

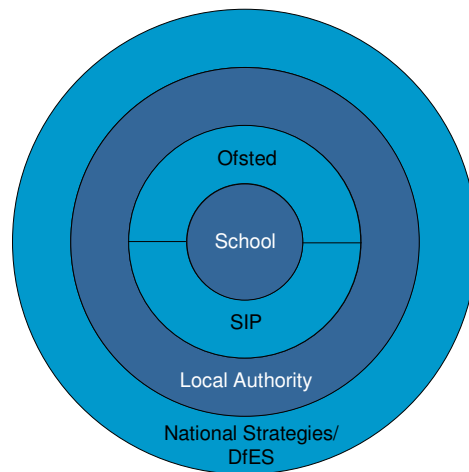
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# Introduction

## Purpose of guidance

1. This guidance relates to Part 4 of the Education and Inspections Act 2006: the provisions relating to schools causing concern in England (sections 59 – 73 and schedule 7).
2. Part 4 of the Act builds on existing statutory powers and good practice to ensure that every pupil is provided with the education and opportunities they deserve. It does this by:
  - Enabling earlier action to tackle school underperformance so that it does not become entrenched and lead to formal school failure
  - Ensuring that effective support and challenge is provided immediately when unacceptable standards are identified, so that improvements can be made quickly
  - Securing decisive action if a school in Special Measures fails to make sufficient improvements, so that the education and life chances of pupils are safeguarded
3. This guidance helps local authorities to interpret and make full use of the powers provided by the Act. It sets out expectations of how local authorities and schools will work together to prevent and address failure, and explains the statutory powers and responsibilities which are enacted in legislation. Guidance for proprietors of non-maintained schools is provided at Annex 2.
4. Part 4 of the Act provides the legislative structure within which a range of partners involved in school improvement will operate. These partners must work together to establish an enabling environment which balances the autonomy schools need to innovate and succeed, with robust challenge and early support when schools are not doing well enough.



Partners in the school improvement process

5. Schools themselves are the core of the system. In addition to having the central role in delivering education, they have responsibility for their own improvement, and for making the best use of the challenge and support available to them.
6. School Improvement Partners (SIPs) are the first layer in a new framework of sharper challenge and better support for schools. They will support and challenge the school's process of self-evaluation in order to help the school arrive at an accurate judgement of how well it is serving its pupils and what it needs to do to improve.
7. This judgement will be validated by Ofsted, as part of a new inspection system which will provide more timely and more focussed information on a school's capacity to improve.
8. Local authorities are responsible for enabling schools to respond to the challenge provided by SIPs and Ofsted. They must lead the system locally by setting up the vision for children's services, based on a clear understanding of service users' and stakeholders' needs, and identifying the top priorities and targets that need to be achieved in order to fulfil this vision. Where challenge from SIPs or Ofsted indicates that schools will need additional support in

order deliver against these priorities and targets, it is the local authority's role to design, commission and broker a suitable package of support, and monitor its success.

9. Many local authorities and schools are already successfully working together to improve outcomes for children and young people. Examples of excellent practice already taking place in local authorities and schools across the country, together with practical advice on school improvement, are available from the website which supplements this guidance: [insert].

### Structure of guidance

10. Each chapter begins with a summary of the vision and principles which underpin the legislation, and which local authorities may wish to use to inform their policies and practice. The formal provisions and legal duties are then set out, together with guidance on how these requirements can be met.

11. The guidance begins with a synopsis of the relevant legislation in Chapter 1.

12. The roles of the local authority and School Improvement Partners in early intervention are explained in Chapter 2. Guidance is also given on statutory warning notices, including when and how they can be issued, what the school should do to respond, and how the school may appeal to Ofsted.

13. Chapter 3 is concerned with schools which Ofsted have judged to require Special Measures or Significant Improvement. It sets out the new requirements for statements of action, and explains how the school's progress will be monitored by Ofsted. It also details how the Secretary of State may intervene if a school in Special Measures does not improve.

14. Chapter 4 details increased requirements to involve parents at schools causing concern, and suggests models of practice.

15. Chapter 5 begins with principles of good practice in school improvement and the development of leadership and management. It then explains the range of existing and new powers available to a local authority if

a school becomes eligible for formal intervention.

16. The guidance concludes with three annexes. The first provides detail on the intervention powers available to other bodies: the Secretary of State, diocesan authorities, and the Learning and Skills Council (LSC). The second explains how legislation on schools causing concern applies to non-maintained schools, including Academies, City Technology Colleges and non-maintained Special Schools. A glossary of terms is provided at Annex 3.

## Chapter 1

# A summary of the law

Many of the provisions in Part 4 of the Education and Inspections Act are re-enactments of existing legislation, but there are some significant new measures to ensure that fewer schools become a cause for concern, and that those which do get in difficulty are supported to recover more quickly. This chapter provides a summary of the legal effects of Part 4.

17. Sections 59-62 define when maintained schools are eligible for intervention by local authorities:

- (i) when the school has not complied with a valid warning notice (section 60);
- (ii) when the school requires Significant Improvement (section 61);
- (iii) when the school is in Special Measures (section 62).

18. Section 60 also amends the legislation for LA warning notices. It extends the definition of poor school performance to include schools that are badly underperforming in relation to the nature of their pupil intake or the school's general context, in addition to schools at which absolute standards (attainment rates) are unacceptably low. When issuing a warning notice, the local authority must indicate the action it is contemplating if the school does not respond satisfactorily. It must also tell the school that it has the right to appeal to Ofsted. The school must respond to the warning notice, or appeal to Ofsted, within 15 working days. Further information on the amended warning notice process is given in Chapter 2.

19. Sections 63-66 set out local authorities' intervention powers in relation to those schools eligible for intervention:

- (i) Section 63 is a new power to require such a school to work with

another school, college, or other named partner for the purpose of school improvement

(ii) Section 64 is a re-enactment of existing legislation which allows the local authority to appoint additional governors;

(iii) Section 65 is a re-enactment of existing legislation which empowers the local authority to apply to the Secretary of State to replace the entire governing body with an Interim Executive Board (IEB);

(iv) Section 66 is a re-enactment of existing legislation which empowers the local authority to take back the school's delegated budget.

Each of these powers is explained in more detail in Chapter 5.

20. Sections 67-69 re-enact the Secretary of State's existing powers of intervention:

(i) The Secretary of State may appoint additional governors (section 67);

(ii) The Secretary of State may put an IEB in place (section 69);

(iii) The Secretary of State may close a school in Special Measures (section 68).

Annex 1 provides further information on the Secretary of State's powers.

21. Section 70 and Schedule 6 re-enact existing technical provisions about IEBs, creating the rules for governance under an IEB and providing a regulation-making power. IEBs are also discussed in Chapter 5.

