



## Schools causing concern

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The Government has introduced strategies to help schools where fewer than 30% of pupil achieve 5 A\* to C GCSEs including English and Maths, and to challenge schools that get reasonable GCSE results but where pupils' progress overall is unimpressive. The Government has also proposed new legislative powers to ensure that local authorities use their powers to issue formal warning notices to under-performing schools, and to empower the Secretary of State to require local authorities to take additional advisory services where authorities have been ineffective in tackling low school standards.

This note refers to the recent school improvement strategies, describes the existing powers of local authorities to intervene where schools become a cause for concern, and outlines proposed new legislative powers expected to be included in the forthcoming education bill.

Education is a devolved matter. This note refers to England only.

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# 1 Background

## 1.1 School improvement strategy: the National Challenge

The [Children's Plan](#) set out ambitious goals for educational achievement by 2020.<sup>1</sup> The Government has introduced strategies to help schools where fewer than 30% of pupil achieve 5 A\* to C GCSEs including English and Maths, and to challenge schools that get reasonable GCSE results but where pupils' progress overall is unimpressive. The minimum target is that by 2011 all secondary schools should have at least 30% of pupils achieving 5 A\* to C GCSEs including English and Maths by the end of Key Stage 4.<sup>2</sup>

In June 2008 the Government launched the National Challenge to focus greater attention, help and resources on schools below this benchmark.<sup>3</sup> The Secretary of State announced that £400m would be available to support National Challenge schools over the next three years (£200m had already been announced in the Budget, and the further £200m would be re-directed from existing resources to National Challenge schools.<sup>4</sup> Details of the plans were set out in [Promoting excellence for all: school improvement strategy: raising standards, supporting schools](#) (DCSF, 2008) and [National Challenge: A toolkit for schools and local authorities](#) (DCSF 2008). These documents noted that the target (referred to as the 'floor target') was ambitious; in 1997 about half secondary schools had results below that level, whereas only around a fifth do now.

638 schools were identified as having achievement below the threshold ([Number of National Challenge Schools by Local Authority](#), DCSF, 2008). While it was acknowledged that many of these schools were doing excellent work in difficult circumstances, the toolkit document highlighted that some schools did much less well than others with apparent similarly intakes, and that these schools might need to make a transformational change.<sup>5</sup>

134 local authorities were found to have schools below the threshold, but with most of these authorities having only a small number of these schools. 28 authorities had more than six schools below the floor target but only 9 local authorities had more than ten schools below the target.<sup>6</sup> Local authorities are being asked to review their existing plans for school improvement and consider the extra support they and local partners will provide to lift schools above the threshold by 2011. They were asked to consider the level and kind of additional support schools below the target might need; to assess whether any schools currently above the threshold are at risk of dropping below it; to consider how each National Challenge school makes the most effective use of available services; and, to consider whether structural interventions would be needed for the schools they judged least likely to reach the floor target by 2011.

Various possible structural interventions were examined in the toolkit document.<sup>7</sup> These included closing the school, and possibly replacing it with an academy, where a local authority judges that a clean break with the past is needed to effect a transformation. In

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<sup>1</sup> Cm 7280, December 2007, chapter 3

<sup>2</sup> [Schools Facing Challenging Circumstances](#) (targets to 2011). Key Stage 4 covers pupils aged 14 to 16 and includes the final year of compulsory schooling.

<sup>3</sup> [Written Ministerial Statement, HC Deb 10 June 2008, cc8-9WS](#)

<sup>4</sup> ["400m funding available to support schools to improve at English and maths", DCSF Press Notice, 10 June 2008](#)

<sup>5</sup> [National Challenge: A toolkit for schools and local authorities](#), paragraph 7

<sup>6</sup> [Promoting excellence for all: school improvement strategy: raising standards, supporting schools](#), paragraphs 5 and 21

<sup>7</sup> [National Challenge: A toolkit for schools and local authorities](#), paragraphs 41 to 45

other cases, where the problems are more specific or less deep-seated the authority might decide, for example, that the school should form part of a school federation with a high performing school, that the school should become a trust school to secure external involvement in its governance; or the authority might replace the school governing body with an IEB. Other interventions were explored in the toolkit document.

