



Department
for Education

Schools causing concern

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

Guidance for local authorities and RSCs

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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 “schools causing concern” (within the meaning of section 44 of the Education Act 2005) and schools that are “eligible for intervention” (within the meaning of Part 4 of the 2006 Act), but also other maintained schools about which the local authority and/or Secretary of State have serious concerns which need to be addressed¹.

This version of the Schools Causing Concern guidance reflects that the Education and Adoption Act 2016 has introduced new intervention powers for the Secretary of State and extended the types of maintained schools that are eligible for intervention to include coasting schools.

These new intervention powers for the Secretary of State will be exercised by Regional Schools Commissioners (RSCs), and RSCs will be expected to follow this guidance in exercising those powers. Therefore, for the purpose of this guidance, the RSC will generally be referred to as using the described powers.

The Education and Adoption Act 2016 introduces new consistent provisions for action to be taken in academies that are causing concern, those being academies that are either failing or coasting. To reflect this, the Schools Causing Concern guidance now describes how RSCs will make decisions and the arrangements for RSCs to take formal action in academies that are causing concern.

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 18 April 2016 when the majority of provisions in the Education and Adoption Act 2016 commence.

¹ 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)
- 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 (RSCs) will be expected to follow this document as guidance for how they will exercise the Secretary of State’s powers of intervention in maintained schools 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

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

The Education and Adoption Act 2016 delivers on the manifesto commitment to introduce new powers to intervene in failing schools from day one and to challenge schools that have been coasting. These powers will strengthen the Secretary of State's ability to deal with underperformance, and to do so more swiftly. This will ensure that there is no delay in giving children the education they deserve.

In addition to describing intervention in underperforming maintained schools, the Schools Causing Concern guidance now additionally describes what action RSCs can take in academies causing concern.

This guidance describes the three groups of schools which are causing concern and eligible for formal action:

1. **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. To minimise delays and ensure swift action, there is a new duty on governing bodies and local authorities to facilitate academy conversion. When an academy is judged inadequate by Ofsted, then the RSC is able to terminate the funding agreement with the existing academy trust, identify a new sponsor and move the academy to that new trust. The process for schools judged inadequate by Ofsted is described in more detail in Chapter 2 of this guidance.
2. **Schools that are coasting** – RSCs will be able to take formal action in any school which falls within the definition of coasting. They will first consider the school in the round before deciding what, if any action, is necessary. Where action is necessary and a coasting maintained school does not have a sufficient plan and the necessary capacity to bring about improvement, the RSC will use the powers of the Secretary of State to intervene. They will consider a range of interventions to ensure that the school receives the support and challenge it needs. This could include requiring the conversion of the school into an academy with the support of a sponsor. RSCs will also consider what action is necessary where an academy is coasting, and may issue a termination warning notice, which will require the academy trust to take specified action, and could ultimately allow a coasting academy to be moved to a new sponsor where necessary. The process for schools falling within the coasting definition is described in more detail in Chapter 3 of this guidance.

- 3. Schools that have failed to comply with a warning notice** – Local authorities and RSCs may give warning notices to maintained schools where they have concerns about unacceptable performance (including results below floor standards), a breakdown in leadership and governance, or 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 intervention. The warning notice process is described in more detail in Chapter 4 of this guidance. Arrangements for academies (that are not failing or coasting) are described in each academy’s funding agreement.

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 failing and coasting academies. More information about the RSCs, how they operate and how they are supported by their Headteacher Boards can be found on the [GOV.UK website](https://www.gov.uk).

The respective powers of local authorities and RSCs to intervene in maintained schools are described in Chapter 5 of this guidance.

RSCs will address underperformance in academies on behalf of the Secretary of State. Where this guidance refers to “academies” this should be taken to include free schools, studio schools and University Technical Colleges (UTCs). This guidance describes the new, consistent powers that the Education and Adoption Act 2016 introduced in respect of failing and coasting academies. Any further arrangements for addressing concerns in academies will be set out in each academy’s funding agreement.

This guidance describes the roles and responsibilities of RSCs and local authorities, and how they will work with others in the school system to ensure underperformance is challenged and schools are supported to improve – including Ofsted, governing bodies, foundation trusts, Dioceses and other religious bodies.

The Government is committed to protecting the ethos of schools with a religious character, and RSCs will ensure that their intervention arrangements will safeguard the religious character and ethos of the school, working closely with the relevant religious body. For all Church of England and Roman Catholic schools, this guidance should be read alongside the relevant Memorandum of Understanding, 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 the land the school is on is 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.

Chapter 2: Schools that have been judged inadequate by Ofsted

Schools that have been judged inadequate are:

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

For these schools, which have failed, action is needed urgently.

Maintained schools judged inadequate

The Secretary of State has a duty³ 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.

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 sponsor and brokering the new relationship between that sponsor and the maintained school. Further details about academy orders are set out in Chapter 5 of this guidance.

In the case of a foundation or voluntary school with a foundation which 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 sponsor” in this guidance) before entering into academy arrangements. The RSC will consult with the trustees of such a maintained school, the person or persons who appoint the foundation governors, and in the case of a school which has a religious character the appropriate religious body⁴. RSCs will ensure that any intervention 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 end⁵. RSCs can also use the Secretary of State’s power to give the governing body or local authority a direction, or directions, to take

² This is also known as a ‘serious weaknesses’ judgement by Ofsted.

