



Department  
for Education

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

**Government consultation response**

**March 2016**

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## Introduction

1. The Education and Adoption Act 2016 is introducing new measures to improve school standards across the country, as part of this Government's commitment to delivering real social justice. These measures will speed up the process by which failing maintained schools become sponsored academies, ensuring there is no delay in giving children the education they deserve. The measures in the Act will deliver on the manifesto commitment to ensure that coasting and other underperforming schools are identified so that they receive the challenge and support they need to improve.
2. While the Education and Adoption Act was being considered by Parliament, we consulted on how the new measures to intervene in such schools should work in practice. We ran an online public consultation from October to December 2015, which sought views on:
  - draft revisions to the **Schools Causing Concern guidance**, to reflect how RSCs will use the new powers in the Act to turn around failing schools and to challenge coasting schools and other cases of underperformance, and which also describes how local authorities should use their statutory intervention powers; and
  - the **proposed definition of coasting** for mainstream schools and the options for developing a coasting definition for special schools and for pupil referral units.
3. We received 332 responses to that consultation. This document summarises the recurring themes from those responses, and describes what changes we have made as a result. In some cases, we have also provided additional explanation and clarification where the responses indicated that there were common misunderstandings. This document also explains the other changes that have been made during Parliament's consideration of the Education and Adoption Act.
4. We are publishing the final version of the revised Schools Causing Concern guidance, reflecting these changes, alongside this document. That guidance will take effect at the same time the Act's powers are commenced, from 18 April 2016. The regulations that contain the definition of coasting will be finalised in the autumn, subject to parliamentary approval, but this document does describe what we expect that final definition to be and how it will work. Further detail about when the different provisions of the Education and Adoption Act will take effect is provided under 'Next steps'.
5. For the purpose of this document, "maintained schools" means local authority maintained schools (but is not referring to academies), "academies" means academies including free schools, studio schools and University Technical Colleges

but is not referring to maintained schools), and “schools” indicates both maintained schools and academies are being described together.

## **Developments since the consultation was launched**

6. A number of changes were made to the Education and Adoption Act by the Government during its consideration by Parliament. In many cases, these changes help to address recurring themes raised in the responses to our consultation.
7. This section describes those changes, and explains how they have been reflected in the final Schools Causing Concern guidance and elsewhere.

## **Duty on the sponsor to communicate information about plans to improve the school**

8. During the passage of the Education and Adoption Act, the Government tabled a number of amendments in order to further strengthen and improve the legislation. One such amendment introduced a new duty for academy sponsors that are taking responsibility for a maintained school that was eligible for intervention, to communicate to parents about their plans to improve the school.
9. We know that what any parent wants for their child is for them to attend a good school, and for there to be quick, effective action if there is a concern about that school. Where a maintained school has failed, it is right that action is taken that will have the best possible impact on improving the school's performance, and that action is taken as swiftly as possible. We are clear that becoming a sponsored academy will always be the solution for a maintained school judged inadequate<sup>1</sup> by Ofsted.
10. That does not, of course, mean that parents do not have a right to know what will happen in their child's school. Once a sponsor has been identified for a failing school, it has already been common practice for that sponsor to engage with parents about their plans for the school, ensuring that parents know what to expect and that they understand the process of converting from a local authority maintained school to an academy, and to give them the opportunity to share their views about the changes that the sponsor proposes to make.
11. The Government amendment to the Act will ensure that this happens consistently in all cases. The new duty will ensure that when an underperforming maintained school is required to become a sponsored academy, parents will always be kept informed by the sponsor.

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<sup>1</sup> Schools that have been judged inadequate are: any school Ofsted judges as requiring significant improvement (as addressed in section 61 of the Education and Inspections Act 2006), and any school Ofsted judges as requiring special measures (as addressed in section 62 of the 2006 Act).

12. That new duty has been reflected in the Schools Causing Concern guidance. The guidance also provides more information about what the communication from sponsors will typically look like in practice; for instance, that sponsors may write to parents when the sponsor is first matched to the underperforming school to provide more information about them as sponsors. The sponsor will, however, have flexibility as to exactly how and when to communicate to parents, according to what they consider is most appropriate to the circumstances of that school. They must have communicated to parents, and met this duty, before the maintained school will be converted into an academy.

## **Academies causing concern**

13. The Government also tabled an amendment to the Education and Adoption Act to bring academies causing concern into scope.

14. The vast majority of academies are performing well and the academies programme remains central to the Government's commitment to secure excellent education everywhere. The Government has always been clear that underperformance will be tackled wherever it occurs, whether in a maintained school or in an academy.

15. However, the formal powers in relation to underperforming academies have varied depending on the age of an academy's funding agreement, with earlier funding agreements providing fewer such powers. This may have restricted Regional Schools Commissioners' (RSCs') ability to take action as strongly or swiftly as would be wanted, and to do so consistently across all academies. The Government amendment on academies causing concern will ensure that RSCs have robust powers to hold all academies to account when they do not meet the high standards we rightly expect of all schools, creating a more consistent framework for tackling underperformance across all types of schools.

