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Schools causing concern

Statutory guidance for schools and local authorities



Guidance

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Schools causing concern

Audience	Chief executives and directors of education in county and county borough councils in Wales; diocesan authorities; headteachers and governing bodies of maintained schools in Wales; teacher associations and other national and local bodies concerned with education in Wales.
Overview	This statutory guidance provides information on the legislative requirements for intervening in schools causing concern. All those using this guidance, particularly local authorities, should also be familiar with the actual wording of the legislation to which this guidance relates, particularly the Schools Standards and Organisation (Wales) Act 2013.
Action required	Local authorities must have regard to this guidance when considering intervening in schools causing concern in their area.
Further information	Enquiries about this document should be directed to: Schools Management and Effectiveness Division Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ e-mail: SMED1@wales.gsi.gov.uk
Additional copies	This document can be accessed from the Welsh Government's website at www.wales.gov.uk/educationandskills
Related documents	<i>Schools causing concern: Draft guidance for schools and local authorities</i> (2013) School Standards and Organisation Act 2013 Education Acts 1996, 2002, 2005 Learning and Skills Act 2000 Education and Inspections Act 2006 The Education (School Inspection) (Wales) Regulations 2006 The Inspection of Education and Training (Wales) Regulations 2001 The Maintained Schools (Partnership Agreements) (Wales) Regulations 2007 The School Governance (Transition from an Interim Executive Board) (Wales) Regulations 2012 <i>Guidance for the inspection of primary schools from September 2010</i> (Estyn, updated in 2013) <i>Guidance for the inspection of secondary schools from September 2010</i> (Estyn, updated in 2013) <i>Guidance for the inspection of special schools from September 2010</i> (Estyn, updated September 2013) <i>Guidance for the inspection of local authority education services for children and young people from September 2010</i> (Estyn, 2012)

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Introduction

1. The School Standards and Organisation (Wales) Act 2013 ('the Act') consolidates, clarifies and reforms the law in relation to intervention in schools causing concern.
2. The provisions in the Act and this accompanying statutory guidance provide a single point of reference for local authorities when they are considering using their powers to intervene in schools causing concern. They aim to ensure that local authorities are clear about their powers of intervention and those of Welsh Ministers and that they use their powers proactively and effectively to bring about the rapid improvement of underperforming schools. These provisions form part of the Minister for Education and Skills' concerted programme of action to raise school standards in Wales.
3. The reforms respond to concerns that in many local authorities a few schools have been allowed to underperform over a long period of time, mainly because authorities do not use the full range of their powers to improve schools quickly enough. Evidence suggests that very few local authorities have issued warning notices in such circumstances.
4. The guidance sets out clearly the procedures to be followed by local authorities in ensuring that schools causing concern make the necessary changes as early as possible.
5. This is statutory guidance issued under Section 20 of the Act. Local authorities must have regard to this guidance when considering using their powers of intervention to intervene in a school causing concern.

Overview of the provisions of the School Standards and Organisation (Wales) Act 2013

6. Many of the provisions in Part 2 of the 2013 Act are re-enactments of previous legislation, but there have been some changes to ensure that fewer schools become a cause for concern. This chapter provides an overview of the legal effects of Part 2.
7. Section 2 of the 2013 Act reforms and broadens the grounds for intervention. Grounds 1 and 2 have been revised to enable the issue of a warning notice at an early stage where there are concerns about a school surrounding the quality of learning and standards and its leadership and management. Grounds 5 and 6 are new for local authorities albeit they are based on Welsh Ministers' powers to intervene in a school. Both grounds also now extend to head teachers.
8. The list of copy recipients of warning notices issued to the governing body of a foundation or voluntary school is extended to include the appropriate religious body (if the school has a religious character) and the person/body who appoints the foundation governors. In addition a copy of **all** warning notices must be sent to Welsh Ministers.
9. A local authority or Welsh Ministers may intervene in a school without first having issued a warning notice where there is a related risk to the health or safety of any person that calls for urgent intervention.
10. The Act provides a uniform approach to the time limits for intervention to be taken by setting the same flexible window for action by authorities in respect of all intervention powers. It is based on the authority keeping the situation under review and requiring them to be satisfied that the issues have been dealt with, or that exercise of its powers is not appropriate for any other reason. It must notify the governing body of its conclusion in writing.
11. The Act provides local authorities and Welsh Ministers with largely the same powers of intervention. However, there remain some differences, namely, only local authorities can suspend a school's delegated budget, whilst only the Welsh Ministers can direct the federation of a school causing concern or that a school in special measures be closed. Sections 5 to 9 set out local authorities' intervention powers in relation to those schools eligible for intervention:

Local authority powers of intervention

- (i) Section 5 is partly a new power. The power to require a governing body to secure advice derives from section 63 of the Education Act 2002. The power requiring the governing body to collaborate under the Education (Wales) Measure 2011 is new.
- (ii) Section 6 is a re-enactment of previous legislation which allows the local authority to appoint additional governors. However, where the school is a voluntary school there is no longer a power for the appointing authority to

appoint additional governors so as to equal the number of additional governors appointed by the local authority to the governing body.

- (iii) Section 7 is a re-enactment of previous legislation which empowers the local authority to apply to Welsh Ministers to replace the entire governing body with an Interim Executive Board (IEB).
 - (iv) Section 8 is a re-enactment of previous legislation which empowers the local authority to suspend the delegated authority for the school's budget.
 - (v) Section 9 is a new general power which empowers the local authority to give directions to the governing body or head teacher or take any other steps.
12. Each of these powers is explained in more detail in Chapter 1.

Welsh Ministers' powers of intervention

13. Sections 12 to 16 of the 2013 Act set out Welsh Ministers' intervention powers in relation to those schools eligible for intervention.
14. The 2013 Act introduces a warning notices procedure for Welsh Ministers' intervention in schools causing concern which mirrors that of warning notices issued by a local authority.
- (i) Section 12 partly re-enacts an existing power to require the governing body to secure advice. However, the second part of section 12 relating to the power to require the governing body to collaborate under the Education (Wales) Measure 2011 is new.
 - (ii) Section 13 is a re-enactment of previous legislation which allows Welsh Ministers to appoint additional governors.
 - (iii) Section 14 is a re-enactment of previous legislation which allows Welsh Ministers to put an IEB in place.
 - (iv) Section 15 is a re-enactment of previous legislation which allows Welsh Ministers to issue directions relating to the federation of schools.
 - (v) Section 16 re-enacts previous legislation which empowers Welsh Ministers to direct the local authority to close a school in Special Measures.
15. Chapter 2 provides further information about the Welsh Ministers powers.
16. Section 20 of the 2013 Act provides a power for the Welsh Ministers to issue statutory guidance to local authorities which they must have regard to when exercising their powers in relation to schools causing concern. This power is also new. <http://www.legislation.gov.uk/anaw/2013/1/contents/enacted>

Summary of guidance

17. Section 20 of the 2013 Act places a duty on all local authorities in Wales to have regard to any guidance given by the Welsh Ministers in exercising their functions in respect of intervention in schools causing concern as set out in Part 2 of the 2013 Act.
18. This is guidance for local authorities when they are considering intervening in schools causing concern in their area. It also sets out the approach the Welsh Ministers will take in exercising their own intervention and consent functions. All those using this guidance, particularly local authorities need to be familiar with the actual wording of the legislation to which this guidance relates as this guidance is not meant to be a substitute for legislation.
19. A school will be 'eligible for intervention' where:
 - one or more of the grounds 1-6 exist, a warning notice has been issued to the governing body, but it has not complied with that notice to the authority's satisfaction,
 - the school has been deemed by Estyn to require significant improvement or special measures (no warning notice is required), or
 - one or more of the grounds 1-6 for intervention exist and there is a related risk to the health or safety of any person that calls for urgent intervention (no warning notice is required).
20. Where schools are eligible for intervention local authorities may exercise their powers to: require the governing body to secure advice or collaborate; appoint additional governors; suspend the delegated authority for the school's budget; appoint an IEB, give directions to the governing body or headteacher; or take any other steps.
21. Where schools are eligible for intervention the Welsh Ministers have the power to: require the governing body to secure advice or collaborate; appoint additional governors; appoint an IEB; and direct the federation of the school.
22. Where HMCI is of the opinion that a school requires special measures the Welsh Ministers may direct the local authority to close the school.

Legal context

23. This guidance is issued by the Minister for Education and Skills, being one of the Welsh Ministers. The Welsh Ministers are part of the Welsh Government.
24. This circular replaces Welsh Government Circular 004/12. It does not constitute an authoritative interpretation of the relevant provisions of the legislation –that is a matter for the Courts.
25. Maintained schools are subject to regular inspection by Her Majesty's Inspectorate for Education and Training in Wales, ('Estyn'). In most cases schools causing concern (requiring special measures or significant improvement) are identified by Estyn as a result of such inspections. Inspection arrangements are governed by the Education Act 2005 supported by provisions set out in the Education (School Inspection)(Wales) Regulations 2006 as amended by the Education (Amendments Relating to the Intervals for the Inspection of Education and Training)(Wales) Regulations 2010. The regulations include detail on the intervals for inspection, inspection procedures and timescales for preparation of inspection reports and action plans. (These regulations are subject to amendment to remove the current predictability of the timing of Estyn inspection of schools during 2014).
26. Inspections of local authority education services are carried out by Estyn under Section 38 of the Education Act 1997 relating to their education functions, and the functions conferred on them under sections 25 and 26 of the Learning and Skills Act 2000 in relation to training or youth support services.
27. Area inspections are conducted under Section 83 of the Learning and Skills Act 2000. The timescales for the preparation of the inspection report and Action Plan are set out in the Inspection of Education and Training (Wales) Regulations 2001 (as amended).
28. Schools can also be identified as causing concern (requiring special measures or significant improvement) through any inspection or monitoring visit carried out by Estyn under Section 24 of the Education Act 2005.