³ Section 4(A1) of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

⁴ Section 5A of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

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

specified steps for this purpose⁶. If the RSC has identified a sponsor to run that maintained school once it becomes an academy, and has notified the maintained school of this, then the governing body and the local authority must take all reasonable steps to facilitate that sponsor taking responsibility for that school⁷.

Once the RSC has identified the academy sponsor for a maintained school that was rated inadequate, that sponsor will be under a duty to communicate to parents information about their plans for improving that school, before it is converted into an academy⁸. This is described in more detail in Chapter 5.

Maintained schools judged inadequate prior to the Education and Adoption Act 2016

If a maintained school had been judged inadequate by Ofsted before the Education and Adoption Act 2016 has taken effect, that maintained school will also be required to become a sponsored academy. An academy order will be made, and the RSC will take responsibility for ensuring that the maintained school becomes a sponsored academy as swiftly as possible.

Academies judged inadequate

The RSC will respond just as swiftly and robustly if an academy has been judged inadequate by Ofsted.

As a result of the Education and Adoption Act 2016⁹, regardless of what terms are in the academy's funding agreement, the RSC (on behalf of the Secretary of State) will be able to 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 not to terminate, for example, where a change of sponsor 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.

⁶ Section 5C of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

⁷ For the purpose of this guidance we refer to 'the sponsor', for simplicity, but this is in fact the person with whom the academy arrangements are to be entered into.

⁸ Section 5E of the Academies Act, as inserted by the Education and Adoption Act 2016.

⁹ Sections 2A and 2D of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

When an academy's funding agreement has been terminated because the academy has been judged inadequate, 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 (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 sponsor will work to ensure minimal disruption to pupils' education during the transition. In some exceptional cases, where the academy is not considered to be viable in the long term, its funding agreement may instead be terminated in order to close it.

Chapter 3: Schools that have met the coasting definition

Coasting schools are schools where RSCs may take action because the school has met the definition of coasting. Local authorities are also able to take action in schools that they continue to maintain¹⁰, but we expect it to predominantly be the RSC who will act, and their powers will take precedence. In coasting schools performance data shows that, year on year, they are failing to ensure enough pupils reach their potential. The definition of a coasting school is specified in regulations¹¹.

The same definition of a coasting school applies to both maintained schools and academies. RSCs will hold coasting academies to account just as robustly as they will maintained schools, and the process for how RSCs will communicate with schools and determine the course of action for schools within the coasting definition will be comparable for both maintained schools and academies. However, the actions an RSC may take in an academy differ somewhat from actions an RSC may take in maintained schools – this is described within this Chapter.

Communication with a coasting school

Coasting schools will be notified by RSCs that they have fallen within the coasting definition. Once a school has been notified that it has met the coasting definition, an RSC will be able to take action if the RSC considers this necessary. Coasting schools will be identified for the first time once the performance tables containing the revised 2016 results for key stage 2 and key stage 4 have been published.

Prior to the publication of the revised data in the performance tables, schools, local authorities and RSCs receive provisional performance results. In some cases, RSCs may make contact with schools during this period, to begin informal discussions about their circumstances, but no formal action can be taken until after the revised data in the performance tables are published and it has been confirmed that the school falls within the coasting definition.

Following publication of the revised data in the performance tables, the RSC will write to notify the school that it falls within the coasting definition and is therefore potentially subject to formal action. The RSC will set out in the notification letter what the school can expect to happen next, including the likely timescales. In the letter, the RSC may request

¹⁰ Section 60B of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016. Both RSCs, acting on behalf of the Secretary of State, and local authorities have intervention powers in schools notified as being coasting. We expect local authorities to work closely with RSCs about the arrangements for doing so. Therefore this guidance describes the RSC's role, which local authorities would support.

¹¹ At the time of publication of this guidance, those regulations are not yet available. The coasting definition may be found via: <https://www.gov.uk/government/consultations/intervening-in-failing-underperforming-and-coasting-schools>

additional information and/or to see the school's current plan for improvement. They may also inform the school that they would like to meet the school's leaders, governors or trustees, or that they intend to ask a representative to do so.

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

Communication with parents

When a school has been notified by an RSC that it has fallen within the definition of coasting, the governing body must inform parents of this. They should also keep parents informed about further developments, including what action will be taken to improve the performance of the school.

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

RSCs have discretion to decide on the specific course of action that will be taken with any school that falls within the definition of coasting. They may decide that a school:

- has met the coasting definition but is in fact supporting pupils well, and therefore no action is required;
- has a sufficient plan and sufficient capacity to improve, and therefore no action is required; or
- will need additional support and challenge in order to improve. The RSC will decide whether it will be necessary to intervene to bring that about.

The RSC will make their decisions with the support and advice of their Headteacher Board.

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

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

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

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

In making decisions about whether a coasting school requires action, and what action is necessary to bring about sufficient improvement in that school, RSCs will consider the school in the round, seeking to take account of its context, wider achievements and overall provision to pupils, as well as the factors which may have led it to fall within the coasting definition.