While additional resources were welcomed there was an outcry from some of the schools identified. They pointed out that the an emphasis on raw examination scores did not take a holistic view of their performance especially as some of the schools had significant numbers of disadvantaged children, and some of the schools were secondary modern schools. There was concern that National Challenge schools would be seen as failing and that that would trigger a spiral of decline as some parents would look for other schools. Furthermore, it was stressed that the list was misleading as some of the schools had received favourable Ofsted inspection reports; some were mentoring other schools to do better. Some commentators questioned how the National Challenge policy fitted with the Government's contextual value added (CVA) scoring as some of the schools on the list were top performers in terms of CVA measurement.<sup>8</sup> Moreover, shortly after the list was published it was found that many of the schools identified had improved and could meet the minimum target.<sup>9</sup>

Some commentators said that the exercise had left a sour taste, and had lacked the recognition that schools exist in their communities and are at the heart of a fragile web of relationships and perceptions.<sup>10</sup> Christine Blower, acting general-secretary of the National Union of Teachers (NUT), thought that the Government had missed the point because, she said, local authorities' capacity had been whittled away so that they have been unable to provide support to schools, and that requiring authorities to 'rap the knuckles' of schools rather than restore and build up support services was both punitive and the wrong target."<sup>11</sup>

Responding to the Government's National Challenge announcement of 10 June, a Local Government Association [press release](#) stated:

It goes without saying that every council wants all schools to deliver the best education and start in life for our children, so will always want to support any initiative designed to help achieve this. Challenging and supporting schools to improve is a top priority for local authorities. This new initiative recognises this is critical and greatly increases its chances of success. Councils must take full advantage of the additional funding to turn the 638 National Challenge schools around.

However, we are disappointed by the National Challenge's centralist design. In signing the National Improvement Strategy, the government committed to a shift towards councils leading the efforts to tackle failing schools, but the opportunity to progress this here has not been taken. Councils need to have

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<sup>8</sup> e.g. "Outstanding but challenged", *Times Educational Supplement (TES)*, 31 October 2008, p6; "national Challenge or national disgrace", *Managing Schools Today*, September/October 2008, pp14 and 15; "Threatened schools to mentor academies", *TES*, 3 October 2008, p3; "real challenge will be to avoid past mistakes", and "Tough targets alone will not be enough", *TES*, 4 July 2008, p14; "When success means failure", *Managing Schools Today*, June/July 2008, pp 8 and 9; "'Failing' tag slashes intakes", *TES*, 25 July 2008, p1; "Threatened schools are doing well", *TES*, 20 June 2008, p1; "Congratulations! But we may now close you", *TES*, 20 June 2008, p10; "Unfairness of being tagged a failure", 13 June 2008, *TES*, 13 June p7; "Failing schools threatened with being taken over", *Financial Times*, 9 June 2008, p2

<sup>9</sup> "Closure threat u-turn for 'failing schools'", *Independent*, 10 November 2008; "Hundreds of 'failing' schools have been left in limbo", *Times*, 6 September 2008, p4

<sup>10</sup> "Why this PM leaves a sour taste", *TES*, 4 July 2008, p27

<sup>11</sup> "Adequate schools to face warning", *Children & Young People Now*, 9 to 15 July 2008, p12

the flexibility to implement plans with their schools that suit their local circumstances as one-size-fits-all solutions will clearly not work. We would also like to point out that some of these schools are already seeking academy status.

Because school improvement is so important, earlier this year the LGA commissioned independent research with councils into 'what works'. The study is not yet complete but it already points up the importance of differentiated targets; clear communication; collaborative approaches between schools; and persistent challenge and review. We will share the final results with councils and schools at the earliest opportunity and, of course, with government.

Press reports in September suggested that 260 of the 638 schools had reached the threshold. Defending the target as a basic benchmark, the Secretary of State insisted that the intention was not to label schools as failing but to ensure that action was taken to improve standards, and support schools above the minimum target but which continue to face obstacles to secure continued improvement.<sup>12</sup>

## **1.2 Government action to tackle 'coasting schools'**

In a [Written Ministerial Statement on 13 November 2008](#), Ed Balls, the Secretary of State for Children, Schools and Families gave an update on the Government's school improvement strategy for secondary schools.<sup>13</sup> He noted that he had agreed proposals for National Challenge Improvement Plans in 48 local authorities. In addition he announced that he was publishing a strategy to improve performance in 'coasting schools' where, despite achieving higher GCSE results, the schools were not fulfilling their pupils' potential. While the GCSE results in these schools may be good enough to earn a reasonable reputation, he said that their performance conceals poor progress, sometimes among its more able pupils and sometimes among those who face additional barriers to learning such as SEN. Such schools are not performing badly enough to receive an inadequate judgement from Ofsted but nevertheless they show too little improvement in attainment and progression over a period of years, and should be achieving better outcomes for their pupils. The Secretary of State said that the Government wanted to focus the attention of parents, governors, heads and local authorities on what they should be expecting their school to achieve. The Government will be working with local authorities to identify schools that could benefit from the programme, but, he said, if schools do not improve the Government will step up the level of challenge and will expect local authorities to use their existing intervention powers.

The DCSF press notice on the announcement said that local authorities will be asked by the end of January 2009 to identify the schools that would most benefit from the strategy. Targeted schools are expected to display one or more of a number of indicators listed in the press notice: ["Next steps for the school improvement strategy", DCSF Press Notice, 13 November 2008](#)

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<sup>12</sup> "More schools, meeting basic GCSE targets, says Balls, *Guardian*, 8 September 2008, p6; "Delight as dozens of schools rise above the 'failed' GCSE benchmark", *TES*, 5 September 2008, p26; "I won't switch off national Challenge case like a tap" (by Ed Balls), *TES*, 5 September 2008, p37; "Schools are making the grade to avert fear of closure...for now", *Times*, 22 August 2008, p2

<sup>13</sup> cc61-63WS

## 2 Schools causing concern

### 2.1 Existing legislative framework for schools causing concern

Local authorities have a strategic role to promote high standards in education, and they have a range of powers to intervene where schools have failed Ofsted inspections. If a school is found to be inadequate when it is inspected, Ofsted will decide whether the school requires significant improvement or special measures. A school requires special measures where it is failing to give its pupils an acceptable standard of education and the persons responsible for leading, managing or governing the school are not demonstrating the capacity to secure the necessary improvement in the school. A school requires significant improvement where it does not require special measures but nevertheless is performing significantly less well than might reasonably be expected. Schools may require significant improvement in relation to their main school or their sixth form, while other parts of the school may be performing satisfactorily. Requiring significant improvement is also sometimes referred to as having a notice to improve.<sup>14</sup>

Local authorities also have a power to issue formal warning notices which enables the authority to intervene even where Ofsted has not graded the school inadequate.

The current legal framework for schools causing concern is contained in the [Education and Inspections Act 2006](#) (EIA 2006). Many of the provisions in Part 4 of the 2006 Act are re-enactments of previous legislation, but there are some significant new measures to ensure that fewer schools become a cause for concern. Comprehensive details about the powers are contained in [Statutory Guidance on Schools Causing Concern](#), published by the DCSF in May 2007, and revised in September 2008. The following draws on this guidance.

Sections 59 to 62 of the Act define when local authorities can intervene in maintained schools:

- when the school has not complied with a valid warning notice (section 60);
- when the school requires significant improvement (section 61);
- when the school is in special measures (section 62).

The new legislation was designed to promote school self-evaluation as a route to school improvement and early intervention where schools needed additional support. School Improvement Partners (SIPs) act as a critical professional friend to a school, helping school management to evaluate the school's performance, identify priorities for improvement, plan effective change and discuss with the school any additional support it may need. SIPs work to national standards and are accountable to local authorities. The statutory guidance states that where a school shows little or no evidence of improvement following discussions with the SIP, and after support commissioned by the local authority, then the local authority should consider issuing a warning notice.<sup>15</sup>

Section 60 of EIA 2006 amended the previous legislation for LA warning notices. It extended the definition of a low standard of school performance to include schools that are badly underperforming in relation to the nature of their pupil intake or the school's general context, in addition to schools at which absolute standards of attainment are unacceptably low.

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<sup>14</sup> [Guide to the law for school governors](#), DCSF, September 2008, chapter 15, paragraph 10

<sup>15</sup> [Statutory Guidance on Schools Causing Concern](#), paragraph 38

Under Section 60(2) of the EIA 2006, a local authority may give a warning notice to the governing body of a maintained school where the authority is satisfied that

- (a) the standards of performance of pupils at the school are unacceptably low, and are likely to remain so unless the authority exercises its statutory intervention powers,
- (b) 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
- (c) the safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise).

For the purposes of section 60(2) 'low' standard of performance is defined further in section 60(3) as meaning the standards are low by reference to any one or more of the following:

- a) the standards that the pupils might in all the circumstances reasonably be expected to attain,
- (b) where relevant, the standards previously attained by them, or
- (c) the standards attained by pupils at comparable schools.

The statutory guidance states:

42. Warning notices should only be used where there is evidence to justify both the local authority's concerns and the school's reluctance to address these concerns through a professional dialogue with the local authority via the SIP within a reasonable timeframe.

43. There may be rare circumstances, when the school's difficulties are believed to be deep-seated or severe, in which the LA may, instead of issuing a warning notice, make a request to Ofsted, via the Local Managing Inspector or regional office, to bring the school's inspection forward. Alternatively, there may be circumstances when a governing body may make representations against a warning notice which may forward an inspection.

Paragraph 44 of the guidance says that local authorities must draw on a suitable range of quantitative and qualitative information to form a complete picture of the school's performance before deciding to issue a warning notice; appropriate forms of evidence are set out in the guidance. For example, in relation to evidence of unacceptably low standards and levels of progress, the guidance states:

46. Quantitative evidence of 'unacceptably low standards' may take one of the following forms; usually a combination of several of these indicators will apply:

- The school's data set indicates that pupil progress is persistently and significantly below expectations.
- There is specific evidence, from close examination of contextual data or other sources that there are groups of pupils performing significantly below expectations.
- Attainment data shows that the school is significantly underperforming and significantly below the national average in core subjects.

47. Qualitative evidence to confirm concerns about the school's standards indicated by the quantitative data may be available from sources such as Ofsted reports, local authority subject inspections, feedback from parents, or analyses of pupils' work.

48. Information from a single academic year is unlikely to be sufficient to justify a warning notice, unless the problems it indicates are severe, or they appear in conjunction with weaknesses in leadership and management. In the majority of cases, local authorities should look at more than one year's data to establish whether standards are improving, declining or fluctuating.

The guidance goes on to note circumstances that may affect the interpretation of available data on pupil performance. Guidance is also provided on the use of data that may indicate evidence of a breakdown in leadership or management. Paragraph 58 of the guidance refers to circumstances where the local authority might refrain from issuing a warning notice even where evidence exists in relation to low standards or breakdown in leadership or management – these include where the school acknowledges the problem and is working effectively to rectify the problem; when the authority has requested that Ofsted bring forward the inspection of the school; and where the school has recently been judged “satisfactory” by Ofsted, and is taking positive steps to rectify the areas identified for improvement.

When giving a warning notice, the local authority must set out the action it is contemplating if the school does not respond satisfactorily. It must also tell the school that it has the right to appeal to Ofsted and must give at the same time a copy of the warning notice to Ofsted. The school must respond to the warning notice, or appeal to Ofsted, within 15 working days. Detailed information on the warning notice process is given in Chapter 2 of the statutory guidance.

Sections 63 to 66 of EIA 2006 set out local authorities' intervention powers. Section 63 was a new power to require such a school to enter into a contract or other arrangement with another school, F.E. college, or other named person for the purpose of school improvement. Section 64 was a re-enactment of previous legislation to allow the local authority to appoint additional governors. Section 65 was a re-enactment of previous legislation to empower the local authority to apply to the Secretary of State to replace the entire governing body with an Interim Executive Board (IEB). Section 66 was a re-enactment of previous legislation to empower the local authority to take back the school's delegated budget. Each of these powers is explained in detail in Chapter 5 of the statutory guidance.

Sections 67 to 69 of EIA 2006 re-enacted the Secretary of State's powers of intervention. The Secretary of State may appoint additional governors if the school requires special measures or significant improvement (section 67); put an IEB in place if the school requires special measures or significant improvement (section 69); or may close a school in Special Measures (section 68). Annex 1 of the statutory guidance provides further information on the Secretary of State's powers.

Section 70 and Schedule 6 re-enacted previous technical provisions about IEBs, creating the rules for governance under an IEB and providing a regulation-making power. Section 71 and Part 1 of Schedule 7 of EIA 2006 comprise amendments to previous legislation on schools causing concern. These provisions:

- require the local authority to consider what action to take immediately after a school is judged to require special measures or significant improvement including how to involve parents;



- empower the Secretary of State to require a local authority to re-consider radical action when the “case becomes urgent”;
- extend the duty on proprietors of non-maintained schools to consider and prepare statements of action if their school is judged to require Special Measures or Significant Improvement.

Under section 72 of EIA 2006 local authorities must have regard to guidance from the Secretary of State when exercising powers in relation to schools causing concern.

The summary table below<sup>16</sup> shows who can currently intervene in schools causing concern, and how:

School	Local authorities	Secretary of State
School in special measures	Full range of powers - closure, forced federation, IEB, additional governors, de-delegation	Closure, IEB, additional governors
School needing significant improvement	Full range of powers - closure, forced federation, IEB, additional governors, de-delegation	Can appoint IEB or additional governors
School with valid warning notice	Full range of powers - closure, forced federation, IEB, additional governors, de-delegation	No current powers
School without warning notice (but with evidence of Current concern)	None apart from general power to close, merge or otherwise re-organise	No current powers
All Schools	LAs have a general power to request an Ofsted inspection	Secretary of State can require Ofsted to inspect any school

In an article in the *Times Educational Supplement*, Maggie Atkinson, president of the Association of Directors of Children’s Services, suggested that the Government had always told local authorities that their powers should only be used in ‘dire circumstances’, and in the same article the *Times Educational Supplement* said that its enquiries suggested that the Secretary of State had barely used his intervention powers.<sup>17</sup>

## 2.2 Proposed new legislative powers

The green paper on the cross-government legislative programme published in May 2008 announced that the Government intended to seek new powers to augment the existing legislation on schools causing concern. The main changes proposed were to give new powers to the Secretary of State to require local authorities to consider the use of their existing warning-notice powers when justified by the school’s performance, and to empower the Secretary of State to appoint additional school governors or an IEB after a valid warning notice has been given. (The latter would be in addition to his current powers to intervene when a school requires special measures or requires significant improvement – see the table

<sup>16</sup> [Delivering the Children’s Plan: Proposals for Revisions to Legislation for schools Causing Concern](#), DCSF, July 2008, p5

<sup>17</sup> “Mr Balls doesn’t flex his muscles”, *TES*, 25 July 2008, p5



above.) The intention is to make the system contained in EIA 2006 more effective, and ensure that it is implemented appropriately.

In July 2008 the DCSF issued a consultation document [Delivering the Children's Plan: Proposals for Revisions to Legislation for schools Causing Concern](#) The consultation document said that, since EIA 2006 was implemented in April 2007, there was evidence that local authorities were not using warning notices in line with the statutory guidance. The evidence included

- Cases where a school has fallen into special measures on inspection some 18 months to two years after the local authority first documented the grounds for concern, which were then confirmed by the Ofsted judgement. While it may be reasonable for the local authority to spend a few months negotiating with the senior leaders and governors on the changes necessary in the school, it is difficult to justify a cause of concern lasting for 18 months without intervention, or sign of improvement.
- The apparent absence of local authority action in cases of long-standing low attainment, both primary and secondary. Some low attaining schools have been stuck at unacceptable levels of performance for several years. For example, there are currently 104 primary schools where Key Stage 2 level 4 attainment rates in both English and mathematics have been below the Government's 65% floor target for five or more years. Most of these schools are not in a formal Ofsted category of concern; the majority have low contextual value added scores, suggesting that the persistently low attainment cannot be fully explained by difficult local circumstances.
- The relatively small number of valid warning notices issued since April 2007, despite a large number of potential candidates. Although it may be argued that the small number of such warnings reflects authorities' successful negotiations with their schools, the evidence above for long-standing problems suggests that more warnings could have been used appropriately.<sup>18</sup>

The consultation document emphasised that decisive action may also need to be considered for two groups of schools:

- schools that are badly and sharply declining in performance, including some of those currently just above the Government's 'floor targets' for primary and secondary schools, but are in imminent danger of dropping below; and,
- schools that have been stuck with low attainment and little or no improvement for several years.

In the case of academies, the consultation document made it clear that the Secretary of State would apply similar principles in relation to warning and intervention when academies are not responding to the need to raise standards (paragraph 21 of the consultation document).

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<sup>18</sup> *ibid.*, paragraph 19

In summary, the consultation document proposed the following changes:

- a further criterion in the definition of when a school may be warned (for the avoidance of any doubt) indicating that a school with persistently poor rates of pupil progress may be eligible for a warning notice.
- new powers for the Secretary of State to require local authorities to consider the use of their existing warning notice powers. It is envisaged that a local authorities would have to respond in a time-limited period and indicate either that it had decided to initiate the warning notice procedure, or had decided not to exercise it giving detailed reasons for not doing so. An additional requirement will be introduced in the warning notice procedure so that in future the Secretary of State will receive a copy of the warning notice issued by the local authority.
- the powers of the Secretary of State are to be widened so that he can appoint additional governors or an IEB after a warning notice has been given.
- an extension of the Secretary of State's current powers to require authorities to take additional advisory services so that the power could apply not only to schools in Ofsted categories of concern but also where an authority maintains a large number or proportion of schools with very low levels of attainment or poor performance relative to their circumstances. For this purpose, the consultation document proposed that the trigger point should link to the legal definition of low standards set out in section 60 of the EIA 2006. The consultation document said that the Secretary of State does not envisage that the power will be used extensively but that it could have an important role in securing improvements where, for example, a local authority has a very high percentage of schools with low standards compared with authorities of a similar size and context; and where most of those schools are failing to make satisfactory progress. It is envisaged that the standards in both primary and secondary schools will be reviewed when use of this power is considered.

The consultation closed on 25 September 2008. The results of the consultation and the DCSF's response will be published on the Department's e-consultation website by the end of January 2009.<sup>19</sup>

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<sup>19</sup> *ibid.*, [paragraph 4.1](#) (in word version of the consultation document)