22. Section 71 and Part 1 of Schedule 7 comprise the amendments to existing legislation on schools causing concern. These provisions:

(i) require the local authority to consider what action to take immediately after a school is judged to require Special Measures or Significant Improvement (see Chapter 3), including how to involve parents

(ii) empower the Secretary of State to require a local authority to re-consider radical action (when the “case becomes urgent”; see Chapter 3)

(iii) extend the existing duty on proprietors of non-maintained schools to consider and prepare statements of action if their school is judged to require Special Measures or Significant Improvement (see Annex 2).

23. Section 72 indicates that local authorities must have regard to guidance from the Secretary of State when exercising powers in relation to schools causing concern. Section 73 is a technical measure about interpretation.



## Chapter 2

# Early intervention & warning notices

Making intelligent use of data in order to understand each school's needs and taking a proactive role in early intervention are central components of local authorities' strategic role. 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.

The first part of this chapter (section 2.1) sets out the roles of local authorities and School Improvement Partners in early intervention, and describes the relationship which should be established with schools in order to provide early support and challenge. However, there will be cases where a warning notice is needed because a school refuses to acknowledge its problems or accept external support. The revised system for issuing a warning notice is set out in the second part of this chapter (section 2.2).

## 2.1 Early intervention

### Context

24. Under the New Relationship with Schools (NRwS), there is an increased emphasis on self-evaluation as the basis of school planning; schools should self-evaluate regularly and use this process to drive improvement and build capacity to ensure that all pupils achieve their full potential.

25. School Improvement Partners (SIPs) are now being deployed in all schools to challenge and support the school's self-evaluation and planning, in order to build the school's capacity to improve the attainment of pupils. A SIP acts as a critical professional friend to a school, helping its leaders to evaluate

the school's performance, identify priorities for improvement, plan effective change and discuss with the school any additional support it may need.

26. Further detail on the NRwS and the SIP role can be found at

[www.teachernet.gov.uk/management/newrelationship](http://www.teachernet.gov.uk/management/newrelationship)

27. The feedback from SIPs is a key component of local authorities' intelligence about a school. In addition to obtaining SIPs' feedback, local authorities are expected to draw on a range of information, including that used to compile the Children and Young People's Plan, to ensure that they know their schools well.

28. Local authorities need to develop strategies, structures and systems which make best use of the information available, in order to identify and commission the support schools require at an early stage.

29. It is common good practice for local authorities to agree and publish their strategies, structures and systems for school intervention, following consultation with their schools. They should set out the criteria for and processes of intervention, under the principle that the level and depth of intervention is in inverse proportion to a school's success and capacity to improve. Local authorities may need to update their strategies for school improvement in accordance with the new legislation and this guidance.

### The role of the SIP

30. As set out above, SIPs contribute significantly to a local authority's intelligence about its schools. Each local authority has its own reporting arrangements for its SIPs. In all cases, SIP reports and notes are provided to the local authority and to the school to which it relates. Over the course of a year, these reports should include comment on: the quality of the school's self-evaluation; the suitability of priorities and targets in the school development plan, and progress towards these; and the school's need for external support.

31. Schools should make their SIPs' reports available to Ofsted inspection

teams on request. SIPs may also attend the oral feedback at the end of an inspection, at the request of the local authority, and they may advise the local authority to request that Ofsted bring forward an early inspection of a school. However, SIPs will not usually have any direct contact with Ofsted.

32. In most cases, the SIP's and the school's judgements will be similar. Following from the SIP's report, the local authority and the school can agree how any necessary support will be secured, deployed and monitored.

33. However, there may be circumstances in which the SIP has concerns about the school and cannot secure agreement on action through professional dialogue with the head teacher and governors.

34. It is in such cases that the connection between NRwS and the arrangements for schools causing concern becomes evident. SIPs should alert the local authority to their concerns and their view of the support required by the school, so that early action can be taken. If the SIP's concerns relate to a school sixth form, the local authority should inform the Learning and Skills Council (LSC).

## 2.2 Warning notices

35. As set out above, local authorities are expected to engage schools effectively through a professional dialogue to address the issues causing the local authority concern.

36. If a school is refusing to engage constructively with the challenge provided by the SIP, or the support commissioned by the local authority, 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.

37. In keeping with the principles of early intervention set out here, the new Act updates the warning notice system in order to:

- provide local authorities with a lever to bring in support at an earlier stage, and more quickly, to a school that is not engaging constructively

with the authority under the New Relationship with Schools

- enable local authorities to address persistent and severe underperformance
- ensure that schools which fail to comply with a valid notice become eligible for local authority interventions.

38. A diagram setting out the process for issuing a warning notice is shown on page 19.

### Establishing the grounds for a warning notice

39. Under Section 60(2) of the Bill, a warning notice can be triggered by any of the following circumstances:

- (a) the standards of performance at the school are unacceptably low, and are likely to remain so unless the local authority exercises its statutory intervention powers;
- (b) there has been a serious breakdown in management or governance which is prejudicing, or likely to prejudice, standards of performance;
- (c) the safety of pupils or staff at the school is threatened (whether by a breakdown in discipline or otherwise).

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

40. Local authorities must draw on suitable quantitative data in addition to any qualitative information before deciding to issue a warning notice; this is discussed in more detail below.

#### (a) Evidence of unacceptably low standards

41. The definition of when standards are 'unacceptably low' is extended from the previous provision. The 2006 Act states that a warning notice can be issued if pupil performance is persistently below levels expected when pupils'

prior achievement and the school's context is taken into account, even if the absolute level of attainment is apparently satisfactory.

42. Quantitative evidence may take one of the following forms; usually a combination of several of these indicators will apply:

- The school's data set, as agreed by the school, the local authority and the SIP, indicates there are problems in relation to pupil progress
- The school is in the bottom quartile nationally in one or more key performance indicators. These will focus on Context Value Added (CVA) data, but could also include, for example, low attainment rates, aggregate point scores, or exclusion and truancy data
- There is specific evidence, from close examination of contextual data or other sources that the school is significantly letting down groups of pupils (usually 5% or more of the school population), or is very weak in core subjects.

43. Some educational settings, especially Special Schools and Pupil Referral Units, may have little standardised data. In these cases, SIPs and local authorities will have to rely on other records, such as how well learners have met their individual targets. It is vital that these schools are challenged to provide a good education for their pupils.

44. It is important to recognise that school-level data can mask within-school variations between subject areas or pupil groups. Schools with high attainment overall must still be encouraged to target those groups of pupils within the school which are not achieving as well as they might be expected to.

45. Local authorities should draw on a range of evidence in reaching a judgement about the school's standards. Where a range of analyses identify a common issue, it is likely that this should be the basis for action. Where analyses differ, this indicates the necessity to check accuracy, undertake further data-gathering, or re-assess underlying assumptions.

## (b) Evidence of a breakdown in leadership or management

46. Key sources of information to justify a warning notice under criterion (b) are likely to be the SIP's report, particularly the commentary on the quality of the school's self-evaluation and target-setting, and Ofsted reports.