16. When an academy's performance meets one of two triggers specified in the legislation – an inadequate Ofsted judgement or performance that falls within the coasting definition – its funding agreement will be read as having the same provisions around failing and coasting academies as are in the latest model funding agreement.

17. This will give RSCs consistent powers to move a failing academy swiftly to a new sponsor, and to require a coasting academy to demonstrate that it can make sufficient improvement. Where an academy is coasting – as with a coasting maintained school – the academy will be given the opportunity to demonstrate that it can improve sufficiently. Where a coasting academy does not have a credible plan to improve sufficiently, the legislation will ensure that further action can be taken by the RSC. This could ultimately include terminating the funding agreement and bringing in a new sponsor if this is the best way to ensure rapid and sustained improvement.

18. Now that the Act includes measures to address failure and coasting in academies, we have made changes to the Schools Causing Concern guidance to reflect this. The Schools Causing Concern guidance now describes how RSCs will address underperformance in both maintained schools and academies, and the decision making and processes for doing so in each. This reiterates our commitment to tackling underperformance consistently wherever it occurs.

## Coasting

19. Government amendments during the passage of the legislation have made some minor improvements to the provisions for coasting schools:

- A coasting maintained school is eligible for intervention if the Secretary of State has notified the school that it is coasting as per the definition in regulations. This provides greater clarity compared with the previous reference to a maintained school that the Secretary of State “considers” to be coasting.
- The Secretary of State is able, through regulations, to disapply the coasting definition for certain types of schools, for example maintained nursery schools.
- The Secretary of State must define in regulations what coasting means, as opposed to the originally drafted “may” define in regulations what coasting means.
- The coasting regulations will be subject to the affirmative procedure the first time they are laid, which means that they must be approved by both Houses of Parliament.

20. We have made revisions to the Schools Causing Concern guidance to ensure consistency with these amendments.

## **Consultation on Schools Causing Concern guidance**

21. Respondents generally agreed that the revised Schools Causing Concern guidance was a clear and comprehensive reflection of the powers, processes and responsibilities for intervening in underperforming maintained schools, as put into place by the Education and Adoption Act.
22. Those who disagreed, responding negatively to Question One of our consultation, generally had objections in principle to the provisions of the Education and Adoption Act – for example they disagreed with the requirement that maintained schools judged inadequate by Ofsted must become sponsored academies.

### **Academies causing concern**

23. Some respondents noted that the Schools Causing Concern guidance only described intervention in underperforming maintained schools, and did not reflect the equivalent arrangements to address underperformance in academies. Amendments to the Education and Adoption Act have introduced consistent, robust powers to take action in academies causing concern. We have, accordingly, reflected those powers in the Schools Causing Concern guidance.

### **Respective responsibilities of local authorities and RSCs**

24. Where respondents disagreed that the respective responsibilities of local authorities and RSCs were described clearly in the Schools Causing Concern guidance, it was in some cases because they had objections in principle to RSCs taking responsibility for intervention in underperforming maintained schools, and believed that these powers should remain with local authorities.
25. The eight RSCs are highly experienced academy headteachers and sector leaders, appointed for their extensive knowledge of the education sector. They exercise the powers and duties of the Secretary of State on her behalf, in their regions, meaning the Secretary of State remains fully accountable to Parliament for decisions made by RSCs.
26. Our current system of eight RSCs, supported by Headteacher Boards, is all about bringing decisions about schools closer to the front line. It ensures that experienced school leaders are the ones making and influencing decisions in their areas – they know what works best in their schools, how to address local needs and what the local priorities should be.
27. RSCs are already responsible for recruitment and approval of new sponsors, and matching sponsors to underperforming maintained schools that are becoming

academies. They are also already responsible for addressing underperformance in academies. This means they are very well placed to take a greater role in intervening in underperforming maintained schools.

28. More and more maintained schools are converting to academy status, meaning the number of maintained schools will decline. The Department's White Paper, *Educational Excellence Everywhere*,<sup>2</sup> sets out the Government's plans to move to a school system where every school is an academy by 2022 and where local authorities no longer have a role in maintaining schools. RSCs taking greater responsibility for intervening in maintained schools is therefore in keeping with this change.
29. Local authorities continue to have statutory responsibilities relating to improvement and intervention in maintained schools. They therefore continue to have a clear interest in promoting educational excellence in maintained schools, and that includes working in conjunction with RSCs to use their intervention powers to address underperformance in maintained schools. The *Schools Causing Concern* guidance sets out a clear framework for this. Local authorities also have an important role to play in supporting their maintained schools to become academies.
30. Where respondents argued that the respective roles of RSCs and local authorities were not described clearly enough in the *Schools Causing Concern* guidance, this was generally in relation to warning notices – both local authorities and RSCs having the power to issue performance standards and safety warning notices to maintained schools. Respondents were concerned that this could lead to duplication or confusion. We have made changes to the guidance to clarify this.

