



Department  
for Education

# **Schools causing concern**

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

**February 2018**

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# 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 2006 Act);
- other maintained schools about which the local authority and/or Secretary of State have serious concerns which need to be addressed<sup>1</sup>; and
- academies causing concern.

It sets out the factors local authorities and Regional Schools Commissioners (RSC) 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 Regional Schools Commissioners (RSCs) who are expected to follow this guidance. For the purpose of this guidance, the RSC will generally be referred to as using the described powers.

Throughout this guidance, “maintained schools” means local authority maintained schools (but 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.

## Effective from date

This guidance is effective from 25 January 2018.

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<sup>1</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 (amended the 2006 Act)
- The School Governance (Transition from an Interim Executive Board)(England) Regulations 2010 (“Transition Regulations”)
- Academies Act 2010
- Education Act 2011 (amended the 2006 Act, and Schedule 14)
- Children and Families Act 2014
- Education and Adoption Act 2016 (which amends the 2006 Act and the Academies Act 2010)

## Who is this guidance for?

- Local authorities, who must have regard to it as statutory guidance in how they use their powers of intervention in their maintained schools.
- Regional Schools Commissioners will be expected to follow this document as guidance for how they will exercise the Secretary of State’s powers of intervention in maintained schools causing concern and for 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, staff and parents at maintained schools and academies, who may find it useful.

## Chapter 1: Introduction

We are building a supportive schools culture in which local authorities and Regional Schools Commissioners (RSCs) work with school leaders to drive school improvement. As part of this culture, the use of data is the starting point of a discussion during which local authorities and RSCs will collect and consider a wide range of relevant information in order to give schools the support they need. This guidance describes the processes local authorities and RSCs 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 meet the coasting definition** – The coasting definition allows RSCs to identify which schools might need additional improvement support. When a school meets the definition, RSCs will engage the school before issuing any letters to take into account measures already in place to raise standards, and then determine whether the school requires additional support. Last year, formal action was brought against only one school that met the definition, and we expect RSCs to continue using formal powers only in the rarest circumstances. The process for schools meeting the coasting definition is described in more detail in Chapter 2 of this guidance.
- 2. Schools that have failed to comply with a warning notice** – Local authorities and RSCs may give warning notices to maintained schools where they have concerns about unacceptable educational performance (including results below floor standards), 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 is described in more detail in Chapter 3 of this guidance.
- 3. Schools that have been judged inadequate by Ofsted** – An academy order will 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 RSC is able to terminate the funding agreement with the existing academy trust, and move the academy to a new trust. The process for schools judged inadequate by Ofsted is described in more detail in Chapter 5 of this guidance.

This guidance is statutory for local authorities, and sets out their role in relation to maintained schools that are causing concern. It also describes how RSCs 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>2</sup>

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<sup>2</sup> More information about RSCs, 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>

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

RSCs will address underperformance in academies on behalf of the Secretary of State. 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 RSCs, and how they will work with others in the school system to ensure underperformance is challenged and schools are supported to improve – including, governing bodies, foundation trusts, dioceses and other religious bodies.

The Government is committed to protecting the ethos of schools with a religious character, and RSCs will ensure that their intervention arrangements will safeguard the religious character and ethos of the school, working closely with the relevant religious body. For all Church of England and Roman Catholic schools, this guidance should be read alongside the relevant Memorandum of Understanding<sup>3</sup>, which describes in further detail how RSCs and dioceses will work together to address underperformance concerns in those schools.

Where any school is run by a charitable trust or is on land held by a charitable trust, local authorities and the Secretary of State will, in using their powers of intervention, have regard to charity law and the responsibilities of the charity trustees. This is described further in Chapter 7.

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<sup>3</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>

## Chapter 2: Schools that have met the coasting definition

The government's coasting policy is about identifying and helping those schools – including maintained schools and academies - where pupils may not be consistently fulfilling their potential. The coasting definition is based on published performance data over three years and reflects the same measures that underpin the floor standards<sup>4</sup>. Meeting the definition is just the starting point of a process and no single piece of data will lead to intervention. RSCs will consider the best approach for each individual school to ensure pupils are able to fulfil their potential on a consistent basis.

The coasting definition applies equally to maintained schools and academies. RSCs will work to support both types of school in the same way, although their powers in relation to an academy and a maintained school do differ slightly.

When a school meets the coasting definition, RSCs will engage with the school, and, where appropriate, the school's trust, local authorities and dioceses, to consider the measures already in place to improve the school's academic standards, and decide whether additional support is needed, prior to any letters being sent to the school to inform them they have met the definition.