Scope of this circular

29. This is statutory guidance to local authorities when they are considering intervening in a maintained school in their area which has been identified as a school causing concern. For the purposes of this guidance, a “school causing concern” is a school which is:
- Subject to a Warning Notice issued under the 2013 Act.
 - Not subject to Warning Notice but meets one or more of the grounds for intervention one to six and there is a related risk to the health and safety on any person that calls for urgent intervention.
 - Deemed by Estyn to require significant improvement.
 - Deemed by Estyn to require special measures.
30. Such schools include maintained sixth forms (i.e. sixth forms within a school that also teaches pupils of compulsory school age) but do not include independent schools or provision within the further education sector.

Roles and responsibilities

31. All those involved in the education sector have a common interest in raising standards of achievement and improving the quality of education in schools so as to avoid schools requiring significant improvement or special measures. Historically, the number of schools in Wales identified as causing concern following inspection by Estyn has been relatively small. However, all parties are committed to reducing the number and to securing ongoing improvements in standards. To achieve this, senior management teams in schools and governing bodies need to ensure that there are robust and rigorous processes for self-evaluation and a commitment to the development and implementation of improvement planning. All school should have effective improvement/development plans. It is anticipated that regulations making school development plans a statutory requirement and specifying their content will be introduced in 2014.
32. Schools have the central role in driving improvements in the quality of learning and the standards achieved by young people. In addition to having a central role in delivering education they have a responsibility for their own improvement through school self evaluation, performance management and target setting, and for making the best use of the challenge and support available to them. In particular it is important that prompt and effective action is taken to both build on strengths and identify and address poor performance.
33. Local authorities have statutory responsibility for monitoring and intervening where necessary where there are concerns about school standards. However, in line with the national model for regional working, regional education consortia will deliver school improvement strategies. Local authorities will work in partnership with religious authorities where the school has a religious character, as they are charged with working with and supporting governing bodies and school management teams in securing ongoing improvements in standards. Regional consortia need to monitor schools' progress systematically, identify at an early stage schools where there may be problems and act quickly to prevent difficulties occurring or escalating by providing effective targeted support to improve any shortcomings and/or intervention. Challenging of standards and intervention therefore play a key role in addressing low performance, raising standards and improving the quality of education. It is important that regional consortia and local authorities, working in partnership with schools put in place effective mechanisms for performance monitoring. Such mechanisms have a key role in providing early identification of issues that need to be addressed.
34. Making intelligent use of data to understand a school's needs and taking a proactive role in early intervention are central components of the regional consortia's role in supporting school improvement. Identifying and solving issues early will be less detrimental to pupils' outcomes and more cost-effective than allowing a school to fall into deep rooted failure. In addition, regional consortia will work with local authorities who should have regard to the commitments and actions in respect of children and young people outlined in their Local Service Board-led single strategic plans and thereby ensuring a

joined-up approach to securing school improvement and better outcomes for young people.

35. The Churches and other religious and voluntary bodies work in close partnership with local authorities and regional consortia in providing and supporting schools. The Churches are able to exercise a powerful influence over the schools they provide. They should be kept fully informed of any concerns as soon as they are identified so that they can be fully involved in their resolution. Working in close partnership in this way is more likely to bring about rapid and sustainable school improvement. Particular attention should be given by local authorities, regional consortia and religious authorities¹ to support and where necessary intervene in schools where performance is unacceptably low or where other issues are having an adverse impact on the operation of the school.
36. The four regional education consortia and their respective system leaders (or Challenge Advisors as outlined in the National Model for Regional Working), have a key role in providing support and challenge to schools and local authorities, identifying and disseminating good practice.
37. Inspections of schools are conducted by teams of inspectors, led by a Her Majesty's Inspector of education and training (HMI), additional inspector (AI) or registered inspector (Rgls) and result in a written report. Estyn is a key partner in securing school improvement. Estyn maintains a close working relationship with local authorities through link inspectors who have responsibility in relation to local authority work. This enables Estyn inspectors, local authority officers and regional consortia staff to work together in identifying areas of concern and supporting schools causing concern. The Common Inspection Framework emphasises improved school effectiveness and higher standards for learners. All references in this document to reporting inspector include HMI, AIs and Rgls.
38. Both local authorities and Welsh Ministers have powers to intervene where a school is causing concern. Local authorities are already responsible for managing school improvement. Through regional consortia services, local authorities provide support, monitor, challenge and intervene with the schools in their area. The Welsh Ministers acknowledge therefore that ordinarily local authorities are best placed to consider intervention for schools in their area. Therefore, if intervention is required the local authority will be expected to take that action in the first instance. Welsh Ministers will only intervene where the local authority has failed to do so or done so inadequately.
39. Where a local authority/regional consortium has concerns about a school surrounding the quality of learning and standards achieved by pupils and its leadership and management, prompt action should be taken to support the

¹ In this circular all references to Religious Authorities are references to the appropriate authority which appoints foundation governors to religious voluntary aided schools. For the definition of appropriate authority please see section 98 of the 2013 Act.

school. Such concerns should be based on an appropriate range of quantitative and qualitative evidence available including analysis of performance data, direct observation of the quality of teaching and evaluations of leadership and management. Data would be expected to include attendance and exclusions in a school.

40. In such circumstances the local authority acting via the regional consortia should, in discussion with the school's governing body and senior management team, take prompt and early action to identify areas for improvement and agree appropriate action. The religious authority should be kept informed of any concerns where appropriate in relation to schools with a religious character and work in partnership with the authority and regional consortium and the school to ensure their early resolution. If matters are not resolved within a measurable period (to be determined by the local authority) the local authority should also consider whether it is appropriate to serve the governing body with a warning notice as provided under Section 3 of the 2013 Act.

1. Schools causing concern

1.1 A local authority has the power to intervene in a maintained school where:

- one or more of the grounds 1-6 exist, a warning notice has been issued to the governing body but it has not complied with that notice to the authority's satisfaction,
- the school has been deemed by Estyn to require significant improvement or special measures (no warning notice is required), or
- one or more of the grounds 1-6 for intervention exist and there is a related risk to the health or safety of any person that calls for urgent intervention (no warning notice is required).

Warning notices

1.2 Local authorities and regional consortia are expected to engage schools effectively through a professional dialogue and work in partnership with the religious authority where necessary to address the issues causing the local authority concern. If a school is refusing to engage constructively with the challenge and support commissioned or provided by the regional consortia, the local authority should consider issuing a warning notice in order to bring the necessary support to bear before the issues of concern result in school failure if at least one of the grounds for intervention are satisfied.

Establishing the grounds for a warning notice

1.3 Under section 3 of the 2013 Act. A warning notice may be given to the governing body of a maintained school in any one of the following circumstances:

Ground 1: The standards of performance of pupils at the school are unacceptably low.

Ground 2: There has been a breakdown in the way the school is managed or governed.

Ground 3: The behaviour of pupils at the school or any action taken by those pupils or their parents is severely prejudicing, or is likely to severely prejudice, the education of any pupils at the school.

Ground 4: The safety of pupils or staff at the school is threatened (whether by a breakdown of discipline or otherwise).

Ground 5: The governing body or head teacher has failed, or is likely to fail, to comply with a duty under the Education Acts.

Ground 6: The governing body or head teacher has acted, or is proposing to act unreasonably in the exercise of any of its or his or her functions under the Education Acts.

- 1.4 The definition of what constitutes low standards of performance in Ground 1 is where they are low by reference to one or more of the following:
- The standards that the pupils might in all the circumstances reasonably be expected to attain;
 - Where relevant, the standards previously attained by them.
 - The standards attained by pupils at comparable schools.
- 1.5 Local authorities should draw on a suitable range of quantitative and qualitative information to form a complete picture of the school's performance and take the advice of the regional consortia before deciding to issue a warning notice. This should include as a minimum the All Wales Core Data Sets, but should extend to the full range of relevant quantitative and qualitative evidence available.

Evidence of unacceptably low standards and levels of progress – ground 1

- 1.6 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 All Wales Core Data Set indicates that pupil progress is persistently and/or well below expectations.
 - There is specific evidence, from close examination of contextual data or other sources that there are groups of pupils performing below expectations.
 - Attainment data shows that the school is underperforming and significantly below the national average in core subjects.
- 1.7 Qualitative evidence to confirm concerns about the school's standards indicated by the quantitative data may be available from sources such as Estyn reports, consortia intelligence and reviews including their school categorisation judgments, feedback from parents, or analyses of pupils' work.
- 1.8 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.

Evidence of a breakdown in the way the school is managed or governed – ground 2

- 1.9 Key sources of information to justify a warning notice under this criterion are the school's self-evaluation, target setting, value for money and capacity to improve and Estyn reports.