## **RSCs' decision making**

31. Most of the written responses to Question 2 focused on RSCs' discretion to take decisions based upon the circumstances of the school. Respondents thought it would be essential for RSCs to have discretion when they make their decisions about a coasting school, given that the coasting definition is an objective, data-based measure. Respondents welcomed that the *Schools Causing Concern* guidance already allowed for an RSC to use discretion in this respect, taking into account a school's characteristics and circumstances, and additional performance data for the school, when making decisions about what action will be required to bring about improvement at the school.

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<sup>2</sup> This was published on 17<sup>th</sup> March 2016 and can be found at:  
<https://www.gov.uk/government/publications/educational-excellence-everywhere>

32. However, some respondents were concerned that by giving RSCs discretion and flexibility in their decision making this could potentially lead to inconsistency both across and within RSC regions. Respondents called for greater transparency about how decisions have been reached and what factors were taken into account. RSCs already operate transparently – the Department already publishes a large amount of information on the work of the RSCs including notes of Headteacher Board meetings, conflicts of interest registers, information on the roles and responsibilities of the RSCs, and criteria for all types of decisions made by RSCs.
33. We have already made commitments during the passage of the Act that we will ensure information about RSCs, and their roles and responsibilities, is made available to parents and the public together in one place through GOV.UK. We expect updated information to be available in early April. This will clarify the role of the National Schools Commissioner, RSCs, Headteacher Boards and how they work with Ofsted and local authorities, as well as including detailed information on each region’s vision. It will also provide clear links to relevant guidance documents.

## **Schools caught by the coasting definition but that are supporting their pupils well**

34. Many respondents emphasised the need for RSCs to give further consideration to any school identified by the coasting definition, and to ensure that the school has not been caught by the definition when it is in fact supporting its pupils well.
35. The Schools Causing Concern guidance already described that a school identified by the coasting definition will not automatically be subject to intervention, which some respondents acknowledged and welcomed. The guidance describes that RSCs will consider whether the school has a sufficient plan and the capacity to bring about the improvement needed. In making those considerations, RSCs will look carefully at the characteristics of a coasting school, and seek to understand the school, its context, and what factors may have led it to meet the coasting definition.
36. In light of the consultation, the guidance now explicitly acknowledges that it is possible for a school to have been caught by the coasting definition but may in fact be supporting pupils well, as a result of the context of the school or cohort factors. RSCs will consider whether further data and information about the school indicates this is the case, and at their discretion may decide that no further action should be taken in the school, and that the school need not provide a plan to improve.

## **Factors RSCs should take into account when considering coasting schools**

37. Question Four in our consultation asked what circumstances or factors should be taken account of by RSCs in considering what action is necessary in a coasting school. Many respondents suggested that the number of pupils with SEND could be an important consideration, and welcomed that this was acknowledged in the Schools Causing Concern guidance. Respondents also raised cohort size as an issue, because a smaller cohort will mean an individual pupil's performance could have a disproportionate impact on the school's data and therefore could affect whether a school is considered coasting. Similarly, schools where there is high pupil mobility may have less reliable data, so this should be taken into account. We have therefore reflected in the Schools Causing Concern guidance both cohort size and pupil mobility as factors that RSCs should consider in schools identified as coasting.

## **Warning notices**

38. Many respondents to our consultation had concerns about warning notices, the roles and responsibilities for issuing warning notices, and how they would be used.

## **Roles and responsibilities**

39. As already described, we have made changes to the guidance to clarify the roles of local authorities and of RSCs in issuing warning notices. The guidance now describes that local authorities should work with RSCs to discuss where they judge that a warning notice is necessary. Local authorities will be expected to continue to use warning notices to challenge the schools they maintain to improve. RSCs will also have the same power to issue a performance standards and safety warning notice. This means RSCs will be able to issue a warning notice including where, in the RSC's opinion, 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.

40. The Secretary of State's powers to issue a warning notice take precedence over the local authority's. RSCs will therefore also be able to issue a warning notice to a maintained school where a local authority has issued a warning notice that the RSC does not consider to be robust enough.

## **What constitutes 'low standards of performance'**

41. Some respondents were concerned by the list of criteria listed in the guidance to describe what would constitute 'low standards of performance'. Whilst these were very similar to those included in previous versions of this guidance, respondents were concerned that there were too many different criteria, and that the criteria listed were

not specific enough. They were also concerned that some of the criteria listed were subjective. Respondents argued that this could also lead to too much inconsistency in approach between different local authorities and RSCs, because the criteria might be interpreted very differently.

42. We accept these concerns. We have made changes to the Schools Causing Concern guidance to address them.

43. The guidance now specifies the objective indicators, based on performance data or Ofsted judgement, that should lead local authorities and RSCs to consider whether a maintained school shows 'low standards of performance' and should therefore be issued with a warning notice.

44. The guidance also clarifies that local authorities and RSCs will consider the school in the round, take account of its context, and consider data and other evidence of the school's performance and capacity to improve. It also lists additional factors which will further help local authorities and RSCs to decide in the above circumstances whether to issue a warning notice or not. For instance, the guidance specifies that if a school's performance at key stage 2 has dropped below the floor standard in 2016 based on performance in writing alone, the local authority or RSCs should not (in the absence of other factors) 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.