### Understanding the wider context

RSCs will contact schools (or where appropriate, the school's trust) that fall within the coasting definition for an informal discussion about what additional support may be needed. The initial contact is the start of a conversation between the RSC and the school. Schools will only receive written notification by RSCs that they meet the coasting definition after an initial discussion has taken place, and the RSC has decided, based on available evidence (outlined below), that additional support is needed.

RSCs will work to understand the school's circumstances and wider context. They have discretion to decide what, if any, action will be taken with a school that meets the coasting definition, having taken the advice of the relevant Headteacher Board and following discussion with the school. RSCs may decide that a school:

- has met the coasting definition but has already taken steps to raise academic standards, and therefore no action is required; or
- requires additional improvement.

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<sup>4</sup> More information on the coasting definition and floor standards can be found in the Primary school accountability technical guide: <https://www.gov.uk/government/publications/primary-school-accountability> and the Progress 8 and Attainment 8 Guide for secondary schools: <https://www.gov.uk/government/publications/progress-8-school-performance-measure>

Schools that meet the coasting definition will have the opportunity to discuss with the RSC how they are educating pupils and their plans for improvement.

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

There are a range of factors that RSCs will consider to inform their decision. Indicative factors include:

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

- Educational performance data for the school (both national data and the school's own information), further to the data that meant the school met the coasting definition;
- Performance of the school in relation to schools in similar circumstances and pupils with similar starting points;
- The educational performance data of groups of pupils with particular characteristics – such characteristics may include but are not necessarily limited to:
  - Disadvantaged pupils<sup>5</sup>;
  - Pupils with special educational needs and/or disabilities (SEND); and
  - Pupils of low, middle and high abilities.
- Further data about the school, such as progress made at pupil level, pupil cohort size, attendance and mobility of pupils (i.e. the number of pupils who have joined and left the school), and the impact this may have had.

#### **b) Other information about the school, and its plans and capacity to improve**

As well as considering performance data, the RSC will also consider the school's plans and capacity to bring about improvement, taking into account:

- The school's plan to improve its educational performance and pupil progress, and whether there is evidence that the plan is sufficient and has the rigour and credibility to bring about the necessary improvement of the school;

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<sup>5</sup> Disadvantaged pupils are those who attract pupil premium funding. More information can be found at: <https://www.gov.uk/guidance/pupil-premium-information-for-schools-and-alternative-provision-settings>, determined on the basis of having been: eligible for free school meals within the last 6 years; in the care of the local authority for a day or more in the past year; or left care in England or Wales through adoption, a special guardianship order or child arrangements order.

- Whether it is a middle school where pupils have only attended the school for a short period when they take their tests; or there are large numbers of SEN pupils in the school but there is other evidence the school is effective;
- Whether the school has the capacity to deliver against that plan, taking into account recent changes to leadership, and recent judgements or assessments that Ofsted has made of the school and its capacity to improve, particularly judgements of Leadership and Management. The RSC will consider Ofsted's views about a school's current areas for improvement to determine the most appropriate additional support and challenge;
- The extent to which the school's leadership has implemented the principles of the independent reports on teacher workload;
- The effectiveness of the school's pupil premium strategy in raising standards for disadvantaged pupils. The RSC may consider the school's response to the findings of any pupil premium review that it has commissioned, including where a review has been recommended by Ofsted<sup>6</sup>.

## Determining next steps

Taking the above into account, RSCs might decide that no further action is required at this stage. If RSCs have confidence in the school's improvement plans, they can allow schools sufficient time to put their plans into place.

If RSCs believe that a school that meets the coasting definition would benefit from additional support, they will receive a notification letter. In this letter, the RSC will set out what the school can expect to happen next, and may request additional information and/or to see any current or further plans for improvement. RSCs may also ask that they or their representative meet the school's leaders, governors or trustees<sup>7</sup>.

Once a school has been notified that it meets the coasting definition, RSCs may decide that additional support and challenge is necessary to enable the school to deliver sufficient improvement. The RSC will work collaboratively with the school to identify appropriate support, including through Teaching Schools Alliances, partnerships with high performing local schools, or from National Leaders of Education that would be appropriate to their specific needs.

When a school has been notified by an RSC that it meets the coasting definition and needs support, the governing body is encouraged to keep parents informed about further

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<sup>6</sup> Additional external guidance can be found in 'Further sources of information'.

<sup>7</sup> This refers throughout the document to academy trustees, also known and referred to as Directors in Church-led academy trusts.

developments, including, where appropriate, what improvement support has been put into place to improve the school's performance.

