



Department  
for Education

# **Academy Trust Intervention Powers**

**Schools Bill Factsheet**

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# Contents

Schools Bill Factsheet: Academy Trust Intervention Powers	3
What is the Government's policy objective?	3
Why is legislation needed?	3
What is the effect of the legislation?	4
How will this work in practice?	4
Notice to improve	4
Compliance direction	5
Key questions and answers	6
Part 2: Additional detail on Delegated Powers	9
Power to issue compliance direction	9
What does this delegated power do?	9
How does the Government intend to use this power?	9
Prescribing the duties that are subject to the compliance direction power	10
What does this delegated power do?	10
How does the Government intend to use this power?	10
Power to issue Notice to Improve	11
What does this delegated power do?	11
How does the Government intend to use this power?	11
How is the Notice to Improve different from the compliance direction power?	11
Defining financial restrictions	12
What does this delegated power do?	12
How does the Government intend to use this power?	12
Termination on grounds of insolvency	13
What does this delegated power do?	13
How does the Government intend to use this power?	13
Power to appoint directors	14
What does this delegated power do?	14
How does the Government intend to use this power?	14

# Schools Bill Factsheet: Academy Trust Intervention Powers

These measures will strengthen the Secretary of State's ability to intervene in underperforming academy trusts, including new powers aimed at addressing failures of governance and management in trusts.

## What is the government's policy objective?

As set out in the Schools White Paper, the government is committed to building the capacity of high-quality trusts across the school system. This requires the development of a strong and effective system of oversight so that instances of failure can be rapidly addressed. The new intervention framework will allow for intervention both in relation to a trust's management of its individual academies and where weaknesses are identified at academy trust level, directly contributing to the government's plans to move towards a fully multi-academy trust (MAT) based system.

## Why is legislation needed?

The intervention framework for trusts has not kept pace with developments in the academy sector. The current intervention framework facilitates intervention mainly where failures occur at an individual academy, rather than addressing issue at trust level. It relies on a limited menu of powers, mostly contractual, which are ultimately limited to the termination of funding agreements. These limitations mean intervention activity can be slow or ineffective, and that it can be difficult to remedy specific breaches of requirements which may not, in themselves, justify termination action. This risks the provision of education and the efficient use of public funds and has the potential to undermine confidence in the sector.

The new intervention powers will extend the ways in which we can tackle failings, including through an approach which supports improvement at trust level. This will provide a range of options so that the Secretary of State can act proportionately and quickly to secure improvement without necessarily having to transfer the school to a different academy trust.

The new intervention powers will also override existing provisions in funding agreements which vary depending on when the academy agreement was entered into. The new statutory powers will ensure that intervention can be taken consistently across the sector providing greater clarity and certainty to schools, parents and academy trusts.

## What is the effect of the legislation?

The new trust-level intervention powers will facilitate more proportionate, transparent and effective engagement with underperforming single and multi-academy trusts. These powers will focus on addressing weaknesses in governance and management, for which trusts are accountable. In particular, these powers will be the enforcement mechanism for the new Academy Trust Standards that are being introduced as part of the Bill.

The measures will provide a menu of powers that can be used more flexibly, providing statutory mechanisms for driving rapid improvements, allowing for trusts to be improved rather than transferring their schools to another trust .

In summary, the legislation will introduce the following:

1. A power to issue a Notice to Improve and impose financial restrictions on academy trusts
2. A power to issue a compliance Direction
3. A power to direct the appointment of trustees and to replace existing trustees with an Interim Trust Board
4. Statutory powers to terminate funding agreements

As highlighted in the Schools White Paper, the government has not always been able to intervene adequately in the small number of trusts that have fallen short of the standards it expects all trusts to meet. These intervention measures will help to address this in the future.

Termination powers currently in individual funding agreements will be incorporated into legislation so the powers can be applied consistently across the academy sector.

## How will this work in practice?

The government proposes to introduce new trust-level intervention powers to facilitate more proportionate, transparent and effective engagement with single and multi-academy trusts. The new framework will work as follows.

### Notice to improve

Where weaknesses in the management or governance of an academy trust or its academies are identified, or where there has been a failure to comply with legal obligations imposed on academy trusts under legislation or the funding agreement, the department may issue the trust with a Notice to Improve, setting a time-frame by which those weaknesses must be addressed. A Notice to Improve will impose certain financial restrictions on the trust whilst the notice remains in place.