47. In addition, some data trends may indicate a breakdown in leadership and management, for example:

- Declining school popularity, usually revealed through falling rolls
- High or increasing absence or truancy rates
- High rates of staff turnover, or numbers of staff grievances
- Significant or increasing numbers of parental complaints.

48. Such data should be treated with caution, as they may also arise for reasons other than poor school leadership. Local authorities should therefore ensure that such indicators are confirmed by strong intelligence from sources such as SIPs' or Ofsted reports before considering a warning notice. Where such reports are unavailable, data trends should be considered only as the first signs of concern which should prompt the local authority to investigate further, perhaps through an audit of the school's leadership.

49. Poor management of the school workforce, or a failure to implement the school workforce agreement, may contribute to a school's poor performance, and may therefore be used as the grounds for issuing a warning notice.

## Exceptions to (a) and (b) above

50. Even where the evidence referred to in parts (a) or (b) above exists, a warning notice is unlikely to be needed when the school is already working positively to address poor performance, and there is evidence of progress. Circumstances in which a local authority might refrain from issuing a warning notice include when:

- the authority have notified Ofsted that the inspection of the school

should be brought forward (local authorities should ask Ofsted – via their Local Managing Inspector - to bring forward a school inspection for a school that they judge to be delivering an inadequate education for its pupils)

- the school acknowledges the problem and is working effectively with the SIP, or other support commissioned by the local authority, to rectify the problem
- the school has taken positive steps, and is monitoring these effectively, to rectify areas identified for improvement after an Ofsted grade 3 (“satisfactory”) judgement.

### Issuing a warning notice

51. Once the grounds for issuing a warning notice have been established, the local authority must set out their concerns in writing to the governing body. This written notice must include:

(a) The reasons for issuing the warning notice, including references to the quantitative and qualitative evidence the authority has used in deciding to issue the notice;

(b) The action the governing body need to take in order to address the concerns raised;

(c) The action the local authority is considering if the governing body do not comply satisfactorily with the warning notice, including, if appropriate, which intervention power(s) it is considering using. Such action should be proportionate to the issues faced by the school;

(d) The date when the 15 working-day compliance period will come to an end;

(e) A reminder to the governing body that they may appeal to Ofsted within 15 working days if they feel that the grounds for issuing the warning notice are not valid, or that the action proposed if the school fails to comply is

disproportionate.

52. The local authority must send the warning notice to the governing body of the school and copy the notice to the Headteacher, Her Majesty's Chief Inspector (HMCI) at Ofsted, and the appropriate appointing authority for church, foundation or voluntary schools. The local authority is also expected to send the notice to the SIP, where in post.

### Appealing against the warning notice

53. The governing body of a school that has received a warning notice can appeal to Ofsted under section 60(7) of the Act, if it believes that the local authority has:

- (a) issued the warning notice without sufficient objective evidence, or;
- (b) proposed action that is disproportionate to the scale of the issues facing the school.

54. The appeal must be made in writing within 15 working days of receipt of the warning notice. It should be sent to the Regional Divisional Manager at Ofsted, and copied to the local authority.

55. The written appeal may contain, as appropriate:

- (a) Why the governors disagree with the grounds for the warning notice; or
- (b) Why the governors consider the action proposed by the authority is disproportionate to the scale of the issues facing the school; or
- (c) A combination of both the above

### Role of Ofsted

56. Ofsted will send an email to the school, copied to the local authority, acknowledging receipt of the appeal.

57. Ofsted may request additional documentary evidence; if such evidence



is requested, it should be supplied within 5 working days.

58. Ofsted will scrutinise the evidence provided, and may also examine other relevant documents (e.g. the school's Ofsted report, RAISEonline data, the local authority's Joint Area Review report).

59. Ofsted may make its judgement based on written evidence alone, if the documentation is sufficiently comprehensive. In some circumstances, for example if there is insufficient written evidence to reach a decision, Ofsted may inspect the school.

60. Ofsted will decide either to uphold or reject the appeal, and will communicate this decision in writing to the school and the local authority.

61. If the appeal is upheld, the warning notice will be rescinded.

62. If the appeal is rejected, the warning notice will be reissued to the school. The school must take appropriate action to respond within 15 working days of receiving the reissued warning notice.

63. Ultimately, irrespective of Ofsted's ratification of a warning notice, a school may appeal to the DfES under section 496 of the Education Act 1996, which allows the Secretary of State to consider whether a local authority has acted unreasonably in exercising its functions.

### Expectation of the school responding to the warning notice

64. If the school does not appeal to Ofsted, or the appeal has been rejected, the school has 15 working days to comply with the warning notice to the local authority's satisfaction.

65. Such compliance may not involve full rectification of the problem, since it will not always be practical to do so, but it will involve positive steps towards the solution. For example, if the warning notice has been issued on the grounds of the relative underperformance of a particular group of pupils, the minimum expectation would be that the school amends its improvement plan to identify what support this group of pupils requires, how this additional

support will be delivered, and how the effect of this additional support will be measured.

66. The development of the school's improvement plan as a result of the warning notice should be discussed with the local authority or the SIP to ensure plans are sufficient. If the authority is content with the action proposed or taken, the warning notice should be rescinded and the intervention powers may not be used.