If additional support does not result in the necessary improvement, the RSC will consider a different approach to ensure schools are fulfilling their potential.

### **Formal action**

In the rarest of cases, where schools meet the coasting definition and fail to secure action to improve or do not have the capacity to do so, the RSC may consider more formal action is necessary to bring about improvement in a school. Based on 2016 results, RSCs brought about formal action for one school that met the coasting definition. We expect the likelihood of formal action being required to remain very low. In most cases, the RSC will look to work collaboratively with school leaders to bring about improvement through support from, for example, Teaching Schools Alliances, partnerships with high performing local schools, or from National Leaders of Education. The specific intervention powers for local authorities and the Secretary of State are explained in detail in Chapter 4.

### **Arrangements for middle schools**

The majority of middle schools are deemed to be secondary schools but, due to the age range, pupils are subject to the coasting definition relating to key stage 2, rather than the coasting definition relating to key stage 4. A pupil may, however, only have attended a middle school for a short time before they took the key stage 2 tests and may still have a number of years left at the school. For this reason, RSCs will give consideration to the wider context when a middle school meets the coasting definition. This will include giving consideration to the progress made by pupils from the point of entry to the middle school to when they leave, which may be demonstrated by robust and, where possible, externally benchmarked school data.

### **Exemptions to the coasting definition**

The coasting definition will not apply to nursery schools, infant or first schools because they do not have the relevant data. Legislation for schools that meet the coasting definition does not include 16-19 provision because of the complexity of these routes. The coasting provisions will not apply to special schools or alternative provision schools<sup>8</sup>.

However, where there are concerns about persistent poor performance in such schools, local authorities or RSCs may issue a warning notice (described further in Chapter 3).

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<sup>8</sup> The coasting definition and its application to different types of schools is described in the Primary Accountability technical guidance: <https://www.gov.uk/government/publications/primary-school-accountability> and the Progress 8 and Attainment 8 Guide for secondary schools: <https://www.gov.uk/government/publications/progress-8-school-performance-measure>

## Chapter 3: Warning notices

There may be schools which have not been judged by Ofsted to be inadequate or that have not met the coasting definition, but otherwise give cause for concern – for example, where the school’s performance data are below floor standards<sup>9</sup>, or where leadership and governance has broken down or safety is threatened. Where local authorities and RSCs are concerned in these circumstances, they can issue warning notices to schools.

RSCs will take into account a wide range of data before issuing a warning notice. Chapter 2 outlines a range of these factors in detail. No single piece of data will lead to intervention, and data is just the starting point of a discussion RSCs should hold with schools that are causing concern. However, failure to comply with warning notices can lead to formal action.

### Warning notices in maintained schools

There are two types of warning notice that can be issued to maintained schools:

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

It is expected that local authorities will use their powers to issue warning notices in the schools they maintain. When a maintained school becomes an academy then the intervention role will fall solely to the RSC (as described below and elsewhere in this guidance).

### Performance standards and safety warning notices

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

1. the standards of performance of pupils at the school are unacceptably low and are likely to remain so<sup>10</sup>;

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<sup>9</sup> A link to the floor standards can be found under ‘Further sources of information’.

<sup>10</sup> Low performance standards are explained in further detail in Section 60(3) of the Education and Inspections 2006 Act

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).

## **Roles of local authorities and RSCs**

Local authorities and RSCs should work together to discuss where they judge that a performance standards and safety warning notice is necessary<sup>11</sup>. Local authorities are expected to continue to use warning notices to challenge maintained schools to improve.

RSCs can issue a warning notice where, in the RSC's opinion, it is appropriate to act – for example, 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 RSC can also act where the local authority issues a warning notice that the RSC does not consider to be robust enough, or the RSC does not consider that the action required by a local authority warning notice is robust enough<sup>12</sup>.

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

## **Low standards of performance**

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

- I. the standards that the pupils might in all the circumstances reasonably be expected to attain; or
- II. where relevant, the standards previously attained by them; or
- III. the standards attained by pupils at comparable schools.

In considering whether a warning notice should be issued to a maintained school, local authorities and RSCs should take into account the following objective indicators, any of which may suggest that the school shows sufficiently "low standards of performance":

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<sup>11</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 RSC beforehand.