## **Arrangements for middle schools**

45. Respondents who worked in different types of school settings, with different age ranges, wanted greater clarity about how the powers and processes for intervening in underperforming schools would apply to them – most notably middle schools, from whom we received a significant number of responses. They expressed concern that middle schools would fall within the key stage 2 coasting definition, despite this not being an accurate reflection of the progress pupils make at a middle school. This is because pupils may only have attended that school for a short time when they take the key stage 2 tests, and will still have a number of years before they leave the school. Respondents felt that data based on the key stage 2 assessments alone were not a fair and reliable way to assess whether a middle school is coasting, and asked for the guidance to explain how middle schools will be considered.

46. We recognise those concerns and have now addressed middle schools explicitly in the guidance. This explains that it will be particularly important for RSCs to consider the wider context of a middle school where key stage 2 results have meant that it has fallen within the coasting definition – including giving consideration of the progress pupils make from their point of entry to when they leave, based on robust, and where possible externally benchmarked, data.

## Consultation on the coasting definition

### The coasting definition

For **primary** schools:

- From 2016 where fewer than 85% of children achieve the new higher expected standard at the end of primary and pupils do not make good enough progress and average progress made by pupils in reading *or* writing *or* mathematics is below a level set against the new primary progress measures<sup>3</sup>; and
- An interim measure for 2014 and 2015, of fewer than 85% of pupils achieving level 4 in reading, writing and mathematics and below the median percentage of pupils making expected progress in *all of* reading, writing and mathematics.

This means that a primary school where the median percentage of pupils made expected progress in, for example, reading in 2014 could not be coasting in 2016.

For **secondary** schools:

- From 2016 where schools are performing below a level set against the new Progress 8 measure<sup>4</sup>; and
- An interim measure for 2014 and 2015 of fewer than 60% of pupils achieving 5 A\*-C including English and mathematics and below the median percentage of pupils making expected progress in English and mathematics.

The progress bar for both primary and secondary in 2016 will be set after the results are available to ensure they are set at an appropriate level once we understand how the accountability and qualifications reforms have taken effect.

A school will have to be below the coasting definition in three consecutive years to be defined as coasting. No school will be identified as coasting until after the 2016 data is published.

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<sup>3</sup> The primary technical guidance describes the new accountability measures, and is available here: <https://www.gov.uk/government/publications/primary-school-accountability>

<sup>4</sup> Progress 8 will be implemented in 2016 for all secondary schools: <https://www.gov.uk/government/publications/progress-8-school-performance-measure>

## Principles underlying the coasting definition

47. Ensuring that coasting schools get the challenge and support they need to improve was a manifesto commitment that the Education and Adoption Act now delivers on.
48. Question 7 of the consultation asked for views on the three principles underlying the coasting definition, which were that it should:
- i. be based on published performance data rather than Ofsted judgements, and reflect headline accountability measures;
  - ii. reflect the progress that pupils make in a school; and
  - iii. consider performance over time, not a single year.
49. While a large proportion of respondents responded 'no' to question 7 ('Do you agree that the three principles underlying our coasting definition are the right ones?'), this was often because those respondents were more fundamentally opposed to the premise of identifying coasting schools, rather than because they disagreed with these three principles.
50. Where respondents were not opposed to the premise of identifying coasting schools, they generally agreed with these three principles.

## Consideration of a school's wider context

51. Many respondents either thought that the coasting definition should incorporate a school's wider context in some way, or they emphasised the need for RSCs to give further consideration to the context of any school identified by the coasting definition. They were concerned that a coasting definition purely based on data would not accurately reflect the school and what, if any, intervention is necessary.
52. The definition is based on published data, because we wanted to ensure that schools are clear about the aspects of their performance for which they will be held to account. We also wanted to ensure schools would be in no doubt when they have fallen within the definition. Creating a much broader, less objective definition would not have accomplished that. However, it was always the intention that once a school has been identified as falling within the coasting definition, then at that point the school's wider context and other factors will be considered by the RSC.
53. The Schools Causing Concern guidance already described that a school identified by the coasting definition will not automatically be subject to action by an RSC. RSCs will consider whether the school has a sufficient plan and the capacity to bring about sufficient improvement. In making assessments about what support or challenge might be needed, RSCs will look carefully at the characteristics of a coasting school,

and seek to understand the school, its context, and what factors may have led it to meet the coasting definition.

## **Schools in different contexts**

54. Some respondents were concerned that the coasting definition may identify disproportionately more schools in socio-economically deprived areas, which tend to take in pupils at a lower starting point, where these may be supporting their pupils well. Or, similarly, respondents were concerned that the coasting definition would be less likely to identify grammar schools and other schools with higher-ability or more affluent pupil intakes, even though some of these may not be supporting pupils well enough. They were concerned that the coasting definition would therefore not achieve its stated aim of identifying schools that are failing to ensure pupils reach their full potential.
55. From 2016, the coasting definition will use the new progress measures which will be implemented this year. The new primary progress measures will capture the progress that pupils make from the end of key stage 1 to the end of primary school, and for secondary schools Progress 8 will capture the progress a pupil makes from the end of primary school to the end of secondary school. These are value added measures, which means that pupils' results are compared to the actual achievements of other pupils nationally with similar prior attainment.
56. This type of progress measure rewards schools for making progress with all of their pupils, whether they are low, middle or high attainers. This will be a more accurate way of assessing whether a school is supporting all of its pupils to reach their full potential, whatever their starting point. This will therefore be a fairer measure of performance for schools with low attaining intakes or those in socio-economically deprived areas that are teaching their pupils well compared to others with the same starting point.