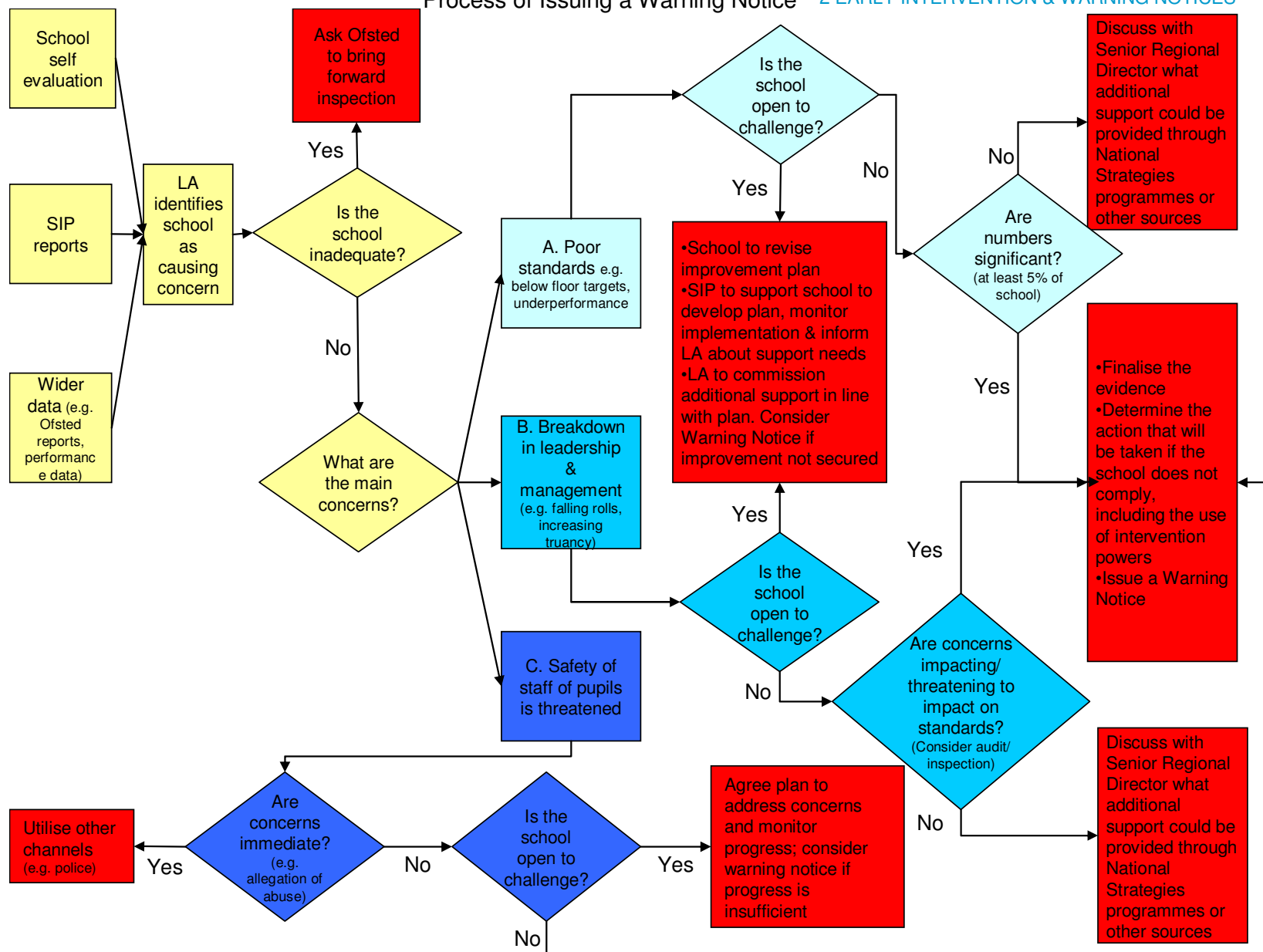
### Use of intervention powers

67. A local authority's intervention powers (see Chapter 5) are available if the school has not complied satisfactorily with the warning notice within the 15 day period following its issue (or re-issue following an appeal).

68. Where a local authority has clearly stated in the warning notice which intervention powers it intends to use should the school fail to comply, and it still intends to exercise these powers, the local authority may intervene after a reasonable notice period. If urgent intervention is required, this period could be as little as one working day after the end of the compliance period.

69. In all cases, the local authority is required to use its intervention powers within 2 months of the end of the 15-day compliance period. If it fails to intervene within this time, a new valid warning notice must be issued.

Process of Issuing a Warning Notice 2 EARLY INTERVENTION & WARNING NOTICES



## Chapter 3

## Schools in Ofsted categories

Schools causing concern must make rapid improvements, so that the negative impact the school's poor performance may have on pupils' outcomes is minimised. Local authorities should therefore continue to take fast, decisive action to secure improvements at schools which Ofsted judges to require Special Measures or Significant Improvement.

This chapter outlines the process when a school enters an Ofsted category of concern (section 3.1) and what action the local authority is required to take (section 3.2). It also details the monitoring inspections that will occur (section 3.3), and how the Secretary of State may intervene if the case becomes urgent (section 3.4).

### 3.1 Entering a category of concern

70. If, following a Section 5 inspection, Ofsted considers a school to be inadequate (Grade 4), it will give a judgement that the school requires either 'Significant Improvement' or 'Special Measures'.

71. A school requires Significant Improvement if it is (a) failing to provide an acceptable standard of education, but demonstrating the capacity to improve, or (b) not failing to provide an acceptable standard of education, but performing significantly less well than it might in all the circumstances reasonably be expected to perform. Schools requiring Significant Improvement are said to be issued with a "notice to improve".

72. A school requires Special Measures if it is failing to give learners 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.

73. If an inspection team judges that a school requires Significant Improvement or Special Measures, it will state this during oral feedback to the Headteacher and governing body at the end of the inspection. If the local authority suspects that a school may require Special Measures or Significant Improvement, it should be represented at the feedback meeting. At the request of the local authority, the school's improvement partner (SIP) may also be present at this meeting as an observer.

74. If the school is judged to require Significant Improvement, Ofsted will state this in a draft report sent to the governors of a maintained school, or the proprietor of a non-maintained school. The recipient will be asked to offer comments on the report within 5 working days.

75. The judgement that the school requires Significant Improvement will be moderated by the Assistant Divisional Manager for schools causing concern in the region. (S)He will decide whether (s)he agrees with the judgement and will communicate his/her decision in writing to the governing body; the Headteacher; the local authority (or the proprietor if a non-maintained school); the Secretary of State; the diocesan or other appointing authority, if the school is a foundation or voluntary school; and the local Learning and Skills Council (LSC), if the school has a sixth form.

76. If a school is judged to require Special Measures, Ofsted will state this in a draft report sent to the governors of a maintained school, or the proprietor of a non-maintained school. The recipient will be asked to offer comments on the report within 5 working days.

77. The judgement that the school requires Special Measures will then be moderated by HMCI or by a specially authorised inspector. This person will decide, on the basis of the draft report and any comments made by the school, whether (s)he agrees with the judgement. (S)He will communicate his/her decision in writing to the governing body; the Headteacher; the local authority (or the proprietor if a non-maintained school); the Secretary of State; the diocesan or other appointing authority, if the school is a foundation or

voluntary school; and the local LSC, if the school has a sixth form.

78. If a school requires Significant Improvement or Special Measures, the moderated judgement and inspection report will be published and available to the public a minimum of five working days after these are received by the school and other parties named in paragraph 75 or 77 above.

### 3.2 Action required

#### Maintained Schools

##### (i) Schools

79. The governing body, in consultation with the local authority, should start to consider what action to take immediately after the oral feedback that Significant Improvement or Special Measures are required.

80. Under the NRwS, all schools should have a single, integrated development plan. There is, therefore, no longer any statutory requirement for the school to produce a specific action plan to respond to the judgement of Significant Improvement or Special Measures. The school should instead develop its existing school development or improvement plan to cover the issues highlighted by the inspection. Where these issues relate to sixth form provision, the local LSC should also be consulted.

##### (ii) Local authorities

81. Under Section 15 of the Education Act 2005, as amended by Schedule 7 of the Education and Inspections Act 2006, it is the local authority's responsibility to prepare a statement of action within 10 working days of receiving the final inspection report.