<sup>12</sup> Section 60 (4A)-(4B) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

- The most recent performance data shows that standards are below the floor (including standards below the 16-19 minimum standards).<sup>13</sup>
- The most recent Ofsted inspection judgement shows the school requires improvement because the standards of education are low and local authorities and RSCs determine that it is likely to remain so, including in types of schools where the coasting definition does not apply; and/or
- In a school with a sixth form, the most recent Ofsted inspection judgement shows that the 16-19 study programme is inadequate, even though the school overall may not have been judged inadequate; and/or
- Performance data showing sustained historical underperformance, including where the coasting definition may not apply in particular circumstances, for example because two schools have recently merged to become one new school, but there is concern about persistent poor performance.

No single piece of performance data or inspection outcome will determine any decision on intervention. Before deciding whether a warning notice is necessary, local authorities and RSCs will consider the school in the round, and consider a range of data and other evidence of the school's performance and capacity to improve. It should be noted that in 2017 and 2018<sup>14</sup>, if a school's performance at KS2 has dropped below the floor standard, or it has met the coasting definition, based on performance in writing alone, the local authority or RSC should not intervene or issue a warning notice, except where the extent of the change in performance cannot be explained by the impact of the changes to primary assessment arrangements in these transitional years.

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

Another ground for issuing a performance standards and safety warning notice is that there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, pupils' standards of performance.

Local authorities (or RSCs 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, depending on the severity of the case, where the governing body is failing to

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<sup>13</sup> A link to information about the expected levels of school performance (floor standards) is provided under 'Further sources of information'.

<sup>14</sup> Following the introduction of interim frameworks for statutory teacher assessment to replace national curriculum levels in the 2015/16 and 2016/17 academic years, assessment arrangements for English writing have been in transition as schools adjust to new materials. In the 2017/18 academic year schools' English writing outcomes are based on a revised version of the teacher assessment framework, which affords teachers greater flexibility in reaching judgements than previously. This change in approach means that assessment arrangements for English writing should continue to be considered in a transitional context.

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 core strategic roles of a governing body are to:

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

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

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

These situations could all indicate a serious breakdown of management or governance that may prejudice standards. In such circumstances, the local authority (or RSC where, for example, a local authority has failed to act swiftly or robustly or lacks the capacity) may want to investigate and where appropriate take action early by issuing a warning notice.

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

Local authorities (or RSCs where, for example, a local authority has failed to act or lacks the capacity to do so) should also consider issuing warning notices to their maintained schools that have not responded robustly or rapidly enough to a recommendation by Ofsted to commission an objective external review of their governance arrangements. Such recommendations are normally made in the Ofsted report of an inspection<sup>15</sup>, if a school is judged as requiring improvement where governance is judged to be weak.

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<sup>15</sup> Carried out under section 5 of the Education Act 2005.

Schools do not need to wait for an Ofsted inspection recommendation to seek an external review of their governance arrangements. Local authorities (or RSCs where, for example, a local authority has failed to act swiftly or robustly or lacks the capacity to do so) may consider issuing such a recommendation where they have concerns about the quality of a maintained school's governance, before considering more formal intervention.

Guidance is available on commissioning and conducting such external reviews<sup>16</sup>.

The Governance Handbook<sup>17</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 RSCs 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 RSCs can act where local authorities fail to act swiftly or lack the capacity to do so.

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

### **Teachers' pay and conditions warning notices**

Under section 60A of the Education and Inspections Act 2006, local authorities have a power to issue a teachers' pay and conditions warning notice to their maintained schools. Failure to comply or secure compliance with the notice within the specified period will mean that the school becomes eligible for intervention.

It should be noted that when a maintained school becomes eligible for intervention due to non-compliance with a teachers' pay and conditions warning notice, a local authority may use its intervention powers in sections 64-66 of the Education and Inspections Act 2006<sup>18</sup> (addressed in more detail in Chapter 4). The powers under sections 64 and 66 of that Act must be used within a period of two months following the end of the compliance period

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<sup>16</sup> See under 'Further sources of information' for departmental guidance on governance reviews.

<sup>17</sup> See 'Further sources of information' for link to the Governance Handbook.

<sup>18</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 4 of this guidance explains these intervention powers in more detail.

specified in the teachers' pay and conditions warning notice<sup>19</sup>. If the local authority fails to exercise these powers within this time, these powers can no longer be exercised and a new teachers' pay and conditions warning notice must be given in order to do so.

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

A local authority must send the RSC a copy of any teachers' pay and conditions warning notice it issues<sup>20</sup>.

## **Issuing a warning notice to a maintained school**

Local authorities should work with RSCs to discuss where they judge that a warning notice is necessary. Once it has been determined that a local authority or RSC 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:

1. the matters on which their concerns are based;
2. the action the governing body is required to take in order to address the concerns raised;
3. the period within which the governing body must comply or secure compliance with that action (the compliance period); and
4. the action the local authority or RSC 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 RSC must give a copy to the headteacher; and in the case of a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority; and in the case of a foundation or voluntary school, the person who appoints the foundation governors<sup>21</sup>.