RSCs will consider both a) Performance data and other quantitative information, which might indicate the causes of the school's current underperformance, and b) Other information about the school, its context, and its plans and capacity to improve, therefore what action would be necessary to bring about sufficient improvement.

Indicative factors are set out below, but are not an exhaustive list.

a) Performance data and other quantitative information

- Educational performance data for that school, further to the data that meant the school was identified as coasting;
- Performance of the school in relation to schools in similar contexts and pupils with similar starting points;
- The educational performance data of groups of pupils with particular characteristics – such characteristics may include but may not necessarily be limited to:
 - Disadvantaged pupils¹²;
 - Pupils with special educational needs and disabilities (SEND); and

¹² Disadvantaged pupils are those who attract pupil premium funding, 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.

- Pupils of low, middle and high abilities.
- Other data about the school, such as pupil cohort size, attendance and mobility of pupils (i.e. the number of pupils who have joined and left the school), and what impact that may have had on the school's data.

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, whether that plan is sufficient and has the rigour and credibility to bring about the necessary improvement of the school;
- Whether the school has the capacity to deliver against that plan, taking into account recent judgements or assessments that Ofsted has made of the school and its capacity to improve, particularly judgements of Leadership and Management. The RSC may use Ofsted's views about a school's current weaknesses and areas for improvement to determine the most appropriate additional support and challenge;
- The 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 Ofsted¹³.

Schools should cooperate fully with the relevant RSC in providing whatever information the RSC believes is required in order to make an assessment of the school and its capacity to improve. Local authorities should similarly cooperate with RSCs where the RSC is making an assessment of a maintained school and its capacity to improve. The RSC will not delay making a decision because a school or local authority has failed to provide in a timely fashion information or representations requested by the RSC, and where there is no good reason for the delay.

Ultimately, in maintained schools, if there is any disagreement between an RSC and the maintained school governing body, or the local authority, about what should be taken into consideration and what conclusions should be drawn, the RSC's powers to intervene take precedence¹⁴, and the RSC will make the final judgement.

¹³ Guidance on commissioning and conducting external reviews on the impact of the pupil premium is available from the National College of Teaching and Leadership – see under 'Further sources of information'.

¹⁴ Section 60(4A)-(4B) and sections 70A-70C ('Interaction between different intervention powers etc.') of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

Arrangements for middle and other schools

The majority of middle schools are deemed to be secondary schools but due to the age range of 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 falls within 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.

The coasting definition will not apply to maintained nursery schools, infant or first schools or 16-19 schools because they do not have the relevant data.

The coasting provisions will not apply to special schools or alternative provision schools¹⁵.

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 4).

What action RSCs may take in coasting maintained schools

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

The RSC may decide that:

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

This might be:

- because the RSC has determined that although the maintained school met the definition of coasting on the basis of its data, they are convinced that it is supporting its pupils well – it may, for example, have met the definition because it has a high number of mobile pupils; or
- because there has been a recent change in leadership at the school, which means that the RSC is satisfied that the school will subsequently improve without the RSC taking further action;

¹⁵ The coasting definition and its application to different types of schools will be reflected in subsequent iterations of the primary accountability technical guide, the current version of which is available at <https://www.gov.uk/government/publications/primary-school-accountability> and the Progress 8 guidance for secondary schools, which is available at <https://www.gov.uk/government/publications/progress-8-school-performance-measure>

- because the RSC has agreed the school's request to join a multi-academy trust, which the RSC considers will ensure the school makes the necessary improvements; or
- because the RSC has concluded that the maintained school already has a sufficient plan for improvement in place, which is rigorous and credible, and that the maintained school's leadership has the capability to deliver against this plan – or the plan may include bringing in additional support and challenge that the maintained school has already identified for itself – and so the school will be allowed the time to do this.

The school needs some additional support and challenge.

The RSC may judge that additional support and challenge is necessary to enable the maintained school to deliver sufficient improvement. The RSC will work with the maintained school to identify appropriate support, including through Teaching School Alliances, partnerships with high performing local schools, or from National Leaders of Education. If that support does not result in the necessary improvement then the RSC will determine whether to take further action.

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

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

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

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

A sponsored academy solution is necessary.

The RSC may decide that a sponsored academy solution is necessary to bring about sufficient improvement of the maintained school, and will therefore exercise the Secretary of State's power to make an academy order. Where this is necessary, once a sponsor has been identified, that sponsor will be under a duty to communicate to parents about their plans for the school (this duty is described further in Chapter 5).

The specific powers of the Secretary of State that the RSC may use in maintained schools are described in more detail in Chapter 5 of this guidance. For certain powers, there are requirements about who must be consulted – this is described in more detail in Chapter 5. In circumstances where a maintained school has a religious character, RSCs

will take into account the views of the appropriate religious body, and in particular will ensure that any necessary intervention identified will safeguard and maintain the religious character and ethos of the school. RSCs will also, in respect of voluntary or foundation schools, have regard for the duties and obligations of charity trustees.

What action RSCs may take in coasting academies

Where an academy has fallen within the coasting definition, the RSC will make the same considerations and take into account the same factors, acting swiftly and robustly, as for a maintained school.