82. The local authority should begin preparing the statement of action immediately after the oral feedback to indicate that Significant Improvement or Special Measures are required. The local authority should work closely with the Headteacher and governing body of the school; the SIP; the diocesan or other appointing authority, if the school is a foundation or voluntary school;

and the local LSC, if the school has a sixth form.

83. The statement of action must provide a detailed explanation of the options for the future of the school. In considering possible action, the local authority should balance the school's need for long-term, sustainable improvements with actions which will have an immediate impact on the quality of education received by pupils. Specifically, the statement of action should set out:

- The action the local authority has taken so far
- The additional support the local authority will commission to help the school address the areas of weakness identified by Ofsted
- What arrangements the local authority has made to inform parents and carers about the actions planned for the school, and how it will gather and take into account their views (see Chapter 4)
- What specific steps are needed to build the leadership and management capacity of the school, including at middle management level
- Whether there is scope for partner organisations to be brought in to support the school (including other schools, trusts, colleges, or non-educational organisations), and how this collaboration will be facilitated
- The scope for the school to be closed or federated, taking into account the number of surplus places in better-performing local schools, and – if such a course of action is appropriate – when this might happen
- The scope for the school to become a Trust school or an Academy
- Whether the authority intends to use its intervention powers (see Chapter 5) to appoint additional governors, require the school to enter into arrangements, withdraw delegation of the budget, or replace the governing body with an Interim Executive Board (IEB)

- If the school is not to be closed or federated, or the authority's intervention powers will not be used, why none of these actions is considered appropriate
- A plan of future action, including resource implications, quantified targets to evaluate the effectiveness of external support, target dates for key actions, and progress review points.

84. The local authority should copy the statement of action to Ofsted, the school's governing body; the SIP; the diocesan or other appointing authority, if the school is a foundation or voluntary school; and the local LSC, if the school has a sixth form.

85. Ofsted will provide feedback to the local authority, usually within a few weeks, about the quality of its statement of action.

### Non-maintained schools

See Annex 2.

### 3.3 Interim Inspections

86. A school requiring Significant Improvement will be visited, usually for one day by one inspector, 6-8 months after the section 5 inspection. A school requiring Special Measures will be visited for up to two days by an inspection team 4-6 months after the section 5 inspection. These visits are section 8 interim inspections, usually referred to as a 'monitoring visits'.

87. The school will normally receive two days' notice of each monitoring visit. At the beginning of a monitoring visit, the school will be encouraged to provide any recent self-evaluation of its progress, or updating of its self-evaluation form, to the lead inspector. The joint DfES / Ofsted document *A New Relationship with Schools: Improving Performance through School Self-Evaluation* can be downloaded from:

<http://publications.teachernet.gov.uk/default.aspx?PageFunction=downloadoptions&PageMode=publications&ProductId=DFES-1290-2005&>.



88. At the end of the visit, the school will receive oral feedback on its progress since the section 5 inspection, or the last monitoring visit. The inspector(s) will come to an overall judgement as to whether the school's progress is 'inadequate', 'satisfactory', 'good', or 'outstanding' and, if the school is in Special Measures, whether it should remain in the category. These findings will also be set out in a letter addressed to the school's Headteacher, and copied to: the Secretary of State, the governing body of the school; the SIP; the diocesan or other appointing authority, if the school is a foundation or voluntary school; and the local LSC, if the school has a sixth form. The letter will also be published on the Ofsted website.

89. A judgement of 'inadequate' progress after a monitoring visit is a clear indication that the school needs to take urgent steps to secure improvements, and this should prompt the local authority to review the action being taken.

90. A school requiring Significant Improvement will be subject to a re-inspection under section 5 approximately 12 months after the original section 5 inspection. If the school remains inadequate, it may be made subject to Special Measures.

91. A school in Special Measures will continue to receive monitoring visits as long as it remains in the category. The timing of the second and subsequent monitoring visits is at the discretion of the lead inspector. Typically, schools will receive two monitoring visits within the first 11-13 months of being judged to require Special Measures. When the school has improved sufficiently, Special Measures will be removed.

92. If a school remains subject to Special Measures following a monitoring inspection, the local authority, Headteacher, governing body, diocesan or other appointing authority, and local LSC are expected to discuss and agree the next steps needed to enable an acceptable rate of progress to be achieved or maintained before the next monitoring visit.

### 3.4 "The case has become urgent"

93. Schools should not be allowed to remain in Special Measures for an

extended period of time if little or no progress is being made towards securing sustainable improvements. The Act therefore includes new legislation to enable to Secretary of State to inform a local authority that the case of a school is Special Measures has become urgent.

94. The Secretary of State will make the judgement that the case has become urgent based on the findings of the Ofsted monitoring visits. The usual trigger point would be a finding of inadequate progress at the second monitoring visit.

95. However, this power is discretionary and the Secretary of State will consider each case on its merits. There may be some exceptions to the expectation that inadequate progress at the second monitoring visit will cause the Secretary of State to consider the case urgent. For example:

- The Secretary of State may consider that the case has become urgent if Ofsted provides evidence of major difficulties at any visit, including the first
- If the local authority's actions have included changes to leadership but these have legitimately yet to take effect, the Secretary of State may decide not to consider the case urgent
- If a school remains in Special Measures for an extended period, the Secretary of State may consider that the case has become urgent.

#### Duty on local authorities if the case has become urgent

96. If the Secretary of State informs a local authority that the case has become urgent, the local authority is required to produce a revised action plan within 10 working days of receipt of the notice.

97. This statement should set out the same range of considerations as detailed on pp.23-24 for the statement of action after a judgement of Significant Improvement or Special Measures, but with additional specific references to the evidence from the latest monitoring report. The statement should contain a reconsideration of the actions taken, in order to determine

why the school has not succeeded in making progress.