For example, it may become apparent that an academy trust has failed to properly assess and address the risk of a recent high turnover of staff, leading to a temporary shortage of teaching staff. This is likely to amount to a breach of the requirement in the new academy trust standards to have a robust system of risk management. In deciding whether to issue a Notice to Improve, the department would be likely to want to take into account the educational performance of the trust and its strategic governance arrangements to assess its ability to manage the temporary staff shortages. If a Notice to Improve were to be issued, it would identify the weaknesses and set a deadline for the trust to address those weaknesses.

## Compliance direction

Where a failure to properly discharge a specific duty is identified, the department may issue a direction, specifying the action which the trust must take or refrain from taking in order to ensure compliance with that specific duty. The following are examples of the circumstances in which a direction might be issued.

1. If the academy trust's attendance policies did not conform to the requirements of the new attendance duties being introduced under this Bill, the Secretary of State would issue a direction requiring the academy trust to update its policies in line with that legal requirement.
2. A parent of a pupil at an academy could be concerned about the outcome of a complaint to an academy trust and the case is referred to the Secretary of State to consider. It appears that the academy trust has complied with the legal requirement to have a complaints policy in place and to follow that complaints policy when considering the parent's complaint. The Secretary might nevertheless be concerned that the academy trust had reached an irrational conclusion in deciding the complaint. The Secretary of State could then consider issuing a direction for an unreasonable exercise of a statutory function and require the academy trust to remedy the irrational element of the decision.

In both of these instances, if the issues are resolved, no further intervention action will take place. If the identified issues are not resolved, or if there is non-compliance with the restrictions in the Notice to Improve or the Direction, the department will consider taking further intervention action.

In the case of non-compliance with a Direction, the department may choose to issue a Termination Notice which could result in the trust's funding agreements being terminated and the academies transferring to a different academy trust.

In the case of a failure to comply with a Notice to Improve, the department may:

- appoint an interim trust board to take over the running of the academy trust, or
- direct the appointment of additional trustees, or
- issue a Termination Notice

The department may also use these powers if the safety of staff or pupils at one or more of the trust's academies is threatened or if there has been a serious breakdown in the trust's governance or in the management of its academies.

The department's existing powers to intervene at individual academy level will remain largely unchanged, save for the fact that the powers will now be set out in statute rather than in individual academy funding agreements.

## **Key questions and answers**

### **Why are these powers needed?**

The intervention framework for trusts has not kept pace with developments in the academy sector. Powers to intervene have mainly applied at individual academy level and not at trust level and the system currently relies on structural change – moving academies from one trust to another.

These powers will change that, enabling the government to tackle failings wherever they are identified, including at trust level, and extending the range of ways in which we can do so.

### **Is this an acknowledgement that the department doesn't have the power to prevent mismanagement in trusts?**

The government already takes action wherever an academy is judged 'Inadequate' by Ofsted, or where financial mismanagement and/or governance failure is identified. The government also takes swift action where there are safeguarding concerns and the safety of staff or pupils is threatened.

The government currently has a range of powers where there is evidence to suggest individuals are unsuitable to manage schools. We have used these powers against several individuals to date and have strengthened our internal processes so that we can better identify and investigate alleged misconduct.

These new powers are designed to ensure that as more schools become part of multi-academy trusts, the government can provide targeted, proportionate intervention at trust level.

### **Does this mean that more academies will end up in the scope of intervention measures?**

The vast majority of trusts are well managed and are meeting their obligations. The proposed intervention measures would not create new burdens for these high performing academy trusts. The use of these intervention measures where required will help drive up standards and strengthen the entire school system.

It is important that the Secretary of State is able to act quickly, proportionately and decisively where necessary to secure improvement, rather than leaving underperformance unchallenged. These measures are about putting in place a strengthened regulatory framework as we move towards a fully trust-based system.

### **When will these measures come into force?**

The government expects these measures to come into force in September 2023, alongside the Academy Trust Standards measures.

### **How will the Power to issue a Notice to Improve work?**

The Secretary of State will have the power to issue a Notice to Improve if he is satisfied that there are significant weaknesses in the management or governance of an academy trust and/or if the academy trust is in breach of its legal obligations under statute or the funding agreement. This power already exists in academy funding agreements in relation to the enforcement of the provisions in the Academies Trust Handbook. However, the proposed new power will allow the department to consider a broader range of factors when assessing whether intervention is required. The power to issue a Notice to Improve will be the key mechanism for enforcing the new Academy Standards Regulations. The Notice will identify the relevant weaknesses/breaches and set a timeframe for improvement but it will not dictate how the academy trust is required to address the weaknesses/breaches.

### **How will the Direction Power work?**

In circumstances where an academy trust has failed to comply with certain legal obligations or has or is proposing to act in a way in relation to those obligations which is unreasonable, the direction power can be used to set out what the trust must do in order to rectify that failure.

Academy trusts will be under a legal requirement to comply with a direction from the Secretary of State under this power. Failure to comply with the direction would likely result in a mandatory order or a Termination Warning Notice.

### **How will the Interim Trust Board work?**

The intention is for the Secretary of State to serve a notice on the academy trust notifying it that the board will be constituted as an Interim Trust Board (ITB) from the date specified in the notice.

The existing trustees will automatically cease to hold their posts as trustees on the date specified in the notice and the ITB trustees will automatically become trustees of the academy trust from the same date.

The ITB trustees will have the same powers and duties as ordinary trustees of academy trusts. The members' powers of appointment, removal and direction will be removed whilst the ITB is in place.

### **Why are termination powers being moved into legislation?**

Existing powers to terminate funding agreements are currently set out in individual funding agreements which can vary depending on when the funding agreement was entered into. Incorporating the powers into legislation will mean that the Secretary of State can exercise these powers on a consistent basis in relation to all academies, providing greater legal certainty to both the department and the academy sector.

New termination powers are also required as a means of enforcing the new intervention powers and to reflect the key role multi-academy trusts now play in the education sector.

The effect of termination can be to enable an academy, or all the academies in a trust, to be transferred to another trust or trusts; or, exceptionally, to close an academy or academies.



## **Part 2: Additional detail on Delegated Powers**

### **Power to issue compliance direction**

#### **What does this delegated power do?**

This power will enable the Secretary of State to issue directions to academy proprietors requiring them either to take specific actions, or not take specific actions to ensure compliance with certain statutory duties and the requirements of their funding agreements. The statutory duties which will be subject to the power will be set out in secondary legislation made by the Secretary of State (explained below).

#### **How does the government intend to use this power?**

The department intends to use this power to address specific breaches of legal requirements or to prevent unreasonable performance of those duties. It is likely to be used where there are otherwise no significant underlying concerns about the academy trust.

In circumstances where an academy trust has breached or is likely to breach a relevant duty or has or is proposing to act in a way in relation to that duty which is unreasonable, the direction power can be used to set out what the trust must do in order to ensure that it meets that duty in a reasonable way.

Academy trusts will be legally required to comply with a direction from the Secretary of State under this power. Failure to comply with the direction would likely result in a Termination Notice being issued or formal legal action to enforce compliance.

## **Prescribing the duties that are subject to the compliance direction power**

### **What does this delegated power do?**

This delegated power will be used to set out a list of duties via regulations. If these duties are not met, a compliance direction may be issued. The power to issue a direction is explained above.

### **How does the government intend to use this power?**

The government will make regulations setting out which duties can be enforced by means of the compliance direction power. These duties will include the duties set out in the academy trust standards regulations, and a number of other duties already applying to academies under education law and children's law. The department does not intend to extend this power to duties which are not directly related to academy trusts' functions as providers of education. For example, duties under company law and health and safety law will not generally be brought within the scope of the direction-making power. As further duties are placed on academy trusts in future, these regulations may bring them within the scope of the direction-making power.

## **Power to issue Notice to Improve**

### **What does this delegated power do?**

This power will enable the Secretary of State to issue a Notice to Improve where there are significant weaknesses in an academy trust's governance or in the management of its academies or where the academy trust has breached a statutory duty or a requirement of its funding agreement.

### **How does the government intend to use this power?**

The Secretary of State will have the power to issue a Notice to Improve if they are satisfied that there are significant weaknesses in the management or governance of an academy trust and/or if the academy trust is in breach of its legal obligations under statute or the funding agreement. This power already exists in academy funding agreements in relation to the enforcement of the provisions in the Academies Trust Handbook. However, the proposed new power will allow the government to consider a broader range of factors when assessing whether intervention is required.

The power to issue a Notice to Improve will be the key mechanism for enforcing the new Academy Standards Regulations. The Notice will identify the relevant weaknesses/breaches and set a timeframe for improvement, but it will not dictate how the academy trusts is required to address the weaknesses/breaches.

The government intends to use this power to address underlying weaknesses in an academy trust.