## **Use of attainment measures in the primary definition**

57. There was wide support for the use of a progress measure as the basis of the coasting definition. Many respondents felt this would be the fairest and most effective way of identifying those schools that are failing to ensure pupils reach their full potential. Some respondents were, consequently, concerned that the coasting definition for primary schools will still use pupil attainment as well as progress.
58. The coasting definition at primary includes attainment, in addition to progress, to reflect the importance of attaining expected standards in English and maths to pupils' chances of making a successful start in secondary school, and succeeding in later life.

59. Primary schools will have to be below our standards on both attainment and progress to be classed as coasting. So a school that did not reach the standard on attainment but where pupils have made good progress would not be identified as coasting.

## Impact of changes to assessment and accountability

60. Some respondents to the consultation expressed concern that in years where new changes are made to assessment and accountability arrangements, this can lead to dips or fluctuations in a school's performance for that year, and that could make a school more likely to fall within the coasting definition.

61. We recognise that when new assessment arrangements are introduced, teachers may need to adapt their approach. The coasting definition considers performance over time, not a single year. A school must have results that are below the coasting level for three consecutive years in order for it to fall within the coasting definition. A dip or fluctuation in a single year would therefore not cause a school to fall within the coasting definition. The new progress measures are value-added measures which mean that pupils' achievements are compared to the national average for pupils with the same prior attainment.

## Interim definition

62. Respondents to the consultation were generally supportive of the use of progress measures as the basis for the coasting definition. Some respondents were therefore concerned that the interim definitions of coasting, which are based on the headline accountability measures for the relevant years, include an element of attainment for secondary schools as well as for primary schools.

63. The accountability arrangements for schools are changing from 2016. Therefore from 2016 the coasting definition will reflect those arrangements, and from 2018 these will be the sole measure of whether a school is coasting. In order to identify schools as coasting before this point, however, it was necessary to use an interim definition for 2014 and 2015 data, based on the headline accountability measures against which schools were held to account in those years. We considered this to be a fairer approach than applying the measures which will apply from 2016 retrospectively, and we still consider that to be the case.

64. We think some respondents' criticisms of coasting more broadly suggested that they had misunderstood that the interim definition will be temporary, and replaced by an improved definition from 2016. We acknowledge that the interim definitions of coasting have limitations, but this will never be the basis of the whole coasting measure. Coasting schools will be identified on the basis of meeting the coasting

definition for three consecutive years, and the interim definitions will only be used for two years.

## **Progress 8 opt-in schools**

65. Question 12 asked how we should apply a coasting definition to those secondary schools that chose to opt in early to Progress 8 in 2015.

66. We proposed that, in order to avoid disadvantaging the secondary schools that chose to opt in without knowing about the introduction of a coasting definition, which was announced after the window to opt in closed, we would apply the more favourable of the two coasting definitions for 2015 results.

67. The consultation responses showed views were mixed. Respondents generally supported Progress 8, and agreed it is more effective than previous measures of progress. But some respondents acknowledged that it would be unfair to penalise those schools that voluntarily opted in to the new measure.

68. In light of that, we will proceed with our proposed approach.

## **Special schools and special academies**

69. In our consultation, we asked whether coasting standards should also be applied to special schools, whether this could be data driven, and if so what metric could be used.

70. There were mixed views on this question, and no overall consensus. This reflected the complexity of the issues. Many respondents who answered 'no' did support special schools being held accountable for the support they give to their pupils, and the progress their pupils make but did not think it would be possible to develop a data-based definition at this time. Many did, however, support the principle of using data rather than an Ofsted judgement to identify coasting special schools.

71. We sought the views of the Rochford Review, the expert review of statutory assessment arrangements for pupils working below the standard of national curriculum tests, on these issues. The review group considered that special schools should be subject to the same level of robust challenge and scrutiny as any other school. However, they agreed that the data needed to form a coasting definition for special schools was not currently available. They felt that in the absence of a data-based definition, the most appropriate option would be to use the outcome of Ofsted inspections.

72. Having considered the range of responses we received to this consultation, we do not intend to apply a coasting definition to special schools at this stage. We will, however, keep this under review.
73. We do, however, want to do more to improve the educational outcomes achieved by children and young people with special educational needs and disabilities (SEND), including those who attend special schools and academies. This includes ensuring that we are holding special schools to account for their performance, and intervening swiftly to tackle underperformance. Therefore other powers in the Education and Adoption Act will apply to special schools and academies. This is set out in more detail in the 'Next Steps' section of this document.
74. We are satisfied that local authorities and RSCs will have sufficient powers to ensure maintained special schools and special academies that are underperforming or otherwise causing concern can be tackled. We will, however, continue to look at how we can improve the educational outcomes achieved by children and young people with SEND, including through ensuring maintained special schools and special academies are held to account.