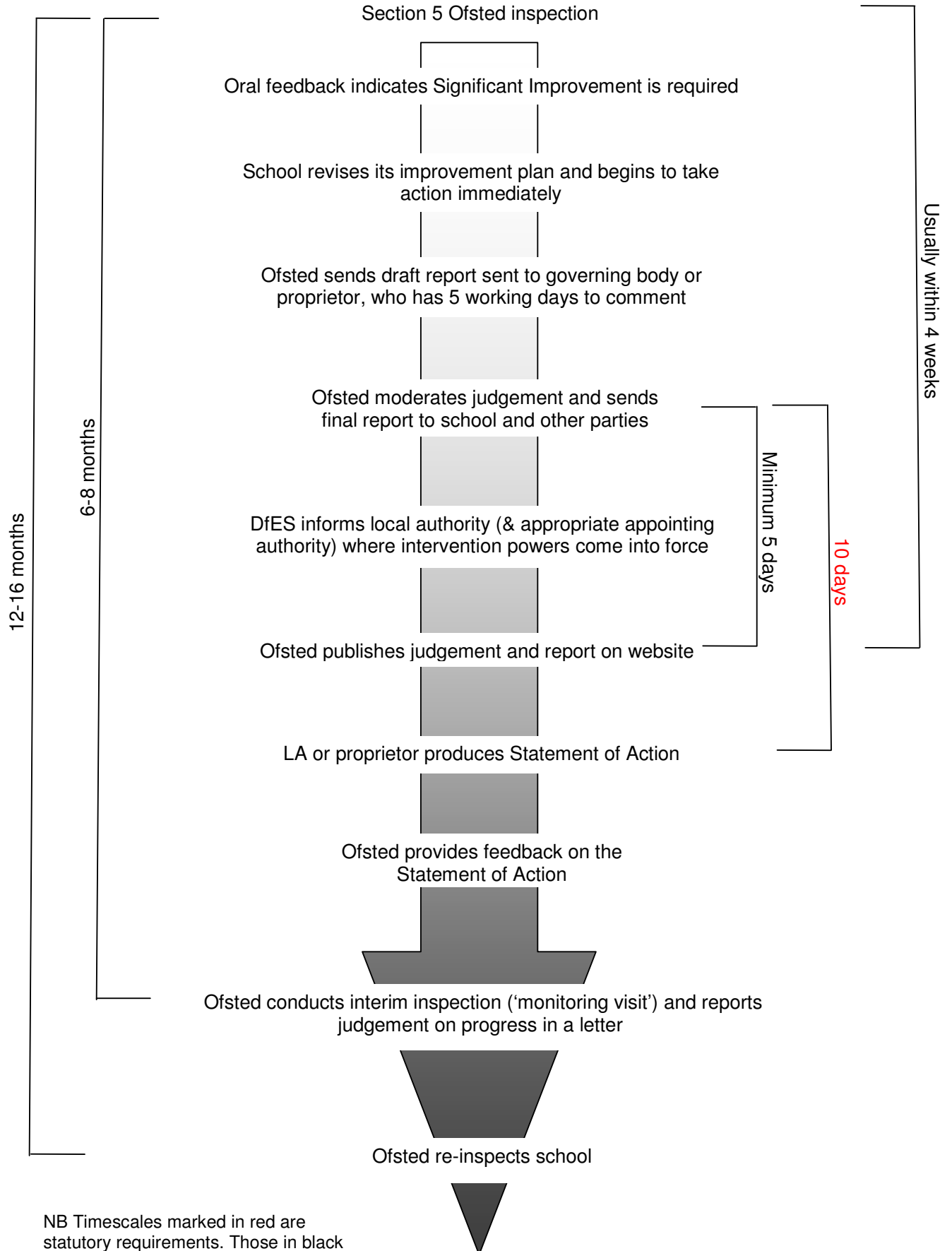
98. By this point, local authorities should have already used a range of statutory and non-statutory interventions. Therefore, the presumption at this point will be that the school should be closed and – if necessary – replaced, unless the local authority is able to make a convincing case that a solution which has not yet been implemented would result in better outcomes for pupils. If the local authority has been unsupportive, indecisive, or dilatory in exercising their duties, then the presumption of closure will be even stronger.

99. If it is decided that a school should be replaced, the local authority will have a range of options for securing better provision for the pupils. These options are discussed in Chapter 5.

100. It is essential that institutions catering for highly vulnerable children improve quickly when they require Special Measures. The Secretary of State may inform a local authority that the case of a special school or Pupil Referral Unit (PRU) has become urgent. The local authority should, as with mainstream institutions, respond with a revised statement of action in which radical action is reconsidered – this may include considering replacement with better provision. However, there will be no automatic presumption of closure for these types of institution. The Secretary of State will not encourage local authorities to reduce the extent of existing provision, and local authorities should not take action to close PRUs or special schools, especially those catering for pupils with Behavioural, Emotional or Social Difficulties (BESD), without securing alternative arrangements which safeguard the needs of the children concerned.

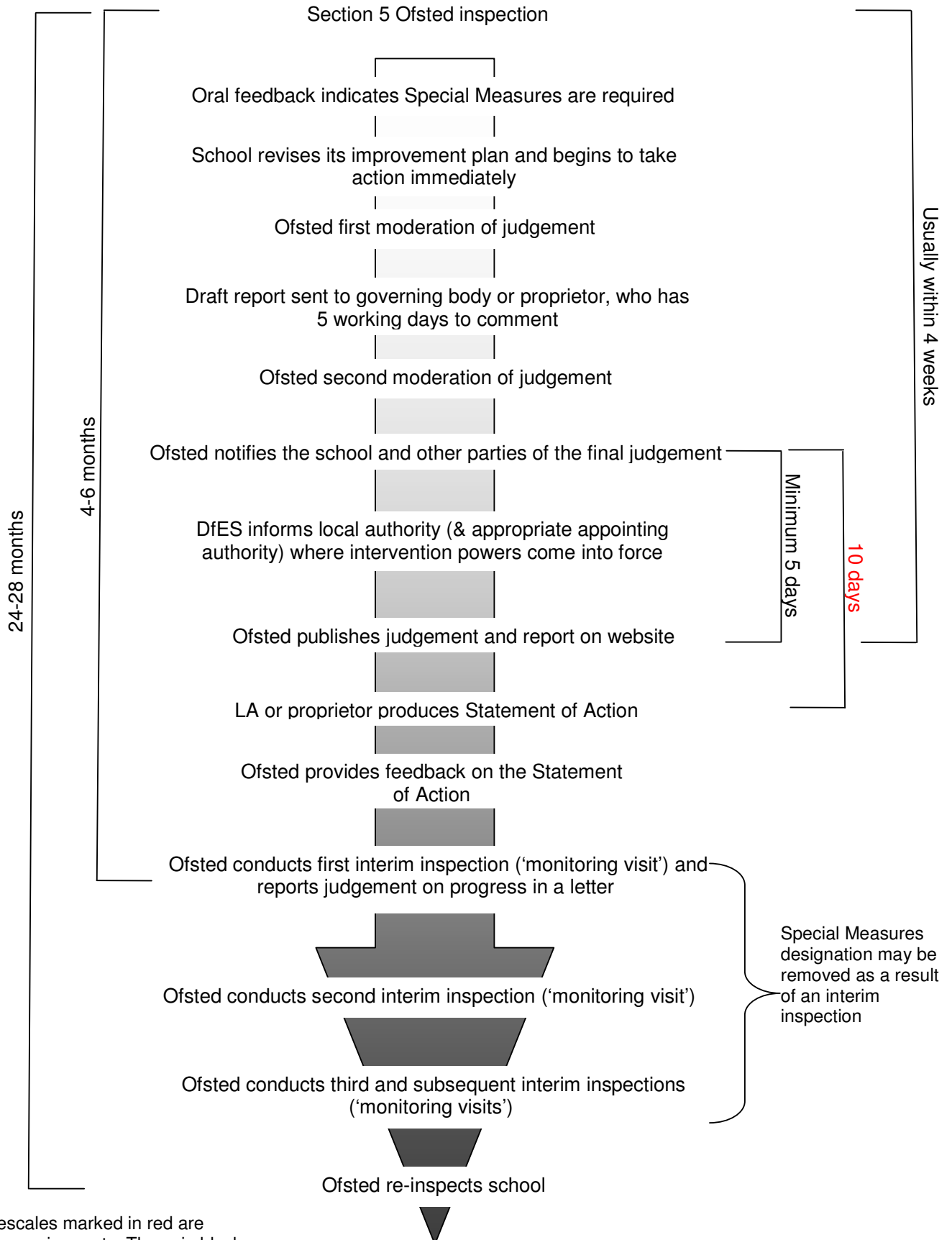
101. The local authority should send a copy of the new statement of action to HMCI at Ofsted; the school's governing body; the diocesan or other appointing authority, if the school is a foundation or voluntary school; and the local LSC, if the school has a sixth form.