### **How is the Notice to Improve different from the compliance direction power?**

The Notice to Improve power is intended for use where there are significant weaknesses in the management or governance of an academy trust, or its academies, or where the trust is failing to comply with its legal obligations. It is intended for those cases where there is a need for longer-term improvements. By way of contrast, the compliance direction power is likely to be used where it is clear that compliance with the direction will resolve the issue swiftly, or where urgent action is required, for example due to safeguarding reasons.

In some instances, a Notice to Improve may be issued following a direction in order to address any underlying weaknesses which led to the breach of duty.

## **Defining financial restrictions**

### **What does this delegated power do?**

Under the existing contractual regime, when a Notice to Improve is issued, there are certain financial decisions for which the academy trust must obtain the Secretary of State's consent. As provisions are moved from contractual arrangements to legislation, this power will enable the Secretary of State to specify in secondary legislation (regulations) which restrictions will automatically apply whilst a Notice to Improve is in place. The Bill also allows the Secretary of State to impose further restrictions on case-by-case basis.

### **How does the government intend to use this power?**

The requirements will replicate the existing provisions under the current contractual regime which are moving onto a statutory footing. The Academy Trust Handbook lists the financial decisions which currently require the Secretary of State's consent when the academy trust is under a Notice to Improve. These financial restrictions will be included in the regulations. It is envisaged that other restrictions will be added to a Notice to Improve on a case-by-case basis to deal with issues which are specific to the case in question. For example, the Secretary of State may require the prior approval of transactions with a particular individual or organisation where there are concerns about a conflict of interest.

## **Termination on grounds of insolvency**

### **What does this delegated power do?**

Under the current contractual regime, an academy trust may seek to terminate the funding agreement if it is of the opinion that running the academy in question would cause the academy trust to become insolvent. The Bill incorporates this termination power in legislation but not the process as it is currently set out in funding agreements. This is because the process is fairly lengthy and technical, and it wasn't therefore considered appropriate to include it in the primary legislation. The power enables the Secretary of State to make secondary legislation (regulations) to set out the process for termination of a funding agreement on the ground of insolvency.

### **How does the government intend to use this power?**

The government will use this power to set out the process as it currently applies in funding agreements. This includes the appointment of experts and the opportunity to make representations as to the solvency of the academy trust. Placing the process in secondary legislation enables it to be updated to keep pace with changes it i as the department and the academy sector become more familiar with its use. The government will engage with the academy sector when making any changes to the process in the regulations.

## **Power to appoint directors**

### **What does this delegated power do?**

This power will enable the Secretary of State to appoint additional trustees/directors to an academy trust board. The Secretary of State can either appoint additional trustees/directors to an existing board, or appoint an Interim Trust Board (ITB) whereby new trustees will replace all the existing trustees.

### **How does the government intend to use this power?**

#### **Interim Trust Boards (ITB)**

The power to appoint an ITB will be triggered if an academy trust has failed to address the weaknesses identified in the Notice to Improve, if there has been serious breakdown in governance or management or if the safety of the staff or pupils is threatened.

The Secretary of State will serve a notice on the academy trust notifying it that the board will be constituted as an ITB from the date specified in the notice. The existing trustees will automatically cease to hold their posts as trustees on the date specified in the notice and the ITB trustees will automatically become trustees of the academy trust from the same date.

The ITB trustees will have the same powers and duties as ordinary trustees of academy trusts. The academy trust's members' powers of appointment, removal and direction will be suspended whilst the ITB is in place. The Bill permits ITB trustees to be remunerated, regardless of anything in law or the academy trust's articles of association which prohibits such remuneration. The Secretary of State will be responsible for agreeing and meeting the costs of the remuneration

#### **Appointing additional Trustees/Directors**

As with the ITB, the power to appoint additional trustees/directors will be triggered if an academy trust has failed to address the weaknesses identified in the Notice to Improve, if there has been serious breakdown in governance or management or if the safety of the staff or pupils is threatened.

This power may be used to direct the academy trust to use its best endeavours to appoint trustees with relevant skills and experience, where the Secretary of State has identified a gap in the board's expertise. This power will also permit the Secretary of State to direct the appointment of a specific individual or individuals. Where the Secretary of State directs the appointment of a specific individual, the Bill permits that individual to be remunerated, regardless of anything in law or the academy trust's articles of

association which prohibits such remuneration. The Secretary of State will be responsible for agreeing and meeting the costs of the remuneration.



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