## **Pupil referral units and alternative provision academies**

75. In our consultation, we asked whether coasting standards should also be applied to pupil referral units (PRUs)<sup>5</sup>, whether this could be data driven, and if so what metric could be used.
76. There were, again, mixed views on this question, reflecting the complexity of this issue. Many respondents who answered 'no' to the question did, however, support PRUs being held accountable for the support they give to their pupils, and the progress their pupils make. Their objection was that they did not think it would be possible or appropriate to develop a data-based definition of a coasting PRU. The views expressed in response to this question were therefore along similar lines to those in relation to special schools.
77. Responses to this consultation question commonly raised that a data-based coasting definition for PRUs would be unreliable because of the small numbers of pupils, high turnover of pupils and the variation in point of entry and time spent in the provision. A cohort in this kind of provision, and their particular challenges and needs, will also vary considerably from year to year, making it problematic to identify trends in data over time. Indeed, we acknowledged in the consultation document that we do not currently publish attainment data for individual PRUs. One of the principles

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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>

underpinning our coasting definition is that it should be based on published performance data, so this is another reason why developing a data-based coasting definition for PRUs is problematic.

78. Having considered the responses we received to this consultation, we do not intend to apply a coasting definition to PRUs at this stage, but will keep this under review.

79. We do, however, want to ensure that pupils in pupil referral units and alternative provision are being supported well, and that underperformance in these types of provision is swiftly challenged. Therefore the other powers in the Education and Adoption Act will apply to PRUs and alternative provision academies. This is set out in more detail in the 'Next Steps' section of this document.

80. We anticipate that these arrangements will ensure RSCs have powers to tackle PRUs and alternative provision academies that are underperforming or otherwise causing concern. We are, however, currently considering further options to make alternative provision more rigorous and will be coming out with plans in due course.

## Next steps

### Implementation of the Education and Adoption Act

81. The majority of the new and strengthened powers introduced by the Education and Adoption Act will be commenced to take effect from 18 April 2016, the beginning of the summer term. This is consistent with the expectation set in the consultation document. The powers in relation to coasting will be commenced later in the year.
82. The finalised Schools Causing Concern guidance has been published alongside this consultation response. That guidance will take effect from 18 April 2016, to coincide with commencement of the Education and Adoption Act.

### Implications for maintained schools

83. From 18 April, therefore, any maintained school that is judged inadequate by Ofsted will have an academy order made in respect of it, and be required to become a sponsored academy. Once such an academy order has been made, the duty to facilitate on the school's governing body and on the local authority will also take effect.
84. For any maintained school that had been judged inadequate before 18 April (before the commencement of the powers of the Education and Adoption Act), that maintained school will also be required to become a sponsored academy.
85. From 18 April, RSCs will be able to use the power of the Secretary of State to issue a performance standards and safety warning notice to a maintained school that is causing concern, in line with the Schools Causing Concern guidance.
86. No maintained schools will be identified as coasting until the coasting levels have been set in the autumn and revised 2016 performance data is published in December 2016/January 2017. From that time, RSCs will be able to take formal action in a maintained school that meets the coasting definition.

### Implications for academies (including free schools)

87. The provisions in the Education and Adoption Act regarding academies causing concern will also be commenced to take effect from 18 April 2016, to ensure a consistent approach for both academies and maintained schools.
88. From 18 April, therefore, an RSC will be able to terminate the funding agreement of an academy that has been judged inadequate by Ofsted. This is a power rather than a duty, meaning the RSC may decide not to terminate, at the discretion of the RSC.

When termination is appropriate, the RSC must first give the proprietor of the academy an opportunity to make representations.

89. For any academy that had been judged inadequate before 18 April (before the commencement of the powers of the Education and Adoption Act), the same will apply – an RSC will be able to terminate the funding agreement, at the RSC’s discretion. When the RSC has considered termination to be appropriate, the RSC must first give the proprietor of the academy an opportunity to make representations.
90. When an academy’s funding agreement has been terminated, the RSC will usually identify a new sponsor to take on responsibility for the academy, and will enter into a new funding agreement in respect of that academy. The academy will remain open, and the RSC and the new sponsor will work to ensure minimal disruption to pupils’ education during the transition.
91. No academies will be identified as coasting until the coasting levels have been set in the autumn and revised 2016 performance data is published in December 2016/January 2017. From that time, RSCs will be able to take formal action in an academy that meets the coasting definition.