A copy must also be given to the relevant RSC, when it is a local authority making it, or a copy must be given to the local authority, when it is the RSC making it<sup>22</sup>. All warning

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<sup>19</sup> These are the local authority's powers to appoint additional governors (section 64) and to suspend the school's right to a delegated budget (section 66). Chapter 4 of this guidance explains the intervention powers in more detail.

<sup>20</sup> Section 60A (6)(za) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

<sup>21</sup> Section 60(6) of the Education and Inspections Act 2006, as amended by the Education and Adoption Act 2016.

<sup>22</sup> Section 60(6A)-(6B) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

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 RSCs will also be published online.

If a local authority is notified that the RSC has given a performance standards and safety warning notice, the local authority may not give such a warning notice to the same maintained school without the RSC's agreement. If the RSC gives a warning notice, any earlier performance standards and safety warning notice given to the same maintained school by the local authority will cease to have effect<sup>23</sup>. Whichever has given a warning notice should subsequently 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.

### **What actions local authorities and RSCs 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 RSC or local authority, within the compliance period, and the issuing local authority or RSC has given reasonable written notice that they propose to intervene, a school is eligible for intervention and further action may be taken<sup>24</sup>.

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

It should be noted that some intervention powers must be exercised within a period of two months following the end of the compliance period – those are the powers in sections 63, 64, 66 and 66A of the Education and Inspections Act 2006. If the local authority or the RSC 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.

### **Warning notice arrangements for 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 coasting definition, but are otherwise causing concern, are specified in their academy funding agreements. Such warning notices can usually be given on the same grounds as those specified in statute for maintained schools, that is where there are low standards of performance, there has

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<sup>23</sup> Section 60(4A)-(4B) of the Education and Inspections Act, as inserted by the Education and Adoption Act 2016.

<sup>24</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. Further action includes the local authority's powers to require the governing body to enter into arrangements (section 63), to appoint additional governors (section 64), and to suspend the school's right to a delegated budget (section 66). The Secretary of State has the power to require the governing body to enter into arrangements (section 66A). Chapter 4 of this guidance explains the intervention powers in more detail.

been a serious breakdown in management or governance, or the safety of pupils or staff are threatened. More detail on each of these grounds can be found on pages 14-17.

RSCs, working with local authorities where appropriate, are responsible for addressing underperformance in academies, so will take action in line with the funding agreement for the academy in question. RSCs will hold academies to account for underperformance just as robustly as they would for maintained schools.

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

Warning notices issued to academy trusts by RSCs are published online<sup>25</sup>, as well as being shared with Ofsted at the time of issuing.

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<sup>25</sup> Via: <https://www.gov.uk/government/collections/letters-to-academies-about-poor-performance>

## Chapter 4: Specific powers of local authorities and the Secretary of State in maintained schools eligible for intervention

Local authorities and RSCs will work closely and co-operatively to support improvement in maintained schools that are causing concern. Where a maintained school is eligible for intervention (as defined by section 60B of the Education and Inspection Act 2006, as inserted by the Education and Adoption Act 2016) 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>26</sup>

The local authority must notify the relevant RSC each time they intend to use their intervention powers and obtain consent from the RSC before appointing an Interim Executive Board (IEB). The RSC will also notify the local authority before requiring the governing body to enter into arrangements, appointing additional governors, appointing an IEB<sup>27</sup> or when the Secretary of State directs a local authority to close a maintained school.

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<sup>26</sup> Or in the case of an inadequate school, duty.

<sup>27</sup> Section 70A of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

When a local authority has been notified that the RSC 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 RSC notifies the local authority that it may do so<sup>28</sup>.

This Chapter describes each power, the consultations the local authority or RSC 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 RSCs respectively, to require a maintained school that is eligible for intervention<sup>29</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.

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 the person or persons by whom foundation or voluntary school governors are appointed.

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

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<sup>28</sup> Section 70B of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

<sup>29</sup> Except a school that is eligible for intervention as the result of a teachers' pay and conditions warning notice.

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

Sections 64 and 67 of the 2006 Act enable a local authority and RSCs 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 RSC must consult:

1. the local authority;
2. the governing body of the school;
3. in the case of a Church of England school or a Roman Catholic 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 local authority appoints additional governors there is no requirement to consult.