### SIGNIFICANT IMPROVEMENT TIMELINE



NB Timescales marked in red are statutory requirements. Those in black are indicative only.

### SPECIAL MEASURES TIMELINE



NB Timescales marked in red are statutory requirements. Those in black are indicative only.

## Chapter 4

# Involvement of Parents

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.

The Education and Inspections Act strengthens the duty of local authorities and school proprietors to ensure parents are properly informed and engaged when their child's school is causing concern. This chapter explains what local authorities are required to do (section 4.1). It also proposes some ways in which these duties can be fulfilled, including through the appointment of a Parent Champion (section 4.2).

## 4.1 Legislative requirements

102. Section 15 of the 2005 Education Act, as amended by Schedule 7 of the 2006 Act, requires the local authority to set out, in its statement of action for a school requiring Special Measures or Significant Improvement, how it will communicate with and ascertain the views of parents at the school. It also requires that the local authority must consider appointing a specified person to discharge these functions.

103. This means that the local authority must set out in its statement of action for a school requiring Special Measures or Significant Improvement:

- How it will inform parents and carers about the actions planned for the school
- How it will gather parents' and carers' views on these actions, and how it will take these views into account

104. The local authority must also consider appointing a specified person to discharge these functions. One of the ways in which they could do this is by

appointing a Parent Champion.

## 4.2 Models of practice

105. Many local authorities already have experience of good practice in the engagement of parents and carers when a school goes into an Ofsted 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 attendance at the school
- appointing a Parent Champion

### Parent Champions

106. A Parent Champion is a person appointed to ensure good communication with parents and carers, and ensure that they are able to influence decisions about the future of the school.

107. The appointment of a Parent Champion may be particularly appropriate where a radical change to the school is being considered.

108. The Parent Champion is a demanding role and authorities should appoint able people with appropriate skills and experience. The local authority should provide training if it considers this necessary. In particular, a

Parent Champion is likely to need:

- Good communication skills, appropriate to the needs of the parents and carers in the local community
- An interest in and understanding of the education system, including a commitment to improved standards and aspirations
- The skills and confidence to collate parents' and carers' views and present them back to the local authority or school leadership

109. Parent Champions may come from any background, but the following people may have particularly relevant skills and knowledge:

- Former senior teachers or others with significant experience of dealing with parents, school leadership, or local authorities
- Individuals from any background who have the skills and capacities listed in paragraph 109. This may include, but is not limited to, community leaders or ex-local authority employees
- Experienced parent governors from other schools

110. The local authority may cover expenses or offer small honorarium payments to the Parent Champion. The local authority is responsible for setting the Parent Champion's terms and conditions, and for performance management arrangements.

111. If a Parent Champion is appointed, the local authority should liaise with him/ her over its statement of action for the school. The local authority will therefore need to appoint the Parent Champion promptly after the oral feedback indicates that Significant Improvement or Special Measures is required.

112. So that they can make such a rapid appointment, local authorities may wish to publicise the role locally and maintain a list of suitable people on whom they could call. The local authority may make its list available to the proprietor of a non-maintained school in its area on request.

113. Furthermore, local authorities may wish to consider the appointment of a Parent Champion before a school is judged to require Significant Improvement or Special Measures. Such an appointment might be made, for



example, when an authority is contemplating issuing a warning notice to a school and considers that a Parent Champion would be an appropriate means of ensuring parents and carers are effectively engaged.

114. When making the appointment, the local authority or proprietor should:

- Ensure that the individual has the necessary skills to perform the role effectively
- Not attempt to mandate the appointee to take any particular line of argument in his/her engagement with parents
- Avoid any potential conflict of interest. The appointee should be able to represent parents' interests impartially and objectively. This will mean that the Parent Champion should not normally be a current employee of the school or a local authority. There may also be circumstances in which it is inappropriate to appoint a current governor at the school, who has been party to corporate decisions made about the school, or the parent of a current pupil at the school.

115. In the case of foundation or voluntary schools, it is good practice for the local authority to provide the diocesan or other appointing authority with information about the proposed Parent Champion before the appointment is confirmed. This will give the appointing authority an opportunity to raise any concerns about the appointment of a particular individual.

116. The Parent Champion may liaise directly with the governing body of the school in order to obtain information about the school's improvement or feed back the views of parents. Alternatively, the Parent Champion may channel his or her communication through the local authority. The local authority should consult the Parent Champion and with the governing body in deciding which of these arrangements is most appropriate.

117. The Parent Champion should remain in post while the future of the school is being considered or whilst action is being pursued, but not necessarily until the school is removed from the Ofsted category. The local

authority or proprietor will need to determine the appropriate point at which the appointment should be terminated.

## Chapter 5

# Securing improvement at schools causing concern

When a school is causing concern, local authorities should consider how to secure immediate and sustainable improvements, and act quickly. Such decisive action will ensure that children's life chances are not jeopardised by attending a poorly-performing school for an extended period of time.

This chapter begins with a discussion of good practice principles for planning school improvement (section 3.1). It then outlines ways in which a local authority can support a school's leaders and managers to deliver improvements (section 3.2). The final section (section 3.3) details the statutory intervention powers which local authorities have at their disposal in relation to maintained schools: appointing additional governors, de-delegation of the school budget, requiring the school to enter a partnership arrangement, the replacement of the governing body with an Interim Executive Board, or school closure.

## 5.1 Planning school improvement

118. There is strong evidence that successful and sustainable approaches to school improvement focus on open and robust school self-evaluation, strengthening school leadership, improving teaching, and working in collaboration with other schools. The intervention powers detailed in section 3.3 may be needed in order to secure improvements in these areas. However, similar results can often be achieved without using these powers; local authorities should attempt to secure schools' voluntary co-operation before resorting to statutory interventions.