## Implications for special schools and alternative provision

### Special schools

92. For **maintained special schools**, from 18 April any special school that is judged inadequate by Ofsted will have an academy order made in respect of it, and be required to become a sponsored academy. For any maintained special school that had been judged inadequate before 18 April (before the commencement of the powers of the Education and Adoption Act), that special school will also be required to become a sponsored academy. This is the same as for mainstream maintained schools.
93. From 18 April, RSCs will be able to use the power of the Secretary of State to issue a warning notice to a maintained special school that is causing concern. This is the same as for mainstream maintained schools.
94. For **special academies**, from 18 April an RSC will be able to terminate the funding agreement on an inadequate judgement by Ofsted – as for mainstream academies. This is a power rather than a duty, meaning the RSC may decide not to terminate, at the discretion of the RSC. When termination is appropriate, the RSC must first give the proprietor of the special academy an opportunity to make representations. For any special academy judged inadequate by Ofsted before 18 April, the same will apply – an RSC will be able to terminate the funding agreement, at the RSC’s discretion.

95. We do not intend to apply a coasting definition to special schools at this stage – either to **maintained special schools** or **special academies**. We intend to use the regulation making powers in the Act to disapply special schools from the coasting provisions in the Act. We expect to lay these regulations in the autumn.

### **PRUs and alternative provision academies**

96. We will be laying regulations to ensure that the provisions in the Act will apply to PRUs, including those requiring an academy order to be made on an inadequate Ofsted judgement. We aim to do this so that the provisions take effect in the summer term 2016.

97. For **alternative provision academies**, from 18 April an RSC will be able to terminate the funding agreement on an inadequate judgement by Ofsted – as for mainstream academies. This is a power rather than a duty, meaning the RSC may decide not to terminate, at the discretion of the RSC. When termination is appropriate, the RSC must first give the proprietor of the alternative provision academy an opportunity to make representations. For any alternative provision academy judged inadequate by Ofsted before 18 April, the same will apply – an RSC will be able to terminate the funding agreement, at the RSC's discretion.

98. We do not intend to apply a coasting definition to alternative provision at this stage. The coasting provisions do not currently apply to PRUs, and we intend to use the regulation making powers in the Act to disapply **alternative provision academies** from the coasting provisions in the Act. We expect to lay these regulations in the autumn.

## Annex A: Summary of responses to the consultation questions

We received 332 responses to the consultation.

57 of those responses were identified as being part of a campaign. These are still included in the following statistics.

### Consultation on the Schools Causing Concern guidance

1) Do you think the revised Schools Causing Concern guidance describes clearly the powers, processes and responsibilities for intervening in underperforming maintained schools?

	Total	Percent	Percentage across consultation
Yes	99	35%	30%
No	162	57%	49%
Not sure	22	8%	7%

2) Chapter 3 of the Schools Causing Concern guidance proposes how RSCs should make decisions about what action should be taken in schools that meet the coasting definition. Do you think that the described approach and process is appropriate?

	Total	Percent	Percentage across consultation
Yes	48	17%	14%
No	199	71%	60%
Not sure	33	12%	10%

3) Chapter 3 explains that RSCs could use their discretion to decide not to intervene where a coasting school is supporting its pupils well, but has fallen within the coasting definition because of its circumstances or pupil characteristics. Do you agree that this is appropriate? The guidance is not intended to be exhaustive, but please specify if there are other such circumstances or factors you think should be included in the guidance that currently are not.

	Total	Percent	Percentage across consultation
Yes	181	63%	55%
No	77	27%	23%
Not sure	28	10%	8%

4) Chapter 4 describes what may constitute low standards of performance and what factors local authorities and RSCs may take into consideration to identify this, for the purpose of issuing a performance standards and safety warning notice. Do you agree with the factors listed which may indicate that a warning notice may be necessary?

	Total	Percent	Percentage across consultation
Yes	68	24%	20%
No	174	61%	52%
Not sure	41	14%	12%

5) Chapter 5 describes the specific powers of local authorities and RSCs (using the powers of the Secretary of State) in schools eligible for intervention. Are the respective responsibilities, and the interactions between the local authority and RSC powers, sufficiently clear?

	Total	Percent	Percentage across consultation
Yes	93	34%	28%

	Total	Percent	Percentage across consultation
No	148	55%	45%
Not sure	30	11%	9%

6) Do you have any other comments on the revised Schools Causing Concern guidance?

## Consultation on the coasting definition

7) Do you agree that the three principles underlying our coasting definition are the right ones?

	Total	Percent	Percentage across consultation
Yes	58	21%	17%
No	185	68%	56%
Not sure	29	11%	9%

8) Should the definition of a coasting school be where the data shows that, over a three year period, the school is failing to ensure that pupils reach their full potential?