As a result of the Education and Adoption Act 2016¹⁶, regardless of the prior terms in that academy's funding agreement, where an academy has met the coasting definition, and the RSC on behalf of the Secretary of State has notified the academy that it has fallen within the coasting definition, then the Secretary of State is ultimately able to terminate the funding agreement for that academy and move the academy to a new trust. Before terminating the funding agreement on the grounds that the academy is coasting, the RSC must first give the academy proprietor a termination warning notice.

Such a termination warning notice will require the academy proprietor to take specified action to improve the academy by a specified date. This could include working with a system leader such as those from within Teaching School Alliances or National Leaders in Education (NLEs), or forming a partnership with a high performing school. It will also require the academy proprietor to respond to the RSC, either by making representations, or by agreeing to take the specified action by the specified date.

Where the academy proprietor fails to comply with the termination warning notice, either because they failed to take the specified action or failed to do so within the specified time, then the funding agreement for that academy may be terminated.

Where a supplemental Church agreement is in place alongside the academy's funding agreement the RSC will notify the appropriate diocesan authority that the academy has fallen within the coasting definition. The RSC will also notify that authority before issuing a termination warning notice to such an academy, and allow reasonable time for them to make representations, including any action they intend to take to remedy the situation.

Where an RSC has considered it necessary to terminate an academy's funding agreement as a result of the academy having been coasting, that does not necessarily mean that the academy must close. Usually the RSC will identify a new sponsor to take on responsibility for the academy and will enter into a new funding agreement in respect of that academy (this is sometimes referred to as 'rebrokerage' of the academy). Where the academy that was coasting was previously a 'standalone' academy, this will require it to join a multi-academy trust (MAT). The academy will remain open, and the RSC and the

¹⁶ Sections 2B and 2D of the Academies Act 2010 as inserted by the Education and Adoption Act 2016.

new sponsor will work to ensure minimal disruption to pupils' education during the transition.

There will be cases where the RSC does not consider it necessary to issue a termination warning notice to an academy that has met the definition of coasting, for example because the RSC is satisfied that the academy already has a sufficient plan to bring about the necessary improvement, or because the RSC has agreed the academy's request to join a multi-academy trust which the RSC considers will ensure the academy makes the necessary improvements.

Monitoring of a coasting school over time

Whatever action the RSC has decided to take, the RSC will continue to monitor the school's progress and keep under review whether additional action is needed. The RSC may specify to the school timescales by which they will expect action to have been taken or improvement to have been made, and what further action the RSC will be minded to take if the school has not taken those actions or made sufficient improvement within that time. The RSC may also visit, or ask a representative to visit, the school to see what progress is being made. The RSC is able to revise their decision or make a new decision about a coasting school at any time – for example if new information or a change in circumstances should come to light – until such time as the school ceases to meet the definition of coasting.

Chapter 4: 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 standards¹⁷, or where leadership and governance has broken down or safety is threatened.

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 notice**. 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 which they still 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;
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).

¹⁷ A link to the floor standards can be found under ‘Further sources of information’.

Roles of local authorities and RSCs

Local authorities should work with RSCs to discuss where they judge that a performance standards and safety warning notice is necessary¹⁸. Local authorities are expected to continue to use warning notices to challenge schools they maintain to improve.

By having the same powers, RSCs will be able to 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 will 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 that follows a warning notice issued by a local authority to be robust enough¹⁹.

A copy of any warning notice issued by a local authority must be given to the relevant RSC, as must a copy of any warning notice given by an RSC to a maintained school be given to the local authority that maintains it.

Low standards of performance

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

- I. the standards that the pupils might in all the circumstances reasonably be expected to attain; or
- 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 maintained school shows sufficiently "low standards of performance":

- Performance data which show that standards are below the floor (including standards below the 16-19 minimum standards)²⁰ – this in itself could demonstrate that a warning notice is necessary;

¹⁸ 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.

¹⁹ Section 60 (4A)-(4B) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

²⁰ A link to information about the expected levels of school performance (floor standards) is provided under 'Further sources of information'. From 2016, the secondary floor standard will be based on Progress 8 and the primary floor standard will be based on a new measure reflecting both attainment and progress.

- An Ofsted judgement that the school requires improvement, where there are also additional factors to indicate that a warning notice is appropriate, including in types of schools where the coasting definition does not apply;
- In a school with a sixth form, an Ofsted judgement that the sixth form is inadequate, even though the school overall may not have been judged inadequate – this in itself will usually demonstrate that a warning notice is necessary; and/or
- Performance data which show 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.

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. The following additional factors will further help local authorities and RSCs to decide in these circumstances whether to issue a warning notice or not:

- Performance trends, such as a sudden drop in performance or conversely signs that a school is on a sharp upward trajectory. It should be noted that in 2016 and 2017, if a school's performance at KS2 has dropped below the floor standard, or 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;
- Recent Ofsted judgements or assessments of aspects of a school's performance and its capacity to improve, particularly judgements of Leadership and Management;
- Variations in performance data between pupils of different characteristics (including pupils of low, middle and high abilities)²¹; and/or
- Low standards achieved by disadvantaged pupils²², including where the school's pupil premium spending is not used effectively²³.

²¹ Comparisons should generally be made to national averages, rather than between groups of pupils within the school.

²² Disadvantaged pupils are those who attract pupil premium funding, determined on the basis of having been: eligible for free school meals within the last six 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.

²³ Decisions on the effectiveness of pupil premium spending will consider the quality and delivery of the school's pupil premium strategy and the way in which it responds to any external pupil premium reviews that have been commissioned, including where Ofsted has recommended such a review. Guidance on

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, the pupils' standards of performance.

Local authorities (or RSCs where, for example, a local authority has failed to act swiftly or robustly enough, either in a particular case or generally in the past, or lacks the capacity) should identify additional support or consider issuing a warning notice, depending on the severity of the case, to maintained schools where the governing body is failing to deliver one or more of its three core strategic roles resulting in a serious breakdown in the way the school is managed or governed, that will or is likely to adversely affect standards' of pupils performance.

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; and/or
- the governing body having an excessive involvement in the day to day running of the school.

These situations could all indicate a serious breakdown of 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.

commissioning and conducting external reviews on the impact of the pupil premium is available from the National College of Teaching and Leadership – see under 'Further Sources of Information'.

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, where this is appropriate.

Local authorities (or RSCs where, for example, a local authority has failed to act or lacks the capacity) should also consider issuing warning notices to maintained schools that have not responded robustly or rapidly enough to a recommendation by Ofsted to commission a robust and objective external review of their governance arrangements. Such recommendations are normally made in the Ofsted report of an inspection²⁴, if a school is judged as requiring improvement where governance is judged to be weak.

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

Guidance is available from the National College for Teaching and Leadership on commissioning and conducting such external reviews²⁵.

The Governance Handbook²⁶ 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 robustly or lack the capacity.

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.

²⁴ Carried out under section 5 of the Education Act 2005.

²⁵ See under 'Further sources of information' for the National College for Teaching and Leadership guidance on governance reviews.

²⁶ See 'Further sources of information' for link to the Governance Handbook.

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 2006²⁷ (addressed in more detail in Chapter 5). 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 specified in the teachers' pay and conditions warning notice²⁸. 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 is required to send the RSC a copy of any teachers' pay and conditions warning notice it issues²⁹.

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 which the governing body is required to take in order to address the concerns raised;
3. the period within which the governing body must comply or secure compliance with that action (the compliance period); and

²⁷ 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 5 of this guidance explains these intervention powers in more detail.

²⁸ These are the local authority's powers to appoint additional governors (section 64) and to suspend the school's right to a delegated budget (section 66). Chapter 5 of this guidance explains the intervention powers in more detail.

²⁹ Section 60A (6)(za) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

4. the action which 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, a copy must be given 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 governors³⁰.

Local authorities are expected to work with RSCs to discuss where they judge that a warning notice is necessary. At the time that any warning notice is given to the governing body, a copy must also be given to the relevant RSC, when it is a local authority making it, or a copy must be given to the local authority, when it is the RSC making it³¹.

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 unless or until the RSC informs them that they may. If the RSC gives a warning notice, any earlier performance standards and safety warning notice given to the same maintained school by the local authority will cease to have effect³². 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 maintained school to have complied with the warning notice, and what if any interventions will be made as a result.

All warning notices must be copied to Ofsted at the time of issuing using the email address: warningnotices@ofsted.gov.uk

Warning notices issued to maintained schools by RSCs will be published online, in addition to being copied to Ofsted.

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 taken³³.

³⁰ Section 60(6) of the Education and Inspections Act 2006, as amended by the Education and Adoption Act 2016.

³¹ Section 60(6A)-(6B) of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

³² Section 60(4A)-(4B) of the Education and Inspections Act, as inserted by the Education and Adoption Act 2016.

³³ Section 60(1)(d) and 60A(1)(d) of the Education and Inspections Act 2006 as amended by the Education and Adoption Act 2016.

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. This may be to use their intervention powers as described in Chapter 5 of this guidance.

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, 66³⁴ and 66A³⁵ 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 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 19-23.

RSCs 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 will be published online³⁶, as well as being shared with Ofsted at the time of issuing.

³⁴ These are the local authority's powers to require the governing body to enter into arrangements (section 63), to appoint additional governors (section 64) and to suspend the school's right to a delegated budget (section 66). Chapter 5 of this guidance explains the intervention powers in more detail.

³⁵ This is the Secretary of State's power to require the governing body to enter into arrangements (section 66A). Chapter 5 of this guidance explains this intervention power in more detail.

³⁶ Via <https://www.gov.uk/government/collections/letters-to-academies-about-poor-performance>

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

Where a maintained school is eligible for intervention (i.e. when it has been judged inadequate by Ofsted, has been notified that it is coasting, or has failed to comply with a warning notice) there are a number of statutory powers the local authority and the Secretary of State may use to drive school improvement. The intervention powers are set out in sections 63-66 of the 2006 Act in respect of **local authorities**:

- Section 63 – power to require the governing body to enter into arrangements;
- Section 64 – power to appoint additional governors;
- Section 65 – power to appoint an interim executive board (IEB);
- Section 66 – power to suspend the delegated budget.

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

- Section 66A – power to require governing body to enter into arrangements;
- Section 67 – power to appoint additional governors;
- Section 68 – power to direct closure of a school;
- Section 69 – power to appoint an interim executive board (IEB);
- Section 70C – power to take over responsibility for an IEB;
- Section 4 Academies Act – power³⁷ to make an academy order.

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

RSCs will exercise the powers of the Secretary of State in maintained schools that have been judged inadequate by Ofsted, and in maintained schools that have been identified as coasting or otherwise causing concern. Local authorities will issue warning notices to schools they maintain that have not been judged inadequate, and are not coasting, but are otherwise causing concern – for example because they show performance standards below the floor – and local authorities will then use their statutory intervention powers where a school they maintain has failed to comply with such a warning notice.

³⁷ Or in the case of an inadequate school, duty.

Local authorities and RSCs will work closely and co-operatively to drive improvement in maintained schools that are causing concern. However, where a local authority fails to act in a maintained school that is causing concern, does not act swiftly or robustly enough, or has generally not acted swiftly or robustly enough in the past, the RSC will use the intervention powers of the Secretary of State to do so.

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 IEB³⁸ or when the Secretary of State directs a local authority to close a maintained school.

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 maintained school until the RSC notifies the local authority that it may do so³⁹.

This Chapter describes, in relation to each power, what consultations the local authority or RSC are required to make before exercising the power, and what parties they are required to notify when they are exercising the powers. Further to this, for all Church of England schools and Roman Catholic Church schools, this guidance should be read alongside the relevant Memorandum of Understanding, which describes in further detail how RSCs and Dioceses will work together when intervention powers are being exercised in those schools.

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

Section 63 enables a local authority, and section 66A of the 2006 Act enables the RSC, to require a maintained school which is eligible for intervention⁴⁰ to enter into contracts or 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;

³⁸ Section 70A of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

³⁹ Section 70B of the Education and Inspections Act 2006, as inserted by the Education and Adoption Act 2016.

⁴⁰ Except a school that is eligible for intervention as the result of a teachers' pay and conditions warning notice.

3. to make arrangements to collaborate with a further education body; or
4. to take specified steps for the purpose of creating or joining a federation.

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

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

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

Local authority and Secretary of State powers to appoint additional governors

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

Before making any appointment, the RSC must consult:

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

There is no statutory time scale in which the consultation process is to be completed. We would expect a normal consultation process to have been carried out within 10 (ten) days but this may vary depending on the circumstances 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 exercised their power to appoint additional governors, the appropriate appointing authority in relation to that school may appoint an equal number of foundation governors to those appointed by the local authority, in order to preserve their majority. However, legislation provides that where the RSC has exercised their power, the voluntary aided school is not authorised to appoint foundation governors for the purpose of outnumbering the other governors including those appointed by the RSC⁴¹.

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

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

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

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

Consultation

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

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

⁴¹ Section 67(6)(b) of the Education and Inspections Act 2006.

This requirement for the RSC to consult the bodies in 2, 3 and 4 above does not apply if the local authority has already done so in respect of their own proposal to appoint an IEB. 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.

There is no statutory time scale in which the consultation process is to be completed and it is likely that this will vary depending on the circumstances in which the IEB is required. We would expect a normal consultation process to have been carried out within 10 (ten) days.

Local authorities must use the IEB application form on the DfE website⁴² and should follow the accompanying instructions for the completion of an IEB application form.

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

Delegated budget

An IEB has a right to a delegated budget. If the school's budget has previously been withdrawn from the governing body, then the local authority must restore the budget from the date when the IEB commences its work. If a notice has been given to the normally constituted governing body specifying a date when it is proposed to withdraw the right to a delegated budget, the notice will cease to be valid from the date of commencement of the IEB.

The role and duties of the IEB

The IEB's main function is to secure a sound basis for future improvement in the maintained school and this should include the promotion of high standards of educational achievement.

The IEB is 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, when the governing body is constituted as an IEB, the requirements concerning the governing body's constitution set out in the School Governance (Constitution) (England) Regulations 2012 do not apply.

The IEB will take on the responsibilities of a normally constituted governing body, including the management of the budget, the curriculum, staffing, pay and performance management and the appointment of the headteacher and deputy headteacher. Where the school in question is a foundation or voluntary school, and the IEB members will also be acting as charity trustees, then the IEB members must carry out their duties under

⁴² See under 'Further sources of information'.

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, or recommend that the Secretary of State give a direction to a local authority, that a maintained school should be closed. However, the IEB cannot itself publish proposals for closure. If, following the statutory consultation and other procedures, it is agreed that the school will be closed, the IEB should continue to hold office until the implementation date of the proposal. The IEB may also seek an academy order from the Secretary of State which enables the 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 body⁴³.

Membership of the IEB

As set out in Schedule 6 to the 2006 Act the number of interim executive members must not be less than two. Once the IEB has been established, further interim executive members can be appointed at any time. Also, the RSC can direct the local authority as to the membership and the terms of appointment of an IEB appointed by that authority.