119. Each school will have different strengths and weaknesses; local authorities should therefore tailor appropriate bespoke packages of support,

to be delivered by suitably trained and qualified staff or consultants.

120. When planning improvement, it is important to focus on an achievable number of key priorities, and link these to the school's longer-term strategic aims. It is essential that the planned actions are coherent and coordinated, to avoid overwhelming the school and its staff.

121. Local authorities should ensure that school improvement plans include arrangements to monitor the progress and success of actions.

## 5.2 Developing leadership and management

122. The school leadership's capacity to improve now forms a significant part of Ofsted's judgements. To demonstrate this capacity, the school's leaders, managers and governors need to show evidence of: thorough self-evaluation, including rigorous analysis of performance data; effective strategic planning; rigorous and robust monitoring of standards and quality of education; and action that has had a demonstrably beneficial impact.

123. In addition to responding promptly to any concerns which Ofsted may identify about a school's leadership, local authorities should consider the development of a school's leaders and managers as part of their early strategies to prevent school failure and increase the school's own capacity to improve.

124. The leadership provided by the Headteacher and senior management team of a school is crucial to the speed and success of its improvement. Headteachers of schools causing concern must have a clear vision of what their school needs to achieve, and be able to communicate this well to staff and pupils.

125. Local authorities should consider a wide spectrum of options through which leadership teams of schools causing concern can be supported and challenged, whilst recognising that ultimately it may be necessary to remove the Headteacher or other staff if they are incapable of making the changes the school needs.

126. Before coming to such a decision, local authorities should always consider whether the person has had sufficient time in post to make improvements and should recognise that otherwise competent leaders may sometimes be overwhelmed by circumstances beyond their control. It may therefore be beneficial for the local authority to commission an audit of the school's leadership and management capacity, including at middle management levels.

127. Where a Headteacher remains in post at a school causing concern, (s)he may benefit from new appointments at Deputy Headteacher or senior teacher level, especially where appointees bring skills which correspond to the school's priorities for improvement. It may also be beneficial to consider ways in which the governing body could be strengthened, or an external partner could become involved to provide additional support for the school's leadership, for example by providing a consultant or mentor Headteacher. Legal powers to support such changes are detailed in section 3.3 below.

### 3.3 Statutory intervention powers

#### Menu of intervention powers available to local authorities

|                        | Entering into arrangements | Appointing additional governors | Interim executive members | Suspension of delegated budget | Closure |
|------------------------|----------------------------|---------------------------------|---------------------------|--------------------------------|---------|
| Consultation required? | ✓                          | ✗                               | ✓                         | ✗                              | ✓       |
| Further information    | p.39                       | p.42                            | p.43                      | p.45                           | p.46    |

128. The statutory interventions detailed in the remainder of this chapter may be exercised by local authorities in maintained schools which are eligible for intervention. A school is eligible for intervention if it requires Significant Improvement or Special Measures, or if it has failed to comply with a valid warning notice.

129. The Secretary of State is also able to exercise some of these powers of intervention (see Annex 1). However, the local authority is expected to intervene initially; the Secretary of State's powers are reserve powers for exceptional circumstances.

130. The interventions described here are not applicable to non-maintained schools; further information about non-maintained schools is given at Annex 2.

## Power to require a school to enter into arrangements

**Legislative provision:** Section 63, Education and Inspections Act 2006 (new power)

**Purpose of intervention:** To require a school to enter into collaborative arrangements to secure improvements

**Best used:** Where a school, or key figures within it, refuses to collaborate with an appropriate partner

**Can be used with:**

|  | Appointing additional governors | Interim executive members | Suspension of delegated budget |
|--|---------------------------------|---------------------------|--------------------------------|
|  | ✓                               | ✓                         | ✓                              |

**Requirements before using power:**

- Local authority must consult the governing body of the school, plus –if a foundation or voluntary school – the diocesan or other appointing authority
- Local authority must find a willing school, college, other organisation, or individual to act as a partner

131. Collaboration is not a panacea, but it can be a powerful lever for school improvement. Collaborative arrangements should therefore be used wherever appropriate as part of packages of support for schools causing concern.

132. The benefits of a firmly-established collaboration in securing school recovery are well known. 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. Cementing partnerships into hard federations or Trusts can ensure that the arrangements withstand staffing and leadership changes.

133. In addition, many strong schools have discovered that collaborative working with a school causing concern has led to substantial gains in staff development opportunities, morale, expertise and professional pride. It is also common for pupils' results at the stronger school to show significant improvement.

134. Each partnership arrangement will offer further specific advantages in addition to these generic benefits of collaborative working. For example:

- Working with a specified person (e.g. a consultant, or a mentor from another school) with relevant expertise may help the school address specific priorities for improvement
- Entering a 'hard' support federation with another school can create a strong, sustainable joint governance structure to oversee and monitor the school's improvement, and offer the possibility of flexible deployment of staff across the schools involved
- Working within a partnership involving higher or further education establishments would give the school access to additional expertise, for example in developing the 14 -19 curriculum or vocational provision. It may also help the school prepare pupils for further study, provide progression routes, and raise young people's aspirations
- Working in partnership with other agencies may help a school address priorities for improvement relating to attendance and behaviour, or health and well-being
- Working with schools in similar circumstances or with relevant experience in another local authority may give a school access to a wider pool of expertise than is available from its immediate neighbours.

135. Authorities will often be able to negotiate collaborative arrangements without invoking this power, and should discuss voluntary partnerships with the school as a first course of action. However, Section 63 gives a local authority the option of requiring a school to enter collaborative arrangements if



it is resistant to outside support.

136. Section 63 should be used differentially by authorities to develop and arrangement appropriate for the areas needing development at the school causing concern and the preferences of the proposed partner organisation.

### **Case study**

Endeavour High School was placed in Special Measures in March 2004 after a troubled history. Only 9% of pupils gained 5 or more good GCSEs in 2004.

A management team was brought in under the direction of the Headteacher of Kingswood School, who became the Executive Head of Endeavour. The governing bodies of the two schools worked together to support and challenge the schools.

The school was removed from Special Measures in December 2005, and results had improved to see 25% of pupils gaining 5 or more good GCSEs. Ofsted found that teaching and pupil attitudes had also improved, and that the school had secure capacity for further improvement.

## Power to appoint additional governors

**Legislative provision:** Section 64, Education and Inspections Bill 2006 (re-enactment with amendments of S16 of the School Standards and Framework Act 1998)

**Purpose of intervention:** To strengthen the local authority's voice on the governing body and/or to 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 Headteacher and senior management team need further challenge and support

Can be used with:

| Entering into arrangements | Interim executive members | Suspension of delegated budget |
|----------------------------|---------------------------|--------------------------------|
| ✓                          | ✗                         | ✓                              |

**Requirements before using power:** None, although it is good practice for the local authority to inform the diocesan or other appointing authority for foundation governors, who are also entitled to appoint additional governors

137. