safeguarding** grounds having previously been judged Good or Outstanding, the maintained school has reverted to its previous Ofsted rating and the Secretary of State is satisfied that the safeguarding concerns have been addressed and can be sustained without the support of a strong sponsor or Multi-Academy Trust.

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, RDs (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 RDs and the ESFA, who will agree a robust and joined up approach to addressing underperformance. Where concerns are identified, the department will take action in line with the funding agreement of the academy in question.

### Termination warning notices in academies

Arrangements for academies to be issued with a warning notice where they have not been judged Inadequate by Ofsted 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 an RD to issue a warning notice for educational standards that are unacceptably low. However, RDs will only issue this kind of termination warning notice in exceptional circumstances.<sup>59</sup>

The RD (on behalf of the Secretary of State) will consider any representations from the academy trust received by the date specified in the termination warning notice. If the

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

academy trust fails to carry out the actions set out in a termination warning notice the RD 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 RD.

Warning notices issued to academy trusts by RDs are published online<sup>60</sup>, as well as being shared with Ofsted at the time of issuing.

## Academies judged Inadequate

The RD 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 2010<sup>61</sup>, regardless of the terms in an academy's funding agreement, the RD (on behalf of the Secretary of State) can terminate the funding agreement of an academy that has been judged Inadequate. This is a power rather than a duty, meaning the RD 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 termination is appropriate, the RD on behalf of the Secretary of State must first give the academy trust an opportunity to make representations.

Where a Church Supplemental Agreement has been entered into, alongside the funding agreement, the RD will also notify the appropriate diocesan body and consider its representations. The RD must comply with any other terms specified in the Church Supplemental Agreement regarding termination. When considering the use of intervention powers in Church academies causing concern, the RD 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, the RD 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). RDs 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

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

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

function, and the RD 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, the RD can move to terminate the funding agreement in order to close it.

## **Academies that are not making necessary improvements**

From 1<sup>st</sup> September 2022, the Secretary of State may use the discretionary power to intervene in academies that are coasting (not making necessary improvements).

### **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).<sup>62</sup>

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

RDs 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. RDs 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**

From the autumn term 2022 the RD (acting on behalf of the Secretary of State) will send a letter to the academy trust of an eligible academy that is not making necessary improvements (as defined on page 12) notifying them that the academy has met the new coasting definition. In such cases, the Secretary of State will have the power to terminate the academy's funding agreement using their coasting powers. The RD will set out in the notification letter the likely timescales for further communication. Where relevant, letters will be copied to the religious body.

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<sup>62</sup> Predecessor schools will be determined using the department's central register of schools, Get information about schools (GIAS).

In order to prioritise support in the areas that need it most, RDs will consider whether eligible schools that are located in Education Investment Areas (EIAs) require intervention and further support first. From the autumn term 2022, all academy trusts with academies in EIAs that are notified that they are not making necessary improvements will receive a second letter with respect to each academy informing them that the respective academy is now eligible for intervention and the academy trust will be invited to make representations. Where relevant this letter will also be copied to the religious body.

Academy trusts with eligible academies located outside of EIAs will be informed in their initial notification letter when to expect further correspondence.

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', the RD will write to the trust confirming that the academy meets the definition, but will normally also notify the trust that no further action will be taken at present in view of the improvement. RDs 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 RD 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 RD 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 the RD 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.

When considering performance data, the RD will take into account the Department's

commitments around using performance data in response to the COVID-19 Pandemic. This includes a commitment not to use 2020 or 2021 assessment, test or exam results data to hold schools to account. When considering data based on results from assessment, tests or exams taken in academic year 2021/22 the RD will treat this data with caution, including using it only to compare to a school's results to the local or national averages for 21/22, not using it to compare 2 schools to each other, and not directly comparing 21/22 data to data from previous years.<sup>63</sup>

If the RD 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 11) meets the definition of not making necessary improvements there will be a presumption in favour of the RD 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 the RD 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 RD (on behalf of the Secretary of State) to terminate the funding agreement where the academy is coasting (not making necessary improvements)<sup>64</sup>. Before terminating the funding agreement on these grounds, the RD 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 the RD, 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.

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

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<sup>63</sup> For more information about how the department will use accountability performance data please visit: <https://www.gov.uk/government/publications/coronavirus-covid-19-school-and-college-performance-measures>

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

If the academy trust does not fulfil the conditions of a TWN or respond by the dates specified, the RD 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, the RD 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, the RD will copy in the appropriate diocesan body to all letters sent to the academy trust regarding an academy that is not making necessary improvements. The RD 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, the RD will continue to have regard to the Church memoranda of understanding.

## **Financial intervention in academies**

The Education and Skills Funding Agency (ESFA) is responsible for the effectiveness of the financial system for academies. High standards of governance and financial management are key to the effective running of an academy trust and underpin the trust's ability to support academies in delivering the best educational outcomes. The ESFA will work alongside RDs, and other parts of the department to help build a strong system of financial management. Where instances of financial underperformance arise, the ESFA will take action to bring about improvements. Guidance for academies concerning financial management, control and reporting requirements can be found in the Academy Trust Handbook<sup>65</sup>.