An IEB should be a small, focused group appointed for the full period which it is expected to take to turn the maintained school around. Members of an IEB should be chosen on a case by case basis, depending on the needs of the school, but should normally include individuals with financial skills and experience of transformational educational improvement. Where an academy order has already been made and a proposed sponsor identified, we would expect that the sponsor should be represented on the IEB. If a sponsor is agreed during the operation of the IEB we would expect that a sponsor representative would join the IEB at that point.

Members of an IEB bring a fresh outlook to the governance arrangements of the maintained school, marking a clear break from the previous management of the school. In most cases, therefore, we would not expect existing governors who are vacating office to be nominated as IEB members (although this is not prohibited by the law). Local authorities who are considering doing this should discuss the particular circumstances of the school with the RSC.

The IEB may arrange for the discharge of their functions by other people as they see fit (under paragraph 11(2) of Schedule 6 to the of the 2006 Act). In this way the IEB could continue to benefit from the experience of existing governors and help engage future governors.

⁴³ Under section 5B of the Academies Act 2010 as inserted by the Education and Adoption Act 2016.

The local authority or RSC is able to nominate one of the members of the IEB to act as Chair.

The local authority or RSC should produce a written notice of appointment for each member of the IEB. Copies of this notice should be sent to: all other members of the IEB; the 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 is considered appropriate.

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

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

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

1. who the interim executive members should be;
2. how many members the local authority can appoint;
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 Act⁴⁴, where a local authority has already appointed an IEB, the RSC may take over responsibility for arrangements in connection with the IEB members. If this happens then the notice given by the local authority to the governing body (setting out that it will consist of interim executive members) will be treated as having been given by the RSC and anything else done by or in relation to the local authority in respect of the IEB will be treated as having been done by or in relation to the RSC.

⁴⁴ As inserted by the Education and Adoption Act 2016.

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. Therefore, it may be particularly effective where the governing body is providing insufficient challenge and support to the headteacher or senior management team of the maintained school, or where management of the budget is providing a distraction from improvement priorities for governors.

A copy of the notice to suspend the right to a delegated budget must be given to the head teacher of the 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.

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 in two circumstances: firstly, on the application of a school's governing body; or secondly, if the school is eligible for intervention within the meaning of Part 4 of the 2006 Act (that is, the school has met the coasting definition or has failed to comply with a warning notice).

The RSC is **under a duty** to make an academy order in respect of a maintained school that has been judged inadequate by Ofsted⁴⁵. The RSC **may** make an academy order in respect of a maintained school that has become eligible for intervention because it has been notified that it is coasting or because it has failed to comply with a warning notice. The academy order enables the maintained school to convert to academy status with the support of a sponsor, ensuring the school is supported to turn its performance around.

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

1. the governing body of the school;
2. the headteacher;

⁴⁵ Section 4(A1) of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

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 sponsor 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.

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 sponsor⁴⁶:

- (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 sponsor 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

⁴⁶ In relation to this requirement to consult, for the purpose of this guidance we refer to the identity of 'the sponsor' but this is in fact the identity of the person with whom the arrangements are to be entered into, as described in Section 5A of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

- (III) in the case of a school which has a religious character, the appropriate religious body.

To minimise any delays to the academy conversion process, when an academy order has been made under section 4(A1) or (1)(b) of the Academies Act 2010, the governing body and local authority are under a duty to take all reasonable steps to facilitate the conversion of the school into an academy⁴⁷. Further advice will be given to the governing body and the local authority about what steps they will be expected to take, and to what timescales, to facilitate the conversion.

Where an academy order has been made under section 4(A1) or (1)(b) of the Academies Act 2010, the RSC can also direct the governing body or local authority to take specific steps to facilitate conversion. This can include requiring the governing body or local authority to prepare a draft of a scheme for the transfer of local authority owned land which is no longer, or about to be no longer, used for the purposes of the school⁴⁸, or for the transfer of other assets from the local authority or governing body⁴⁹. The RSC is able to set a date by which these steps must be taken⁵⁰.

The RSC has the power to revoke an academy order which was made because a maintained school is eligible for intervention⁵¹. This power will only be used in very exceptional circumstances – for example, should the maintained school not be viable and therefore it is most appropriate that it should 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. The Secretary of State does have a power to direct a local authority to close a school that is eligible for intervention (see p40).

Duty on the sponsor to communicate to parents information about its plans to improve the school

Once the RSC has identified the academy sponsor for a maintained school that was eligible for intervention and is being required to become an academy, that sponsor will be under a duty⁵² to communicate to parents information about their plans for improving that school, before the school is converted into a sponsored academy.

That communication may typically include:

⁴⁷ Section 5B of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

⁴⁸ Part 1 Schedule 1 to the Academies Act 2010.

⁴⁹ Section 8 Academies Act 2010.

⁵⁰ Section 5C of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

⁵¹ Section 5D of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

⁵² Section 5E of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.

- writing to parents when the sponsor is first matched with the school, to provide more information about them as a sponsor, their ethos, and what parents can expect to happen next;
- providing, in writing, information about their plans to improve the school; and/or
- holding meetings with parents to share information and answer questions.

The sponsor has flexibility to decide how they communicate to parents, to enable them to tailor their approach according to the specific circumstances of the school. For example, the sponsor might agree with the governing body of the school that the governing body will initially write to parents themselves.