	Total	Percent	Percentage across consultation
Yes	68	24%	20%
No	176	63%	53%
Not sure	35	13%	11%

**9a) Should the proposed interim definition for coasting in 2014 and 2015 be based on the accountability measures for those years, against which the schools were held to account?**

	<b>Total</b>	<b>Percent</b>	<b>Percentage across consultation</b>
Yes	71	26%	21%
No	112	41%	34%
Not sure	89	33%	27%

**9b) If so, are the thresholds right? Alternatively, should the new 2016 accountability measures be applied retrospectively for 2014 and 2015?**

**10a) Should coasting standards be applied to special schools?**

	<b>Total</b>	<b>Percent</b>	<b>Percentage across consultation</b>
Yes	46	16%	14%
No	198	69%	60%
Not sure	42	15%	13%

**10b) Can this be data driven – if so, what metric could be used? What other indicators might be used?**

**11a) Should coasting standards be applied Pupil Referral Units?**

	<b>Total</b>	<b>Percent</b>	<b>Percentage across consultation</b>
Yes	44	15%	13%
No	201	71%	61%
Not sure	39	14%	12%

**11b) Can this be data driven – if so, what metric could be used? What other indicators might be used?**

**12a) Is our proposed approach for schools that chose to opt in early to Progress 8 in 2015 – that the more favourable of the two coasting definitions be applied – the right one?**

	<b>Total</b>	<b>Percent</b>	<b>Percentage across consultation</b>
Yes	80	31%	24%
No	53	21%	16%
Not sure	121	48%	36%

**12b) If not, what is the fairest way of defining coasting for these schools in 2015 and why?**

## Annex B: List of organisations that responded to the consultation

- Achieving for Children
- Achievement for All
- ACE Schools
- Acorn Care and Education
- Alliance for Inclusive Education (ALLFIE)
- Association for Achievement and Improvement through Assessment (AAIA)
- Association of Directors of Children's Services
- Association of School and College Leaders (ASCL)
- Association of Secondary Headteachers in Essex (ASHE)
- Association of Teachers and Lecturers (ATL)
- Aston Fields Middle School
- Avon Valley School
- Babcock Education
- Basildon Academies
- Best Practice Network
- Birchensale Middle School
- Board of Deputies of British Jews
- Bournemouth Borough Council
- Bracknell Forest Children's Services
- Bredon Hill Middle School
- Brent Strategic School Effectiveness Partnership Board (SSEP)
- Brighton and Hove City Council
- Bristol City Council
- Brundall Primary School
- Buckinghamshire County Council
- Calderdale Local Authority
- Calderdale Partnership School Improvement Board
- Cambridgeshire County Council

- Catholic Education Service
- Catmose Federation
- Challenge Partners
- Church of England Education Office
- City Academy Norwich
- Consilium Academies
- Co-operative Schools Network
- Cornwall Council
- Crudwell CE Primary School
- Cumbria County Council
- Cumbria NUT
- Derbyshire County Council
- Durham Local Authority
- Education Support Partnership
- Edward Francis Primary School
- Essex County Council
- Fairlands Middle School
- Freedom and Autonomy for Schools – National Association (FASNA)
- Fen Drayton Primary School
- Garth Hill College
- GL Assessment
- Gossops Green Community Primary School
- Hackney Learning Trust
- Hampshire County Council
- Hamstel Junior School
- Haringey Council
- Henley in Arden School
- Hertfordshire County Council
- Hitchin Boys' School
- Hospital and Outreach Education Pupil Referral Unit
- Kent County Council

- Leicester City Council
- Leigh Academies Trust
- Local Government Association (LGA)
- Lockyer's Middle School
- London Borough of Hammersmith and Fulham; Royal Borough of Kensington and Chelsea; and Westminster City Council
- London Borough of Harrow
- London Borough of Merton
- Meadowbrook Primary School
- Medway Local Authority
- National Association of Orthodox Jewish Schools (NAJOS)
- NASUWT
- National Association of Head Teachers (NAHT)
- National Association of Secondary Moderns
- National Day Nurseries Association
- National Foundation for Educational Research (NFER)
- National Governors' Association (NGA)
- National Middle Schools' Forum
- National Union of Teachers (NUT)
- Norfolk County Council
- North Devon Academic Board
- North Yorkshire County Council
- Northamptonshire County Council
- Northern Saints Church of England Primary School
- Olympus Academy Trust
- Ormesby Village Junior School
- Oxfordshire County Council
- Parkfields Middle School
- Redbridge Community School
- Rednal Hill Junior School
- Rochester Diocesan Board of Education

- Roysia Middle School
- Safe & Sound Group
- Sandwell Borough Council
- Surrey Secondary Phase Council
- Suffolk Association of Secondary Headteachers (SASH)
- Kirkburton Middle School
- Stockport Metropolitan Borough Council
- Silverstone UTC
- SMID
- Somerset County Council
- South Gloucestershire Headteachers Assessment Group
- Southampton City Council
- Southwark Diocesan Board of Education
- Sponne School
- St Andrew's Catholic Primary School
- St Anne's CE Primary School
- St Barnabas CEVC Primary School
- St Michael's CE (VC) First School
- St Nicolas CE Junior School
- St Philip Howard School
- Staffordshire County Council
- Stedham Primary School
- Steel City Schools Partnership
- Stockton-on-Tees Borough Council
- Surrey County Council
- Thornhill and Washington Schools' Federation
- Tower Hamlet Council
- UNISON
- Voice
- Walkwood CE Middle School
- Worle Community School

- West Sussex County Council
- William Martin Infant and Junior School
- Wiltshire County Council
- WISE Academies
- Woodfield Academy
- Woodhouse Academy
- Worth Primary School Academy Trust



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