Where the ESFA or RDs have concerns about financial management and/or governance in an academy trust a Notice to Improve (Ntl) may be issued. All Ntl's are published online. 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 Ntl's can be found in the Academy Trust Handbook.

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<sup>65</sup> 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>

## Chapter 5: Other local authority duties

### School performance

A local authority must exercise its education functions with a view to promoting high standards<sup>66</sup>.

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 the relevant RD, 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 the relevant RD, 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.

The School Improvement Monitoring and Brokering Grant<sup>67</sup> will be provided to local authorities to assist them in fulfilling these core school improvement activities for the maintained schools in their area. The grant will cease in 2023-24, phased so that it will be reduced to 50% of the previous amount on a per school basis in FY 2022-23. From 2022-23, local authorities will be 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

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<sup>66</sup> Section 13A of the Education Act 1996.

<sup>67</sup> More information on the School Improvement Monitoring and Brokering Grant can be found here: [Government response - Reforming how LA SI functions are funded \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

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 the relevant RD.

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

## Special Educational Needs and Disabilities (SEND)

Local authorities are subject to a range of duties under the Children and Families Act 2014<sup>68</sup> 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 Practice<sup>69</sup>.

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

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

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

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

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<sup>68</sup> Children and Families Act 2014, Part 3, Section 22.

<sup>69</sup> 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>



## Alternative Provision

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

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

## 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](#)<sup>70</sup> [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.

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<sup>70</sup> The DfE enquiry form can be found here: <https://www.gov.uk/contact-dfe>

'Keeping Children Safe in Education'<sup>71</sup> is statutory guidance to which schools and colleges must have regard when carrying out their duties to safeguard and promote the welfare of children. 'Working Together to Safeguard Children' is statutory guidance on multi-agency working to safeguard and promote the welfare of children<sup>72</sup>.

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.

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

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

## Chapter 6: Governance

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

### **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 training<sup>73</sup>.

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 guidance<sup>74</sup> and

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<sup>73</sup> 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.

<sup>74</sup> 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 Schools<sup>75</sup> (GIAS).

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

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

### **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.<sup>76</sup>

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<sup>77</sup>.

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. RDs

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<sup>75</sup> 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>

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

<sup>77</sup> 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.<sup>78</sup>

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.

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

## Chapter 7: Pupil referral Units

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

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

- The power to direct closure of a PRU<sup>79</sup>;
- The power to appoint an interim executive board (IEB)<sup>80</sup>;
- A power to make an academy order in PRUs that are not making necessary improvements (as defined on page 12);
- A duty to make an academy order in PRUs judged Inadequate by Ofsted<sup>81</sup>.

The RD 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 so<sup>82</sup>;

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<sup>79</sup> 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.

<sup>80</sup> 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.

<sup>81</sup> 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.

<sup>82</sup> 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 low<sup>83</sup>;
- 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, the RD will take responsibility for ensuring that the PRU becomes a sponsored Alternative Provision (AP) academy as swiftly as possible. This includes identifying the most suitable sponsor and brokering the new relationship between that sponsor and the PRU.

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

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 39.

## **Pupil referral units not making necessary improvements**

From 1<sup>st</sup> September 2022, the Secretary of State will have a discretionary power to intervene in PRUs that are coasting (not making necessary improvements).

### **Eligibility for intervention**

RDs 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.

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<sup>83</sup> 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.

## **Communication**

From the autumn term 2022 the RD (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 12) 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 RD will set out in the notification letter the likely timescales for further communication. Where relevant, letters will be copied to the religious body.

In order to prioritise support in the areas that need it most, RDs will consider whether PRUs that are located in Education Investment Areas (EIAs) require intervention and further support first. From the autumn term 2022, all PRUs in EIAs notified that they are not making necessary improvements will receive a second letter informing them that they are now eligible for intervention and the management committee will be invited to make representations.

PRUs located outside of EIAs will be informed in their initial notification letter when to expect further correspondence.

## **Process for intervention**

Where a PRU is not making necessary improvements and the RD considers that intervention action is appropriate, the RD 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 a PRU becomes eligible for intervention, the RD will assess the capacity of the PRU to achieve rapid and sustained improvements and whether intervention should be recommended to support the PRU to improve. The RD 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).

When considering performance data, the RD will take into account the Department's commitments around using performance data in response to the COVID-19 Pandemic. This includes a commitment not to use 2020 or 2021 assessment, test or exam results data to hold schools to account. When considering data based on results from assessment, tests or exams taken in academic year 2021/22 the RD will treat this data with caution, including using it only to compare to a PRU's results to the local or national averages for 21/22, not using it to compare 2 PRUs to each other, and not directly comparing 21/22 data to data from previous years.<sup>84</sup>

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.

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<sup>84</sup> For more information about how the department will use accountability performance data please visit: <https://www.gov.uk/government/publications/coronavirus-covid-19-school-and-college-performance-measures>

## Further sources of information

### Legislation

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

### Guidance

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

### Other departmental resources

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



Department  
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