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

Section 68 of the 2006 Act enables the Secretary of State to direct a local authority to discontinue a maintained school, where that school is eligible for intervention, on a date specified in the direction⁵³.

This will usually be done where there is no prospect of the maintained school making sufficient improvements. Before this power can be exercised the Secretary of State must consult:

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

If the direction to close a 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.

Powers of the Secretary of State in academies

This Chapter described the statutory intervention powers of local authorities and RSCs in maintained schools.

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

Academies operate in accordance with the terms of individual funding agreements between the academy trust and the Secretary of State. These agreements set out the action the Secretary of State (or an RSC acting on behalf of the Secretary of State) may take if there are concerns about the performance of an academy.

The Education and Adoption Act 2016 also introduced a revised, consistent power into all academy funding agreements to allow action to be taken when an academy is failing (has been judged inadequate by Ofsted) or meets the coasting definition. These arrangements are described in Chapters 2 and 3 of this guidance, respectively.

Funding agreements generally allow RSCs to issue warning notices to academies if:

- the standards of performance of pupils at the academy are unacceptably low;
- there has been a serious breakdown in the way the academy is managed or governed;
- the safety of pupils or staff is threatened; or
- the academy trust breaches the funding agreement in any other way.

On financial matters, the funding agreement requires an academy to comply with the Academies Financial Handbook⁵⁴ and a Financial Notice to Improve may be issued where there are concerns about the finances of an academy.

⁵⁴ The Academies Financial Handbook can be found via <https://www.gov.uk/government/publications/academies-financial-handbook-2015>

Chapter 6: Other local authority duties

School performance

Section 13A of the Education Act 1996 states that a local authority must exercise its education functions with a view to promoting high standards.

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

- Understand the performance of maintained schools in their area, using data to identify those schools that require improvement and intervention;
- Work with the relevant RSC, to ensure swift and effective action is taken when underperformance occurs in a maintained school, including and using their intervention powers, where this will improve leadership and standards; and
- Encourage good and outstanding maintained schools to take responsibility for their own improvement and to support other schools, and enable other schools to access such support.

To comply with these responsibilities, local authorities will need to work closely and co-operatively with RSCs, and with religious bodies (where appropriate).

Academies are accountable to the Secretary of State. Therefore, local authorities should focus their school improvement activity on the schools they maintain. Local authorities should raise any concerns they have about an academy's standards, leadership or governance 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.

Special Educational Needs (SEN)

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

Safeguarding

Local authorities have overarching responsibilities under the Children Act 1989 in respect of the safeguarding of children in need, or those suffering or at risk of suffering significant harm, regardless of where those individual children are educated or found. To comply with these duties, local authorities may need to work with maintained schools, academy trusts, religious bodies (where appropriate), independent schools, further education and sixth form colleges (wherever the individual child concerned is educated) to investigate what action they need to take to safeguard such a child.

Where a local authority has concerns about an academy or free school's safeguarding arrangements or procedures (arising as a result of investigations about individual children or otherwise), these concerns should be reported to the relevant RSC or the Education Funding Agency (EFA) who have responsibility to take any necessary improvement action and to monitor the situation.

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

Where a local authority has a concern about safeguarding at a maintained school, the authority can use its intervention powers as set out in this guidance. In addition to the Schools Causing Concern guidance there are two other statutory guidance documents that provide guidance on the roles and responsibilities for safeguarding: 'Keeping Children Safe in Education' and 'Working Together to Safeguard Children'. The guidance makes clear what all education institutions (including academies and free schools) should do to safeguard children in their care.

Chapter 7: Governance

Full details of the duties on both governing bodies of maintained schools and of 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').

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. To prevent schools becoming eligible for intervention local authorities should promote and support high standards of governance. To do so, they should: be champions for high quality in school governance; help ensure that governors have the necessary skills; and have in place appropriate monitoring arrangements to identify signs of failure in relation to governors' oversight of finance, safety or performance standards.

Maintained schools have codes of conduct for their governors, which will include what training is considered necessary for their governors.

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

Local authorities should have arrangements in place for maintaining up to date records of governors in maintained schools. This should include contact details for chairs of governing bodies, to aid communication with those accountable for schools. It should also enable the carrying out of any necessary due diligence. Ideally, the records should also include schools' registers of interests and enable identification of governors who sit on more than one governing body. Information held by the local authority should also be made available to the Department for Education upon request. Local authorities should also encourage their schools to publish up to date and full details of their governors on the school website (in line with their statutory duties) to ensure transparency to parents and to aid oversight.

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 EFA.

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, has 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 are legally responsible for its effective governance. They 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*⁵⁵, as follows:

- Ensure your charity is carrying out its purposes for the public benefit;
- Comply with your charity's governing document and the law;
- Act in your charity's best interests;
- Manage your charity's resources responsibly;
- Act with reasonable care and skill; and
- Ensure your charity is accountable.

If a school is causing concern or is eligible for intervention, then 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 duties (for example to make decisions solely in the charity's interests). 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.

⁵⁵ 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](#) NCTL guidance
- [External reviews of the pupil premium](#) NCTL guidance
- [Interim Executive Board application](#) Application form and guidance

Other departmental resources

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



Department
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