- 1.10 In addition, some data trends may indicate a breakdown in management and governance. Such data should be treated with caution, as they may also arise for reasons other than poor school leadership.
- 1.11 Data trends which might in some circumstances prompt local authorities to investigate a school's management and governance further include:
- Declining school popularity, possibly revealed through school rolls falling more rapidly than might reasonably be expected from demographic changes.
 - High or increasing absence or truancy rates.
 - High rates of staff turnover, numbers of staff grievances, or capability and disciplinary proceedings.
 - Feedback from parents, or significant or increasing numbers of parental complaints.
 - Evidence of a dysfunctional governing body including non-compliance with the school governance framework.

Evidence of a breakdown of discipline – ground 3

- 1.12 A warning notice would be justified under this criterion where the safety of pupils or staff of the school is threatened due to a breakdown of discipline or otherwise. "Breakdown" implies problems such that the school can no longer function in an orderly way. This may be the result of a number of issues including, staff being unable to maintain discipline and as a consequence large numbers of pupils are truanting, pupils are being violent to other pupils and/or staff at the school, or parental behaviour is causing a problem on the school grounds, resulting in the safety or welfare of pupils or staff being put at risk. It is accepted that such behaviour may occur in all schools from time to time, however, it is the degree to which such behaviour is occurring which is important. It must be to such an extent that it is affecting the orderly running of the school.
- 1.13 Schools have the main responsibility for maintaining discipline. Local authorities have for some years had a reserve power to take whatever steps they think necessary including giving directions to the governing body or head teacher to prevent or put right a breakdown of discipline. They should view this as a power of last resort. Local authorities should use it extremely rarely.

Evidence that the safety of pupils or staff at the school is threatened – ground 4

- 1.14 In certain circumstances, evidence for ground 4 is similar to that of ground 3. However, a separate example of this ground of intervention could be where the school buildings are not physically safe, so that pupils and staff are exposed to increased risks of accidents occurring which is a danger to their health and safety.

Evidence of the governing body/headteacher failing to comply with their duties – ground 5

1.15 An example of this would be that the governing body does not have an appropriate staff disciplinary policy.

Evidence of the governing body/headteacher acting unreasonably in the exercise of any of its functions – ground 6

1.16 An example of this would be that the school does have a staff disciplinary policy but the governing body/headteacher are acting unreasonably as they have disregarded the policy and they have not provided any notice or an inadequate amount of notice for the disciplinary hearing to take place.

Giving a warning notice

1.17 A warning notice must be given in writing to the governing body of the school and must set out:

- The grounds for intervention.
- The reasons why the authority is satisfied that the grounds exist. This should set out in some detail the matters on which the concerns are based and explain the facts that exist in that particular school and the circumstances which are giving cause for concern.
- The action which the governing body is required to take in order to deal with the grounds for intervention.
- The period in which the action is to be taken by the governing body ('the compliance period').
- The action the local authority is minded to take (under one or more of sections 5 to 9 of the 2013 Act or otherwise) if the governing body does not take the required action. (The local authority is not limited to taking the action it said it was minded to in the warning notice).

1.18 In addition to giving the governing body the warning notice, the local authority must also give a copy to the head teacher and in the case of a foundation or voluntary aided or voluntary controlled school the person who appoints the foundation governors and the appropriate religious body (in the case of a school with a religious character).

All warning notices must be copied to the Welsh Government at the same time using the following e-mail address: SMED1@wales.gsi.gov.uk

This is a requirement under section 3 of the School Standards and Organisation (Wales) Act 2013

1.19 The warning notice must set out the action which the local authority "requires" the governing body to take. It is good practice for the local authority also to

provide guidance to governing bodies on how they might comply. The local authority and consortia will continue to support the school to make those improvements. The governing body does not have discretion to decide whether or not to comply; it must comply. If it fails to, the local authority is likely to have grounds (although this will depend on the circumstances of each case) for proceeding to use its statutory powers (to require the governing body to secure advice or collaborate, give directions to the governing body or head teacher or take any other steps, appoint additional governors, suspend the school's delegated budget; or replace the school governing body with an IEB) or the local authority could put a complaint to the Welsh Ministers under Ground 6 for intervention that the governing body is acting unreasonably in failing to comply, and seek a direction from the Welsh Ministers to the governing body under section 17 of the 2013 Act.

- 1.20 Where a warning notice has been given which has not been complied with to the satisfaction of the local authority within the compliance period, the school is eligible for intervention. If urgent intervention is required, this could be as little as one working day after the end of the compliance period. The local authority is not limited to taking the action it said it was minded to take in a warning notice.

Inappropriate issue of warning notices

- 1.21 The governing body may make a complaint to the Welsh Ministers if they feel that the local authority has issued a warning notice inappropriately. This enables the Welsh Ministers to make a direction, under sections 27 or 28 of the 2013 Act if expedient to do so, where they are satisfied that a local authority has acted, or is proposing to act unreasonably with respect to an education function, or where the local authority has failed to discharge a duty under the Education Acts (see grounds 1 to 3).
- 1.22 The Welsh Ministers may request Estyn to inspect and report on a school where there are serious concerns.

Schools eligible for intervention because they have been judged as requiring significant improvement or special measures

- 1.23 If, following an inspection by Estyn a school is identified as causing concern it will be placed in one of the following categories as defined by Section 44 of the Education Act 2005.

Significant improvement – A school requires significant improvement if it is performing significantly less well than it might in all the circumstances reasonably be expected to perform and does not fall into the more serious category of special measures.

Special measures – Special measures are required to be taken in relation to a school if the school 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.

- 1.24 If the school has already been given a warning notice by a local authority and it is subsequently found to be in need of special measures or significant improvement following an Estyn inspection, the judgement means the school is eligible for intervention whether or not the period of compliance in the warning notice has expired or the governing body has made/or intends to make representations to Welsh Ministers.

Notices bringing an intervention period to an end

- 1.25 Where a school is eligible for intervention the local authority must keep the circumstances giving rise to the power under review. If it is satisfied that the grounds for intervention have been dealt with or that using its powers of intervention would not be appropriate for any other reason it must notify the governing body of its conclusion in writing. Where the local authority issues such a notice it should send a copy at the same time to the head teacher, and in the case of a foundation school, voluntary aided or voluntary controlled school, the person who appoints the foundation governors and the appropriate religious body if the school has a religious character.

All notices bringing an intervention period to an end must be copied to the Welsh Government at the same time using the following e-mail address: SMED1@wales.gsi.gov.uk

This is a requirement under section 8 of the School Standards and Organisation (Wales) Act 2013

- 1.26 A school remains eligible for intervention by a local authority until one of the following events takes place:-
- the authority gives notice that it is satisfied that the grounds for intervention have been dealt with or that using its powers of intervention would not be appropriate for any other reason;
 - the Welsh Ministers determine that the power to intervene is no longer in effect and give notice in writing to the local authority and the governing body of their determination;
 - the Welsh Ministers issue a warning notice to the governing body.

2. Powers and types of intervention – local authorities

- 2.1 Where a school is 'eligible for intervention' there are a number of powers the local authority or Welsh Ministers may use to drive up school improvement. These interventions are set out in sections 5 to 9 and 12 to 18 of the 2013 Act. The expectation is that local authorities will act in the first instance. Welsh Ministers will only intervene where a local authority has failed to do so or done so inadequately. Local authorities must give reasonable notice in writing to the governing body that they propose to exercise their powers under any one or more of sections 5 to 9.

Local authority powers

Requirement to secure advice or collaborate

- 2.2 Section 5 enables a local authority to direct the governing body to enter into a contract or other arrangement to secure advice and/or collaborate where a school is eligible for intervention.
- 2.3 Collaboration is not a panacea, but it can be a powerful means to drive up school improvement. Collaborative arrangements should therefore be used wherever appropriate as part of packages of support for schools causing concern.

Purpose of the intervention: To require a school which is a cause for concern to secure advice or collaborate in order to secure improvements.

Best used: Where the school or key figures within it refuse to collaborate with an appropriate partner.

Additional requirements before using power:

- Local authority must consult the governing body of the school and if the school is a foundation or voluntary aided or voluntary controlled school, the appropriate religious body (if applicable) and the person or body who appoints the foundation governors.
- Local authority must find a willing school, college or other organisation, or individual to advise or act as a partner.
- In choosing a suitable partner, local authorities would be expected to take into account the charitable/religious character of a voluntary or foundation school.

- 2.4 Collaborative working can offer schools causing concern access to new perspectives, support and expertise. As a result, some schools are turned around more rapidly than expected, with sustained capacity for future improvements, after working alongside a partner institution.

The appointment of additional governors

- 2.5 Section 6 enables a local authority to appoint additional governors where a school is eligible for intervention. The local authority may appoint as many additional governors as they think fit.

Purpose of the intervention: To strengthen the local authority's voice on the governing body and/or provide additional expertise to the governors in key areas to support a school's improvement.

Best used: Where the governing body needs additional expertise, or the head teacher and senior management team need further challenge and support.

Additional requirements before using this power:

In the case of a voluntary aided school the local authority must consult the appropriate religious body (if applicable) and the person or body who appoints the foundation governors.

Whilst there is no longer a power for a voluntary aided school to appoint foundation governors for the purpose of outnumbering the other governors appointed by the local authority, it is good practice for the authority to provide the governing body and appointing body with information about the appointees before the appointment is confirmed. This will give them an opportunity to raise any concerns about the appointment of a particular individual, or about the terms of their appointment².

All school governors, including those appointed by the local authority must have regard to the religious ethos of the school.