In the case of a voluntary aided school, where a local authority has used their power to appoint additional governors, the appropriate appointing authority may appoint a number of foundation governors equal to those appointed by the local authority, in order to preserve their majority. However, legislation provides that where the RSC has used this power, the voluntary aided school is not authorised to appoint foundation governors for the purpose of outnumbering the other governors including those appointed by the RSC<sup>30</sup>.

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

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<sup>30</sup> Section 67(6)(b) of the Education and Inspections Act 2006.

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

Section 65 of the 2006 Act enables the local authority to apply to the RSC for consent to constitute the governing body of a maintained school as an IEB, and section 69 enables the RSC 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.

### Consultation

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

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

This requirement for the RSC to consult the bodies in 2, 3 and 4 above does not apply if the local authority has already done so as part of their own proposal to appoint an IEB. There is no requirement for the RSC to consult about appointing an IEB if an academy order has effect in respect of the maintained school. In these circumstances the RSC 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 have been carried out within 10 (ten) days.

Local authorities must use the IEB application form on the DfE website<sup>31</sup> and should follow the accompanying instructions for the completion of the form.

When the decision has been taken to appoint an IEB, the local authority or RSC must write to the governing body to give them notice that the IEB will be established. This notice must specify a date when the IEB will commence and will usually also give a date when the IEB will cease, or an exit plan, but may not always do so.

### 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

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<sup>31</sup> See under 'Further sources of information'.

budget has been 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 has effect as a reference to an interim executive member. During the interim period, the requirements concerning the governing body's constitution set out in the School Governance (Constitution) (England) Regulations 2012 do not apply.

The IEB will take on the responsibilities of a normally constituted governing body, including the management of the budget, curriculum, staffing, pay and performance management and the appointment of the headteacher and deputy headteacher. Where the school in question is a foundation or voluntary school, and the IEB members will also be acting as charity trustees, the IEB members must carry out their duties under charity law – those duties are described further in Chapter 7 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. The IEB 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>32</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 RSC 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-

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<sup>32</sup> Under section 5B of the Academies Act 2010 as inserted by the Education and Adoption Act 2016.

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 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 trust representative should join the IEB at that point.

In most cases, we would not expect existing governors who are vacating office to be nominated as IEB members (although this is not prohibited by law). Local authorities who are considering doing this should discuss the particular circumstances of the school with the RSC. The IEB may however arrange for the discharge of their functions by other people as they see fit<sup>33</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 RSC can nominate one of the members of the IEB to act as Chair.

The local authority or RSC should produce a written notice of appointment for each member of the IEB. Copies of this notice should be sent to: all other members of the IEB; the maintained school's existing governing body; the RSC (where it is a local authority appointed IEB); and, in the case of foundation or voluntary schools, the Diocese or other appropriate authority. A local authority may choose to pay interim executive members such remuneration and allowances as they consider appropriate.

Interim executive members may be removed by whoever appointed them (the local authority or the RSC). 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.

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 RSC has appointed an IEB, during the period when the governing body is constituted as an IEB the local authority cannot suspend the school's right to a delegated budget. There is no requirement for the local authority to consult before exercising this power.

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<sup>33</sup> Under paragraph 11(2) of Schedule 6 of the 2006 Act

## **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 RSC 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 RSC to contribute to the make-up and the arrangements of the IEB where it is felt that the local authority is best placed to take the IEB forward.

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

Under section 70C of the 2006 Act<sup>34</sup>, where a local authority has already appointed an IEB, the RSC may take over responsibility for arrangements in connection with the IEB members. If this happens, 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 RSC.

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

Section 68 of the 2006 Act enables the RSC to direct a local authority to close a maintained school that is eligible for intervention.<sup>35</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 school or a Roman Catholic Church school the appropriate diocesan authority;
3. in the case of any other foundation or voluntary school the person or persons by whom the foundation governors are appointed; and

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<sup>34</sup> As inserted by the Education and Adoption Act 2016.

<sup>35</sup> Except a maintained school that is eligible for intervention as the result of a teachers' pay and conditions warning notice.

4. such other persons as the Secretary of State considers appropriate.

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.

## **Power of the Secretary of State to make an academy order**

Using the Secretary of State's powers under Section 4 of the Academies Act 2010, RSCs 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. This includes schools that have received an inadequate Ofsted rating, those that meet the coasting definition, and those that have failed to comply with a warning notice.

Where a maintained school is judged inadequate by Ofsted the RSC is **under a duty** to make an academy order<sup>36</sup>. The RSC may also choose to make an academy order where a maintained school has failed to comply with a warning notice and where schools meet the coasting definition, should the RSC believe this could improve attainment.

If an academy order is made in respect of a school, the RSC must give a copy of the order to:

1. the governing body of the school;
2. the headteacher;
3. the local authority; and
4. in the case of a foundation or voluntary school that has a foundation:
  - (I) the trustees of the school;
  - (II) the person or persons by whom the foundation governors are appointed; and,
  - (III) in the case of a school which has a religious character, the appropriate religious body.

### **Consultation**

#### **For a maintained school that 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. There is no requirement for the RSC to consult on whether the maintained school should convert to an academy.

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<sup>36</sup> Section 4(A1) of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

Where such a maintained school is a foundation or voluntary school that has a foundation, the RSC must consult the following regarding the *identity of the academy trust*<sup>37</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 RSC 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 RSC must consult:

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

**Sponsored and Converter Academies**

An academy is considered a sponsored academy where an RSC 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 RSC 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>38</sup> to communicate to parents information about their plans for improving that school, before the school is converted into a sponsored academy.

A converter academy is one that converts (whether as a stand-alone academy or as part of a multi-academy trust) after an application by the governing body of the school and the

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<sup>37</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.

<sup>38</sup> Section 5E of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

RSC 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>39</sup>.

## **Power of the Secretary of State to revoke an academy order**

Section 5D of the Academies Act 2010 enables RSCs to revoke an academy order that was made because a maintained school is eligible for intervention. This power will only be used in very exceptional circumstances – for example, where the maintained school is not viable and therefore it is most appropriate for it to close. In such circumstances, where the maintained school is not viable and the RSC has taken the decision to revoke the academy order, then the local authority will be expected to close the maintained school and if necessary the RSC may use the Secretary of State's power to direct them to do so.

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<sup>39</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>

## Chapter 5: Schools that have been 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>40</sup>; and
2. any school Ofsted judges as requiring special measures (as addressed in section 62 of the 2006 Act).

Schools that have been judged inadequate by Ofsted are eligible for intervention.

### Maintained schools judged inadequate

The Secretary of State has a duty<sup>41</sup> to make an academy order in respect of any maintained school that has been judged inadequate by Ofsted, to enable it to become an academy and receive additional support from a sponsor.

The RSC, 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 trust and the maintained school. Further details about academy orders are set out in Chapter 4 of this guidance.

In the case of a foundation or voluntary school with a foundation that is eligible for intervention and subject to an academy order, the RSC 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 RSC will consult with the trustees of the maintained 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>42</sup>. RSCs will ensure that any arrangements will safeguard the religious character and ethos of these maintained schools.

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. RSCs can also use the Secretary of State’s power to give the governing body or local authority a direction, or directions, to take specified steps for this purpose<sup>43</sup>. This can include requiring the governing body or local authority

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<sup>40</sup> This is also known as a ‘serious weaknesses’ judgement by Ofsted.

<sup>41</sup> Section 4(A1) of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

<sup>42</sup> Section 5A of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

<sup>43</sup> Section 5C of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

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>44</sup> or for the transfer of other assets from the local authority or governing body<sup>45</sup>. The RSC is able to set a date by which these steps must be taken<sup>46</sup>. If the RSC 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 body and the local authority must take all reasonable steps to facilitate that academy trust taking responsibility for that school.

Once the RSC has identified the academy trust for a maintained school that was rated inadequate, that trust will be under a duty to communicate to parents information about their plans for improving that school, before it is converted into an academy<sup>47</sup>. This is described in more detail in Chapter 4.

Where a maintained school had been judged inadequate by Ofsted before the Education and Adoption Act 2016 has taken effect, that school will also be required to become a sponsored academy.

## Academies judged inadequate

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

As a result of the Education and Adoption Act 2016<sup>48</sup>, regardless of the terms in an academy's funding agreement, the RSC (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 RSC may decide to implement other measures to improve the school rather than terminate to bring about a change of trust, for example, where a change of academy trust would prevent the consolidation of improvements in a school.

Where termination is appropriate, the RSC on behalf of the Secretary of State must first give the proprietor of the academy an opportunity to make representations.

Where a supplemental Church agreement has been entered into, alongside the funding agreement, the RSC will also notify the appropriate diocesan authority and consider its representations. The RSC must comply with any other terms specified in the supplemental Church agreement regarding termination.

When an academy's funding agreement has been terminated because the academy has been judged inadequate, the RSC will usually identify a new academy trust to take on

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<sup>44</sup> Part 1 Schedule 1 to the Academies Act 2010.

<sup>45</sup> Section 8 Academies Act 2010.

<sup>46</sup> Section 5C of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

<sup>47</sup> Section 5E of the Academies Act, as inserted by the Education and Adoption Act 2016.

<sup>48</sup> Sections 2A and 2D of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

responsibility for the academy, and will enter into a new funding agreement in respect of that academy (this is sometimes referred to as 'rebrokerage' of the academy). If the academy that was judged inadequate was previously a 'standalone' academy, this will generally mean it will join a multi-academy trust (MAT). The academy will remain open, and the RSC 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 RSC can move to terminate the funding agreement in order to close it.

## Chapter 6: Other local authority duties

### School performance

A local authority must exercise its education functions with a view to promoting high standards<sup>49</sup>.

Beyond this statutory guidance, 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 their schools, and in doing so should:

- Understand the performance of maintained schools in their area, using data as a starting point to identify any that are underperforming, while working with them to explore ways to support progress;
- Work closely with the relevant RSC and other local partners to ensure schools receive the support they need to improve;
- Where underperformance has been recognised in a maintained school, proactively work with the relevant RSC, 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 schools; and enable other schools to access the support they need to improve.

The School Improvement Monitoring and Brokering Grant<sup>50</sup> is provided to local authorities to assist them to fulfil these responsibilities. Local authorities should focus their activity on the 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 RSC.

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

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<sup>49</sup> Section 13A of the Education Act 1996.

<sup>50</sup> More information on the School Improvement Monitoring and Brokering Grant can be found here: <https://www.gov.uk/government/publications/school-improvement-monitoring-and-brokering-grant-allocations>

## Special Educational Needs (SEN)

The Children and Families Act 2014<sup>51</sup> introduced a number of local authority duties with regard to children and young people.

To comply with these duties, a local authority must identify all children and young people in the area who have (or may have) a special educational need or disability, and ensure that the integration between education and training provision and health and social care provision is suitable. This includes making arrangements with partner commissioning bodies about the education, health and care provision to be secured for SEND children.

Additionally, they must, in cooperation with local partners, develop and publish a 'Local Offer' setting out the provision available for children and young people in the area with SEND and ensure a service providing impartial advice and support regarding special educational needs to parents and young people.

Furthermore, to ensure a child is receiving a suitable education for their needs, a local authority must consult with the school where a request is made to secure a particular school is named in an Education, Health and Care plan.

Further information on local authority responsibilities in relation to children with SEND can be found in the SEND Code of Practice.<sup>52</sup>

## 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. They have 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 (maintained schools, academy trusts, religious bodies (where appropriate), independent schools) 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 Education and Skills Funding Agency (ESFA) who have responsibility for ensuring that academy trusts comply with their Funding Agreements.

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

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<sup>51</sup> Children and Families Act 2014, Part 3, Section 22.

<sup>52</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>

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. In addition, there are two other statutory guidance documents that provide guidance on the roles and responsibilities for safeguarding: 'Keeping Children Safe in Education'<sup>53</sup> and 'Working Together to Safeguard Children'.<sup>54</sup> The guidance makes clear what all education institutions (including academies and free schools) should do to safeguard children in their care.

Schools' governing bodies and proprietors should ensure that the school or college contributes to inter-agency working in line with statutory guidance *Working Together to Safeguard Children* (2015). Schools and colleges should work with local safeguarding arrangements, social care, the police, health services and other services to promote the welfare of children and protect them from harm.

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<sup>53</sup> *Keeping Children Safe in Education*: <https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

<sup>54</sup> *Working Together to Safeguard Children*: <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

## Chapter 7: Governance

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

### **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 school could improve and encouraging the 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 of 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 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.

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 schools. It should also enable them to carry out of 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 school governance arrangements including through information published on school websites in line with statutory guidance<sup>55</sup> and compliance with schools' duties under s538 of the Education Act 1996 to populate all of the governance fields on Get Information About Schools.

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<sup>55</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>

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 RSC or the ESFA.

## **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 will 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.

The members of the governing body of a foundation or voluntary school, and the charity trustees of an academy trust or MAT, are charity trustees in law and have a number of duties under charity law, which mirror their duties as school governors and trustees. These are summarised and explained in Charity Commission guidance, *The Essential Trustee*<sup>56</sup>.

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

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<sup>56</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>

## 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.

### 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

- [Expected levels of school and college performance \(floor standards\)](#)
- [16 to 18 minimum standards for 2016 - GOV.UK](#)
- [Performance tables – user guide and resources \(includes progress measures\)](#)
- [Regional Schools Commissioners \(RSCs\)](#)



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