The appointment of an Interim Executive Board (IEB)

- 2.6 Section 7 of the 2013 Act enables the local authority to apply to the Welsh Ministers for consent to constitute the governing body as an IEB in accordance with Schedule 1 to the 2013 Act. An IEB is a specially constituted governing body which replaces a school's existing governing body. For a Foundation or Voluntary School the Governing Body (corporate) is the charity. This power allows it to be reconstituted, but the IEB will be charity trustees in law and accountable accordingly. A local authority must obtain the consent of Welsh Ministers before it appoints an IEB. An IEB can be used to provide challenge to the leadership of the school to secure rapid improvement or where there has been a serious breakdown in the working relationships within the governing body of the school.

² All school governors of a foundation or voluntary school, including those appointed by the local authority, are also charity trustees in law. They must comply with their legal responsibilities as charity trustees and the governing document of the charity. They have an overriding duty to act in the interests of the charity.

Purpose of intervention: To secure a step-change in the leadership and management of a school through the use of a specially-appointed governing body for a temporary period.

Best used: Where the governing body is providing insufficient challenge to the head teacher or senior management team of the school, is providing an obstacle to progress, or where there has been a breakdown in working relationships that is having an impact on standards.

Additional requirements before using power:

- The local authority must consult the governing body, and – in the case of a foundation or voluntary school – the appropriate religious body or other appointing authority.
- The local authority must obtain Welsh Ministers' consent for the establishment of an IEB.

2.7 When considering appointing an IEB, the local authority must determine that the existing governing body is unable to provide the necessary leadership to turn around the school as quickly as possible. The governing body may not agree with the local authority's judgement, which is why the power may only be used with the consent of Welsh Ministers.

Consultation

2.8 Before exercising this intervention the local authority must consult the governing body, and in the case of a school with a religious character, the appropriate religious body or other appointing authority. A fair consultation must be undertaken when proposals are at a formative stage and include sufficient detail to allow those affected to give a considered response. A minimum of 14 days³ should be allowed for parties to respond. When deciding on the appropriate length of time to consult the local authority should take into account Bank holidays and school holidays.

2.9 In determining whether to consent to the local authority's application to replace the governing body with an IEB the Minister must be satisfied on two accounts:

- (i) That the local authority has complied with its statutory duties in the 2013 Act in respect of the issue of a warning notice and undertaken a fair consultation with those affected;
- (ii) That replacing the school's governing body with an IEB is appropriate and justified when taking into account all the relevant facts and circumstances.

³ Unless otherwise stated, all references to days or working days in this Circular mean a day which is not a Saturday, Sunday or Bank Holiday or part of a school holiday.

- 2.10 The Minister looks to Estyn to provide advice on all matters within its remit and is likely to seek advice on all applications to appoint IEB.
- 2.11 IEB applications should be made using the form at annex 2 and should follow the guidance for completion of the form. An appropriately completed form will better enable the Welsh Ministers to make a timely determination. If consent in writing from the Welsh Minister is obtained, the local authority must write to the governing body to give them notice that the IEB will be established (a “notice of establishment”). This notice should specify a date when the IEB will commence and will usually give a date when the IEB will cease.

Delegated budget

- 2.12 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

- 2.13 An IEB should be a temporary measure and its main functions are to secure a sound basis for future improvement in the school and to promote high standards of educational achievement.
- 2.14 The IEB should be considered as the governing body of the school and any reference in the Education Acts to a governor or foundation governor has effect as a reference to an interim executive member. Schedule 13 of the School Standards and Organisation (Wales) Act 2013 provides that regulations made under section 19(2) and (3) of the Education Act 2002 do not apply in relation to IEBs. However, paragraph 13(3) of Schedule 13 to the School Standards and Organisation (Wales) Act 2013 does allow the Welsh Ministers to apply regulations made under those 2002 Act powers to IEBs except for regulations which make provision about the governing body constitution. Further paragraph 13(3) of Schedule 13 to the 2013 Act states that the Instrument of Government of the school does not have effect in relation to the IEB insofar as it relates to the constitution of the governing body. In other respects the Instrument of Government does have effect.
- 2.15 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. An IEB may recommend to a local authority, or recommend that the Welsh Ministers should give a direction to the local authority, that a 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.

- 2.16 In addition, the members of an IEB appointed for a school with a religious character will take on the powers and responsibilities of charity trustees of that charity. The Charity Commission for England and Wales publishes information on the responsibilities of charity trustees on its website www.charitycommission.gov.uk.
- 2.17 The governing bodies of schools with a religious character are exempt charities; they do not register with the Commission; the Welsh Ministers are their principal (i.e. charity regulator). See Charities and charity trustees – an introduction for school governors. http://www.charitycommission.gov.uk/Charity_Requirements_guidance/Specialist_guidance/Education/introduction_for_school_governors.aspx

Membership of the IEB

- 2.18 As set out in Schedule 1 to the 2013 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. An IEB should be a small, focused group appointed for the full period which it is expected to take to turn the school around. Members of an IEB should be chosen on a case by case basis, depending on the needs of the school and existing governors may be appointed to the IEB.
- 2.19 Interim executive members may be removed in limited circumstances. This can be for incapacity or misbehaviour or where their written notice of appointment provides for termination by the appropriate authority on notice. The appropriate authority may be the local authority or Welsh Ministers depending on who made the appointment.
- 2.20 The local authority 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 schools existing governing body; the Welsh Ministers; and, in the case of a school with a religious character, the appropriate religious body or other appointing authority. A local authority or the Welsh Ministers may choose to pay interim executive members such remuneration and allowances as is considered appropriate.
- 2.21 All charity trustees can reclaim out of pocket expenses, but most are unpaid. Where there is a power to pay trustees (as in this case under the Schools Standards and Organisation (Wales) Act 2013), it must be exercised only in the interests of the charity. The level of payment must be justified in the interests of the charity (although in this case the local authority rather than the charity would be paying). The trustees must also manage their conflict of interest. This will mean:
- Trustees (governors or members of an IEB) must absent themselves from any decision affecting their payment.
 - Usually, only a minority of trustees may be paid; there must always be enough unconflicted trustees to be able to make a valid decision.

- 2.22 For further guidance see: Trustee Expenses and Payments <http://www.charitycomission.gov.uk/Publications/cc11.aspx> and Conflicts of interest

http://www.charitycommission.gov.uk?Charity_requirements_guidance/Charity_governance/Good_governance/conflicts_default.aspx.

Transition from an IEB to a normally constituted governing body

- 2.23 The transition from an IEB to a normally constituted governing body needs to be carefully managed. Schedule 1 to the 2013 Act, provides that arrangements for the transition may be prescribed by the Welsh Ministers in regulations.
- 2.24 Under the 'School Governance (Transition from an Interim Executive Board)(Wales) Regulations 2012, a local authority must make arrangements to establish a shadow governing body (SGB) at least 6 months before the IEB ceases. This enables the “shadow” governing body to work alongside the IEB before assuming the full powers of a governing body. The SGB will be constituted in the same way as a schools governing body. The IEB may delegate functions to the SGB during this transition period. When the IEB steps down, the SGB is treated as if it were the normally constituted governing body of the school.
- 2.25 If the date when the IEB will cease work was not given in the notice of establishment, the local authority must send a second notice to the shadow governing body specifying the date when the IEB will be discontinued. This notice should be copied to all members of the IEB, the Welsh Ministers and in the case of schools with a religious character the appropriate religious body.

Associated resources

Questions and Answers in respect of IEBs can be found in Annex 1.

Interim Executive Board application Form and guidance notes are located in Annex 2.

The suspension of delegated authority for the governing body to manage a school’s budget

- 2.26 Section 8 of the 2013 Act enables a local authority to suspend the governing body’s right to a delegated budget, by giving the governing body of the 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.
- 2.27 A copy of the notice to suspend the right to a delegated budget must be given to the governing body of the school and copied to the head teacher.

2.28 The local authority may suspend a governing body's right to a delegated budget in order to secure control of staffing and other spending decisions. This allows the local authority to remove poorly-performing teachers or Head teachers if necessary, or to take control of budget deficits. It also allows governors to focus their time and attention to other priorities for improvement. If the local authority has appointed an IEB, it cannot suspend the school's right to a delegated budget. If the local authority removed the right to a delegated budget before appointing an IEB, it must reinstate the delegated budget when the IEB comes into effect.

Purpose of intervention: To secure control over staffing and spending decisions in order to secure improvement.

Best used: Where the governing body is providing insufficient challenge to the head teacher or senior management team of the school, or where management of the budget is providing a distraction from the improvement priorities for governors.

Additional requirements before using the power: None

Power to give directions and take steps

2.29 Section 9 enables a local authority to give directions to the governing body or head teacher or take any other steps where a school is eligible for intervention. The Direction must be in writing and may be varied or revoked by a future direction.

Purpose of the intervention: To allow local authorities to intervene in a proportionate and suitable way by directing a governing body to take certain action, or desist from taking certain action, without recourse to more extensive forms of intervention.

Best used: Where the governing body has failed to exercise its functions or is exercising them unreasonably.

Additional requirements before using power: None

Timeframe for the exercise of powers of intervention

See paragraph 1.25 and 1.26.

3. Welsh Ministers' powers and types of intervention

3.1 The Welsh Ministers are also able to exercise powers of intervention. However, the local authority is expected to intervene initially. Local authorities are expected to make decisive and effective use of their own intervention powers (see Chapter 2). Welsh Ministers will only use their powers where the local authority has failed to do so, or done so inadequately.

3.2 Schools are eligible for intervention by Welsh Ministers where:

- the school has failed to comply with a warning notice from the local authority to the Welsh Ministers satisfaction within the compliance period and they are satisfied that the local authority has not taken, and is not likely to take adequate action to deal with the grounds for intervention;
- the school has failed to comply with a warning notice from the Welsh Ministers within the compliance period;
- the Welsh Ministers are satisfied that one or more of the grounds for intervention 1-6 exist and there is a related risk to the health or safety of any person that calls for urgent intervention (no warning notice required);
- the school requires significant improvement (no warning notice required);
- the school requires special measures (no warning notice required).

Warning notice

3.3 The 2013 Act introduces a warning notice procedure for Welsh Ministers' intervention where none previously existed. Welsh Ministers may give a warning notice to the governing body of a maintained school where one or more of the grounds for intervention 1-6 exist and the local authority has either not given a warning notice to the governing body of the school or has given a warning notice but in terms the Welsh Ministers consider to be inadequate.

3.4 If Welsh Ministers issue a warning notice to a school any intervention action taken by the local authority (including a warning notice issued by the local authority) ends.

3.5 Welsh Ministers would take into account the whole range of qualitative and quantitative evidence available, including prior action taken by the local authority when forming a view whether to intervene or as to the most appropriate means of action to take. In practice, Welsh Government officials would consult with local authorities regarding schools that are causing concern and eligible for intervention by Welsh Ministers to find out what, if any, action the local authority has put in place to offer early support to the school.

Timeframe for the exercise of powers of intervention

- 3.6 Where the school is eligible for intervention as a result of being given a warning notice, there is a flexible window based on the Welsh Ministers keeping the situation under review and requiring them to be satisfied that the issues have been dealt with or that the use of their powers would not be appropriate for any other reason before closing the window.
- 3.7 The Welsh Ministers' power to intervene in the school remains until they give notice to the governing body and the local authority in writing that the grounds for intervention have been dealt with or that use of their powers of intervention would not be appropriate for any other reason. A copy of this notice must be given to the headteacher and in the case of a school with a religious character the appropriate religious body.

Welsh Ministers' powers

Power to require governing body to secure advice or collaborate

- 3.8 Section 12 of the 2013 Act allows Welsh Ministers to direct the governing body to enter into a contract or other arrangement with a specified person (who may be the governing body of another school) for the provision to the governing body of specified services of an advisory nature or require them to collaborate.

Additional requirement before using this power

Before the Welsh Ministers can exercise this intervention power they must consult the governing body, and in the case of a school with a religious character – the appropriate religious body (if applicable) and the body that appoints foundation governors.

In choosing a suitable partner Welsh Ministers would be expected to take into account the charitable/religious character of a voluntary aided, voluntary controlled or foundation school.

Power to appoint additional governors

- 3.9 Section 13 of the 2013 Act allows the Welsh Ministers to appoint additional governors at any time a maintained school is eligible for intervention; the Welsh Ministers may appoint any such number of additional governors as they see fit.

Requirement before using this power

Before the Welsh Ministers can exercise this intervention power in the case of voluntary aided school they must consult the appropriate religious authority (if applicable) and the body that appoints foundation governors.

All school governors of a foundation or voluntary school including those appointed by the Welsh Ministers, are also charity trustees in law. They must comply with their legal responsibilities as charity trustees and the governing document of the charity. They have an overriding duty to act in the interests of the charity, not to represent or act on the direction of the Welsh Ministers.

3.10 The Welsh Ministers may pay any governor appointed such remuneration and allowances as is considered appropriate. All charity trustees can reclaim out of pocket expenses, but most are unpaid. Where there is a power to pay trustees (as in this case under the School Standards and Organisation (Wales) Act 2013), it must be exercised only in the interests of the charity, although the Act is clear that the Welsh Government and not the charity would be paying). The trustees must also manage their conflict of interest. This will mean:

- Trustees (governors or members of an IEB) must absent themselves from any decision affecting their payment.
- Usually, only a minority of trustees may be paid; there must always be enough unconflicted trustees to be able to make a valid decision.

For further guidance see: Trustee Expenses and Payments <http://www.charitycomission.gov.uk/Publications/cc11.aspx> and Conflicts of interest

http://www.charitycommission.gov.uk?Charity_requirements_guidance/Charitygovernance/Good_governance/conflicts_default.aspx.

3.11 The legislation provides that a voluntary aided school is not authorised to appoint foundation governors for the purpose of outnumbering the other governors appointed by the Welsh Ministers.

Power to provide for the governing body to consist of interim executive members

3.12 Under Section 14 of the 2013 Act the Welsh Ministers may require the governing body of a school to be constituted as an IEB in accordance with Schedule 1 to the Act where the school is eligible for intervention. The Welsh Ministers will normally only use this power if the local authority is unable or unwilling to make such arrangements itself, and the action is judged to be necessary to secure rapid improvement of the school.

Additional requirements before using this power

Before the Welsh Ministers can exercise this intervention power they must consult the local authority, the governing body, and – in the case of a school with a religious character – the appropriate religious body (if applicable) and the person or body who appoints the foundation governors.

This requirement to consult does not apply if the local authority has already done so in connection with a proposal of its own to appoint interim executive members.

The same rules of charity law apply to members of an IEB constituted for a Foundation or Voluntary Aided or Voluntary Controlled School as to individual governors appointed for such a school.

Power to direct federation of schools

- 3.13 Under Section 15 of the 2013 Act the Welsh Ministers may direct the governing body to federate with another maintained school(s) or with an existing federation. In addition the Welsh Ministers may direct that a school which is causing concern and which is part of a federation leave that federation. Effective federations can drive school improvement, enabling schools to share resources, best practice, facilities and expertise.

Additional requirements before using this power

Before the Welsh Ministers can exercise this intervention power they must consult the local authority, the governing bodies concerned and – in the case of foundation or voluntary schools – the appropriate religious body or other appointing authority.

In the case of Foundation or Voluntary schools the Welsh Ministers would be expected to take account of charity law requirements when exercising this function.

Power to direct the closure of a school

- 3.14 Section 16 enables the Welsh Ministers to direct a local authority to cease to maintain a school where that school is eligible for intervention by virtue of it requiring special measures. This will usually be done where there is no prospect of the school making sufficient improvement in an acceptable timeframe.

Additional requirement before using this power

Before the Welsh Ministers can exercise this intervention power they must consult the local authority, the governing body, and – in the case of schools with a religious character – the appropriate religious body or other appointing authority.

- 3.15 If the direction to close a 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 school.

General Power to give directions and take steps

- 3.16 Section 17 enables the Welsh Ministers to give directions to the governing body or the headteacher or take any other steps to deal with the grounds for intervention. It is best used where the governing body or headteacher has failed to exercise its functions or is exercising them unreasonably.
- 3.17 All Directions under this chapter must be in writing and may be varied or revoked by a future direction.

Power to publish proposals to close a school's sixth form

- 3.18 Where a school's sixth form has been judged to require significant improvement in two consecutive Estyn inspections, or where a maintained school has been assessed as requiring special measures but where the sixth form is identified as requiring significant improvement the Welsh Ministers may propose closure of the school's sixth form.
- 3.19 In most instances a decision on a school requiring special measures or significant improvement will be applied to provision for all age groups being made by a school. However, there is potential for Estyn to determine that provision being made in a school for the sixth form requires significant improvement. Such a judgement could be made as a result of an inspection carried out under Section 28 of the Education Act 2005 or through the school being included as part of an area inspection under Section 83 of the Learning and Skills Act 2000.
- 3.20 As defined by Schedule 7, paragraph 1(2) to the Learning and Skills Act 2000 as amended by the Education Act 2005 a school requires significant improvement in relation to its sixth form where:
- (a) The school is failing to give its pupils over compulsory school age and acceptable standard of education; or
 - (b) In relation to its provision for pupils over compulsory school age, the school is performing significantly less well than it might in all the circumstances reasonably be expected to perform.

4. Schools requiring special measures or significant improvement

- 4.1 The procedures and timescales in this Chapter apply to inspection of all maintained schools. For a school sixth form see also Chapter 5.

When does a school require special measures or significant improvement?

- 4.2 If, following an inspection under Section 28 of the Education Act 2005 or an area inspection under Section 83 of the Learning and Skills Act 2000, a Reporting Inspector considers a school to be causing concern a judgement will be given that the school requires 'special measures' or 'significant improvement' (see definitions in Section 2 of this circular).
- 4.3 Schools causing concern (requiring special measures or significant improvement) can also be identified through any inspection or monitoring visit carried out by Estyn under Section 24 of the Education Act 2005.
- 4.4 Estyn's handbooks 'Guidance on the Inspection of Primary and Nursery Schools', 'Guidance on the Inspection of Secondary Schools' and 'Guidance on the inspection of Special Schools and Pupil Referral Units' set out the criteria used by inspectors in reaching a judgement that a school requires special measures or significant improvement. They can be viewed on Estyn's website through the attached link www.estyn.gov.uk.

What happens when it is judged that a school requires special measures or significant improvement?

- 4.5 As part of oral feedback at the end of the inspection the Reporting Inspector will inform the head teacher that in view of serious deficiencies identified as a result of the inspection it is proposed that the school requires special measures or significant improvement. This meeting may include a representative from the school's governing body or the appropriate authority for the school. The governing body must invite the local authority and where appropriate, the diocese to be present at all or part of the feedback meeting. The local authority may however wish to be represented by a regional consortia representative. However, only one representative from either the local authority or the regional consortia should attend, but not both.

Timescales for preparation of inspection report and action plans

- 4.6 The Reporting Inspector has 35 working days from the date on which the Section 28 school inspection was completed to produce the final inspection report and summary. The inspection report and summary will be subject to Estyn's quality assurance and moderation processes. Estyn will provide the school with a draft of the inspection report to help check the factual content. The school has 5 working days to consider the report and provide comments on factual accuracy.

- 4.7 The inspection report will be submitted to Her Majesty's Chief Inspector (HMCI) who will decide whether to support the inspection team's view on the need for special measures or significant improvement.

What happens if HMCI disagrees with the findings of a Reporting Inspector?

- 4.8 The school only requires special measures or significant improvement if HMCI agrees with the Reporting Inspector's judgement. If HMCI disagrees with the findings then HMCI's judgement takes precedence. However, HMCI may form the view that a school judged by the Reporting Inspector as requiring special measures is a cause for concern but decide to place the school in the lesser category of requiring significant improvement. The HMCI may also place the school in a more severe category if a school is initially identified as requiring significant improvement but needs special measures.

What happens when HMCI agrees that a school requires special measures or significant improvement?

- 4.9 If a school requires special measures or significant improvement, in accordance with Section 37 of the Education Act 2005, HMCI has a duty to notify the Welsh Ministers and the local authority without delay. All inspection reports are published electronically on Estyn's website and can be accessed through the attached link <http://www.estyn.gov.uk/home.asp>.

Action required by the school once found to require special measures or significant improvement

Action Plan

- 4.10 The governing body is required to prepare a written statement of the action it proposes to take in the light of the key issues identified in the inspection report. The written statement is usually known as the Post Inspection Action Plan and should also set out the period within which each action identified will be addressed. The local authority should work closely with the head teacher and governing body of the school and where applicable, the appropriate religious authority to provide support in drawing up the action plan. It is expected that work on the action plan begin as soon as early warning of the school being identified as a cause for concern is provided by the Reporting Inspector or HMI at the end of the inspection.
- 4.11 Currently the Action Plan must be completed within 45 working days (this timescale may be reduced in the future) from the date the governing body received the final inspection report. However, Welsh Ministers may specify a shorter timescale if they are of the opinion that the urgency of the case requires a shorter period.
- 4.12 Schools should aim to make a draft of the Action Plan available to Estyn for comment at least 10 working days before the statutory deadline. This allows

time for Estyn to write to the school with any suggested improvements to the Plan. However, the governing body must submit the Action Plan to Estyn by the statutory deadline.

What if the school does not have a delegated budget?

4.13 Where the school does not have a delegated budget the local authority is responsible for producing and submitting the Action Plan. The Action Plan must also be made available to the governing body in these circumstances.

Destination of final Action Plan

4.14 A copy of the final Action Plan must be submitted to HMCI, the Welsh Ministers, the local authority and the school staff. In addition, the governing body is required to:

- make a copy of the Action Plan available for inspection by members of the public at such times and at such place as may be reasonable;
- provide a copy, free of charge to any person who asks for one or in those cases set out in the regulations on payment of a small fee (not exceeding the cost of supply);
- take such steps as are reasonably practicable to secure that every parent of a registered pupil at the school receives a copy of the Action Plan or summary of the plan as soon as is reasonably practicable.

4.15 With regard to foundation governors, the appropriate authority must also send a copy of the summary to the person or the appropriate religious authority who appoints the governors.

What should the Action Plan set out?

4.16 The Action Plan should set out the work proposed to enable the school to make sufficient improvement to address the deficiencies identified by Estyn as soon as possible. Most schools are expected to make the required improvements within one year of being found to require significant improvement or within 2 years of requiring special measures. The format of the Action Plan is a matter for schools. Schools may wish to make use of the School Effectiveness Framework in improvement planning. As a minimum, however, for each area for improvement identified in the Inspection report the Action Plan we would expect the action plan to specify:

- the action the school proposes to take;
- the support the school will access to address the area for improvement;
- lead responsibility for the action proposed;
- the timescale for the work to be completed with key milestones;

- success criteria, including targets for improvements in learner outcomes, against which progress will be judged;
- resources to be applied to the work;
- how progress will be monitored e.g. who, when and how;
- how it will inform parents and carers about the actions planned for the school; and
- how it will ascertain parents' views on these actions and how it will take those views into account.

What action is required by local authorities and when?

- 4.17 The local authority should work closely with the head teacher and governing body of the school and, if appropriate, the religious authority, in drawing together the school's Action Plan. Under Section 40 of the Education Act 2005, the local authority is also required to prepare a written statement of any action it proposes to take in the light of the school inspection report that identifies a school as requiring special measures or in need of significant improvement. The written statement should also set out the period within which it is proposed to take such action. The written statement of support must be produced within 10 working days from the date that the local authority received a copy of the school's Action Plan or within 12 working days from the date by which the appropriate authority is required to have distributed the school's Action Plan (whichever is the earlier). If the local authority does not propose to take action it must still produce a written statement setting out its reasons.
- 4.18 The local authority must submit a copy of the statement to HMCI, the Welsh Ministers and, in the case of a voluntary aided school, to the person who appoints the foundation governors and, if different, also to the appropriate appointing authority (i.e. the diocesan authority). Where the local authority is the appropriate authority for the school (i.e. where the school does not have a delegated budget), there is no requirement to prepare a written statement (as the local authority will have prepared the school's Action Plan).
- 4.19 Welsh Ministers may direct a shorter period for preparation of the written statement where they are of the opinion that the urgency of the case so requires. The time periods referred to in relation to the completion of written statements, exclude Saturdays, Sundays, Good Friday, Christmas Day and any other bank holidays but do not exclude any other school holidays.
- 4.20 Best practice indicates that the school, local authority and, where appropriate, the Diocese should work closely to prepare complementary plans. It is important that the local authority's written statement is closely tailored to the specific needs of each school.

What should the local authority statement contain?

- 4.21 The format for the written statement is a matter for each local authority.

However, it is suggested that the statement should provide:

- an assessment of the governing body's Action Plan and the school's ability to implement the plan;
- detail on the action the local authority plans to take to address the areas for improvement identified in the inspection report;
- identified responsibilities for ensuring the action takes place;
- timescales with key milestones;
- success criteria including targets for improvements in learner outcomes against which progress will be judged;
- detail on how progress will be monitored e.g. who, when and how;
- resources to be applied to the work;
- whether the local authority intends to use its powers of intervention to require the governing body to secure advice or collaborate, give directions to the governing body or head teacher and take any other steps, appoint additional governors, withdraw the school's delegated budget or replace the governing body with an IEB; and
- how it will inform parents and carers about the actions planned for the school. How it will ascertain parents' views on these actions and how it will take those views into account.

Who approves the school Action Plan and local authority statement?

4.22 Estyn will evaluate the school's Action Plan and local authority's written statement and write to the governing body, local authority and Welsh Ministers to advise whether the action plan and statement are considered fit for purpose to secure the necessary improvements within a reasonable timescale. If Estyn does not consider the school's Action Plan and local authority's statement of support to be fit for purpose, it will require them to be amended and re-submitted until Estyn is satisfied that plans are appropriate to bring about the necessary improvements within a reasonable timescale. In this context it is anticipated that in most instances schools should aim to make sufficient progress to be removed from special measures within 2 years and to be removed from requiring significant improvement within 1 year, but each case must be taken on merit.

Monitoring of schools causing concern

Schools requiring special measures

4.23 For schools requiring special measures, in most instances Estyn will carry out termly monitoring visits to the school starting the term following publication of the inspection report. Estyn will assess the progress made by the school and the local authority in implementing the action plan and the written statement to

address the issues identified in the school inspection report. Estyn will write to the Chair of the governing body, the local authority and the Welsh Ministers following each monitoring visit to report the progress made by the school since the initial inspection.

- 4.24 The letter will include HMCI's judgement as to whether the school still requires special measures. Estyn will continue to carry out monitoring visits until such time as HMCI is of the opinion that the school has improved sufficiently to be removed from special measures.
- 4.25 Where progress is assessed as insufficient local authorities and the Welsh Ministers may consider the need to invoke their statutory powers of intervention in respect of the school (see Chapter 4 of this circular).

Schools requiring significant improvement

- 4.26 For schools requiring significant improvement, in most instances, Estyn will re-inspect the school approximately twelve months after publication of the inspection report. Estyn will assess the progress made by the school and local authority in implementing the action plan and written statement to address the issues identified in the school inspection report. A report of the visit will be sent to the Chair of the governing body, the local authority and to the Welsh Ministers. The letter will include HMCI's judgement as to whether the school should be removed from the list of schools requiring significant improvement.
- 4.27 Where Estyn considers that good progress has been made to address the areas of concern identified in the inspection HMCI may judge that the school can be removed from the list of schools requiring significant improvement. If progress is insufficient, HMCI will give consideration to the school requiring special measures. In exceptional cases, where a school has made some progress and is nearly, but not quite, at a point where it can be removed from the list of schools requiring significant improvement, HMCI will consider one further monitoring visit after a further 6 months. If the school has made suitable progress, Estyn will report as in paragraph 4.26 above.

5. Parental engagement

- 5.1 Strong parental engagement can have a positive impact on the morale of the school and its community, the school's overall performance, and the educational achievements of individual pupils.
- 5.2 The Welsh Government expects local authorities to ensure that parents are properly informed and engaged when their child's school is causing concern. We expect the school action plan and local authority statement of support for a school requiring significant improvement or special measures to set out how they will communicate with and ascertain the views of parents at the school.
- 5.3 Some local authorities already have experience of good practice in the engagement of parents and carers where a school goes into an Estyn category, for example:
- holding a meeting for parents to explain the inspection findings and outlining the plans for improvement;
 - producing a regular newsletter to update parents on the progress the school is making;
 - a regular parents' forum where parents can talk to one another and to a senior member of staff or a governor about making things better at the school;
 - groups to involve parents on particular issues which the school needs to address; for example, a group of parents, staff governors and an education welfare officer meeting together to work on raising school attendance.

Annex 1: Further guidance on Interim Executive Boards (IEBs)

Interim Executive Boards (IEBs) – Questions and answers

1. The 2013 Act gives local authorities and the Welsh Ministers powers to provide for a school governing body to consist of an IEB. The powers to appoint an IEB are intended to be used in circumstances where a governing body is judged to be incapable of improving performance and turning a school around even with support. IEBs are governed by provisions set out at Section Schedule 1A to the 2013 Act. The effect of appointing an IEB is that all existing governors cease to hold office from the date appointed.

What is the procedure for a local authority to appoint an IEB?

2. The local authority must obtain the consent of the Welsh Ministers before it can appoint an IEB. The local authority should give a written explanation to the governing body (and where appropriate other relevant bodies including the religious authority) on the intention to apply for an IEB and maintain details of their response.
3. A local authority may apply to the Welsh Ministers for permission to replace the school's governing body with an IEB where a school has failed to comply with a Warning Notice or has been identified by Estyn following inspection as requiring special measures or significant improvement. The local authority must obtain the consent of the Welsh Ministers before serving notice on the governing body that an IEB will be appointed.
4. The IEB is appointed by the local authority and assumes all of the responsibilities of a governing body. With regard to foundation and voluntary schools, the local authority is required to consult the diocese or other appointing authority before applying to the Welsh Ministers for permission to put an IEB in place.
5. The IEB is charged with overseeing the development and implementation of work to ensure that pupils are provided with an acceptable standard of education. After a period the IEB is replaced by a normally constituted governing body which acts in a shadow capacity before assuming the full powers of a governing body.

Key facts

What is the role of an IEB?

6. The IEB should be considered to be the governing body of the school for the time it is in place. It will take on all the responsibilities of a governing body, including the management of the budget, the curriculum, staffing, pay and performance management and the appointment of the head teacher and deputy head teacher. The IEB's main functions are to secure a sound basis

for future improvement in the school and promote high standards of educational achievement. The IEB may determine its own procedures and make such arrangements as it thinks fit for the discharge of its functions.

7. Schedule 13 of the Schools Standards and Organisation (Wales) Act 2013 provides that Regulations made under section 19 (2) and (3) of the Education Act 2002 do not apply in relation to IEBs. However, paragraph 13 (3) of Schedule 13 to the School Standards and Organisation (Wales) Act 2013 does allow the Welsh Ministers to apply regulations made under those 2002 Act powers to IEBs except for regulations which make provision about the governing body constitution. Further, paragraph 13(3) of Schedule 13 to the 2013 Act states that the Instrument of Government of the school does not have effect in relation to the IEB insofar as it relates to the constitution of the governing body. In other respects the Instrument of Government does not have effect.

What will be the composition of the IEB?

8. An IEB will be made up of a number of Interim Executive Members (IEMs). There is no maximum number of IEMs for an IEB but there must be at least two. However, in applying to the Welsh Ministers to establish an IEB the local authority will need to set out the range of expertise that will be drawn together and why the authority believes that the IEB will be better placed than the current governing body to secure improvement. Applications will need to be supported by a brief outline of the skills and experience of the proposed IEMs. An existing governor may be appointed as an IEB member. The appropriate authority may nominate one of the IEMs to be chair of the IEB. Every appointment of IEM must be made in writing setting out the terms of the appointment. An IEM may be removed from office at any time by the appropriate authority for misbehaviour or for incapacity and the appropriate authority shall also be able to terminate his or her appointment by notice.

What will be the term of appointment for IEMs?

9. It is anticipated that members will be appointed for the full period which it is expected to take to turn the school around.

What will be the selection criteria for IEMs?

10. IEMs should be chosen on a case by case basis depending on the school's needs. Existing governors may be appointed to the IEB. Once the IEB has been established, further IEMs can be appointed at any time. IEMs may be removed by the local authority. The local authority should produce a notice of appointment for each IEM. Copies of this notice should be sent to all other members of the IEB, the school's governing body, the Welsh Ministers, and – in the case of schools with a religious character – the appropriate appointing religious authority. The local authority may also nominate an IEM to be chair of the IEB.

Remuneration

11. Local authorities may choose to pay IEMs whatever amount they consider appropriate.
12. IEMs appointed for Foundation or Voluntary Schools are automatically charity trustees. All charity trustees can reclaim out of pocket expenses, but most are unpaid. Where there is a power to pay trustees (as in this case under the Schools Standards and Organisation (Wales) Act 2013), it must be exercised only in the interests of the charity. The level of payment must be justified in the interests of the charity (although in this case the local authority or Welsh Ministers rather than the charity would be paying). The trustees must also manage their conflict of interest. This will mean:
 - Trustees (governors or members of an IEB) must absent themselves from any decision affecting their payment;
 - Usually, only a minority of trustees may be paid; there must always be enough unconflicted trustees to be able to make a valid decision.

For further guidance see: Trustee Expenses and Payments <http://www.charitycomission.gov.uk/Publications/cc11.aspx> and Conflicts of interest

http://www.charitycommission.gov.uk/Charity_requirements_guidance/Charity_governance/Good_governance/conflicts_default.aspx.

Delegated budget

13. 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.

Can an IEB recommend closure of a school?

14. An IEB may recommend to a local authority that a 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.

Appointment of an IEB at a foundation or voluntary school

15. Where a local authority seeks to appoint an IEB at a foundation or voluntary school, it must consult the appropriate religious body or other appointing authority before applying to the Welsh Ministers. Ministers will expect to see

evidence of the full involvement of the religious body or appointing authority in any decision to establish an IEB.

16. The members of an IEB appointed for a Foundation or Voluntary School will automatically be charity trustees. The governing bodies of Foundation and Voluntary Schools are exempt charities; they do not register with the Commission; the Welsh Ministers are their principal (i.e. charity regulator). See Charities and charity trustees – an introduction for school governors http://www.charitycommission.gov.uk/Charity_requirements_guidance/Specialist_guidance/Education/introduction_for_school_governors.aspx.
17. IEMs will be required to respect the religious ethos of the school and ensure that the character of the school is maintained.

Transition from an IEB to a normally constituted governing body

18. The transition from an IEB to a normally constituted governing body needs to be carefully managed. Schedule 1A to the School Standards and Framework Act 1998, as amended by the Education Act 2002, provides that arrangements for the transition may be prescribed by the Welsh Ministers in regulations. Under the School Governance (Transition from an Interim Executive Board)(Wales) Regulations 2012, the process will begin with a period when a “shadow” governing body works alongside the IEB before assuming the full powers of a governing body.
19. If the date when the IEB will cease work was not given in the notice of establishment, the local authority must send a second notice to the shadow governing body specifying the date when the IEB will be discontinued. This notice should be copied to all members of the IEB, the Welsh Ministers and in the case of foundation or voluntary schools the diocese or other appropriate appointing authority.

How long before the shadow governing body assumes full powers of a governing body?

20. The “shadow” governing body should work alongside the IEB for a minimum of six months before taking full responsibility as the governing body of the school. In some cases, it may be necessary for a shadow governing body to work alongside an IEB for longer than six months. For example, a full academic year would allow the shadow governing body to experience a complete year of the planning and management cycle.
21. Members of the shadow governing body should attend IEB meetings as observers to help smooth the school's return to normal governance arrangements.

Application to Welsh Ministers to establish an IEB

22. A local authority must obtain the consent of the Welsh Ministers before it can appoint an IEB (using the application form at annex 2). When a local authority wishes to replace a governing body with an IEB, it must:
- (i) consult the existing governing body and, in the case of a foundation or voluntary school, the diocese or other appointing authority; *A fair consultation must be undertaken when proposals are at a formative stage and include sufficient detail to allow those affected to give a considered response. A minimum of 14 days should be allowed for parties to respond, but each case may be different and the length of time for consultation may vary.*
 - (ii) Complete and send an application to establish an IEB to the Welsh Government – using the application form at Annex 2; and, after obtaining approval from Welsh Ministers.
 - (iii) Write to the governing body to provide notice that the IEB will be established (a “notice of establishment”). This letter should state when the IEB will commence, and should indicate when it is anticipated that the IEB will cease to function. In the case of foundation or voluntary schools, this letter should be copied to the diocese or other appropriate appointing authority.
23. For further guidance please contact:

Head of Schools Management and Effectiveness Division
Department for Education and Skills
Welsh Government
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Annex 2: Application form for Welsh Ministers' consent to appoint an IEB

Application to Welsh Ministers to replace a School Governing Body with an Interim Executive Board

LA School
1. Brief description of the school, including status (community, foundation, aided), location number on roll.
2. Date of Warning Notice to governing body/Report from Estyn placing the school in the category of special measures/significant improvement.
3. Background and reasons for application, to include details of all offers of support to the school/consultation taken prior to application for IEB.
4. Date the Governing Body was first informed of application for IEB, including dates of appropriate consultation meetings and minutes of relevant meetings.
5. Governing Body's response to IEB proposal (or attach separately).
6. Religious authority's response to IEB proposal (in the case of a foundation or voluntary school which is a Church in Wales school or a Roman Catholic Church school) (or attach separately).
7. In the case of all foundation or voluntary schools, the reaction to the proposal of the person or persons by whom the foundation governors are appointed.
8. List of proposed members of the IEB, with a brief outline of their suitability, skills and experience (or attach separately).
9. Planned life of IEB and plans for exit strategy (or attach separately):
Signed Dated Full Name: Position

Part 2 – for Chair of Governors to Complete

Do you support the application for an IEB? Yes/No
If no please state reasons below (or attach separately):

Signed:
Dated:
Name:
Position:

Part 3 – For a representative of the appointing authority to complete (where applicable)

Do you support the application for an IEB? Yes/No
If no please state reasons below (or attach separately):

Signed:
Dated:
Name:
Position:

Guidance notes for completion

The background and reasons for the application should outline:

The brief history of the improvement issues facing the school and the key steps taken by local authorities over last 3 years to tackle them/details of partnership working with the diocesan authority if appropriate to address weaknesses.

The local authorities' view of the governing body's commitment and capacity to tackle issues and take advice, for example, identifying whether it is a block to school improvement (and if this is intentional), and why the local authority feels it should be replaced.

Questions 4 & 5, 6, 7 – In answering these questions, the local authority should set out what steps it has taken to inform governing body/diocesan/ appointing authority of its intention to replace it with an IEB. It should record the reaction/response of governing body/diocesan authority to the IEB proposal; including the nature and extent of formal consultation (this should include evidence that the local authority has informed each member of the governing body of their intention to establish an IEB and allowed a reasonable time for the governing body to respond).

If there is no formal response from the governing body, the local authority must endeavour to include a letter from the Chair of Governors to the effect that consultation has occurred. If the Chair of Governors does not respond to this request, the local authority must state explicitly why they are not able to provide evidence of consultation, for example, that the governing body are refusing to discuss the issue.

Question 8 – The answer to this question should give the reasons why the proposed membership has sufficient capacity to allow Welsh Ministers to feel confident that the school will make the necessary progress in a timely manner. The proposed membership should reflect a range of expertise and represent different stakeholders' interests. The local authority should give reasons for the choice of the IEB Chair; ideally this should be someone independent from the school and local authority.

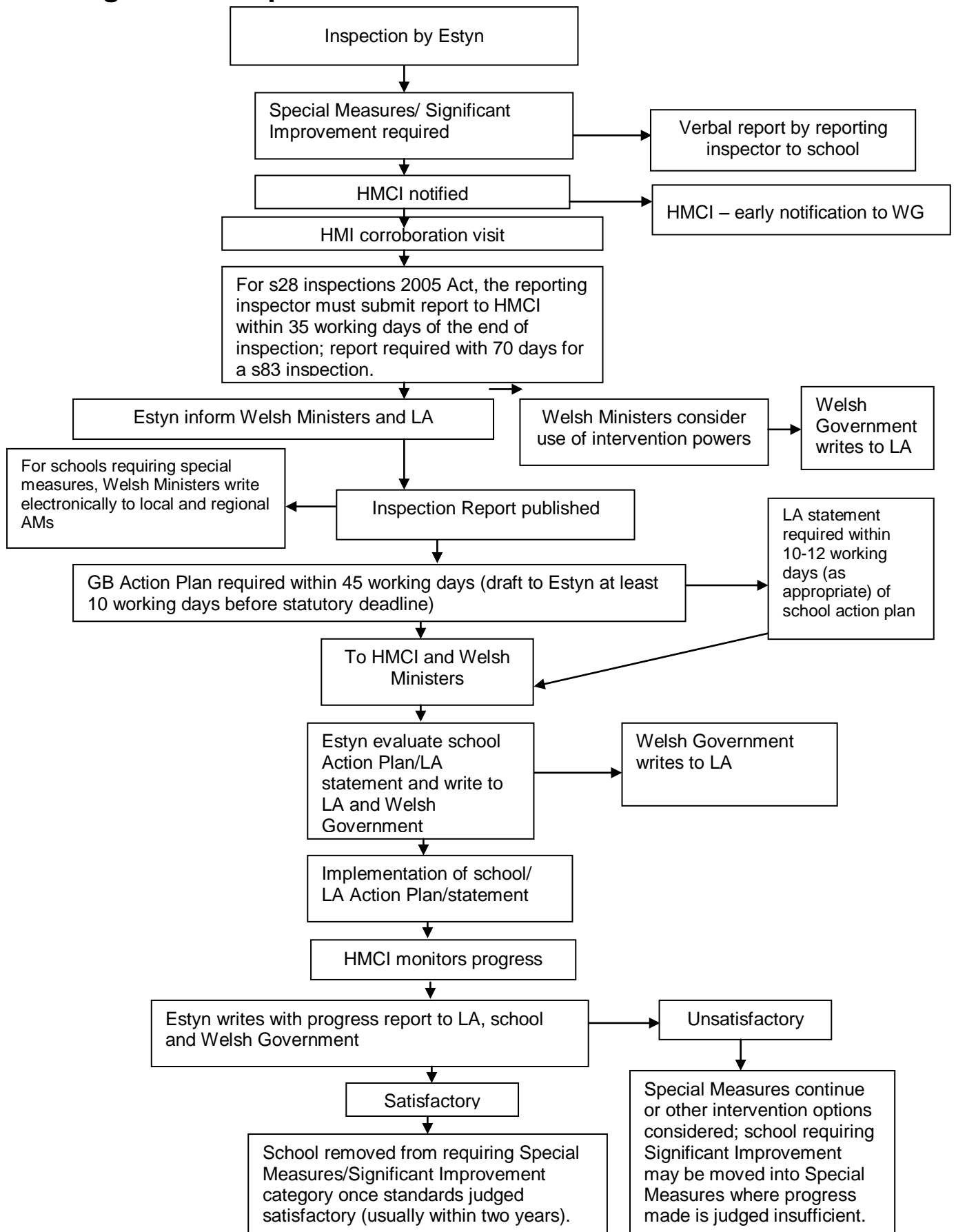
Further advice

Local authorities should note that applications cannot be processed unless the necessary statutory processes have been followed correctly, which includes the processes for issuing a warning notice (where relevant), and undertaking consultation before applying for an IEB.

In addition, the following should be noted:

1. Applications should be succinct and with specific evidence presented as referenced annexes.
2. The local authority should be able to demonstrate: that recovery/improvement is more likely as a result of the IEB being established proper and timely steps have been taken to support the school to address its improvement needs proper and timely consultation has occurred with the Governing Body and other relevant authorities e.g. the appropriate religious authority.
3. Where the local authority sees the establishment of an IEB as a means of successfully establishing a collaborative arrangement to improve the school, it will be expected that the local authority has fully outlined the advantages of the collaborative arrangement to the Governing Body, and it is clear that governors are not prepared to take the steps necessary to implement this solution.

Annex 3: Process for schools requiring special measures or significant improvement



Annex 4: Governing body action checklist

- Verbal report on inspection conclusions to senior management of school.
- Copy of inspection report received.
- Copy of report and summary:
 - made available for inspection by members of the public;
 - made available to any person who asks for one;
 - every parent of a registered pupil at the school has received a copy of the summary of the report within 10 working days of receipt.
- Prepare Action Plan within 45 working days of receipt of inspection report.
- Submit draft Action Plan to Estyn for comment at least 10 working days Before statutory deadline.
- Submit agreed Action Plan to:
 - the Welsh Ministers;
 - Estyn;
 - Local Authority.
- Copy of Action Plan:
 - made available for inspection by members of the public;
 - made available to any person who asks for one;
 -

Annex 5: Local authority action checklist

Copy of inspection report and summary received.

Where the local authority is not the appropriate authority

(i.e. where the school has a delegated budget):

- copy of the school's Action Plan received;
- Local Authority prepare a written statement of action the authority proposes to take within 10 working days from receipt of the school governing body's action plan;
- Local Authority consider whether to use powers of intervention to appoint additional governors, suspend the right to a delegated budget, or appoint an Interim Executive Board.

Where the local authority is the appropriate authority (i.e. where the school does **not** have a delegated budget), the local authority must:

Inspection Report

- ensure that every parent of a registered pupil at the school receives a copy of the summary inspection report within 10 working days of receipt;
- make a copy of the inspection report and summary available for inspection by members of the public;
- provide a copy of the full inspection report and summary to any person who asks for one;

Action Plan

- prepare an Action Plan within 45 working days of receipt of inspection report;
- submit draft Action Plan to Estyn for comment at least 10 working days before statutory deadline;
- submit final Action Plan to:
 - the Welsh Ministers;
 - Estyn;
 - the school's governing body.

- copy of Action Plan:

- to be made available for inspection by members of the public;

- to be made available to any person who asks for one;

-

Powers of intervention

- Local authority consider whether to use powers of intervention to appoint additional governors, suspend the right to a delegated budget, or appoint an Interim Executive Board.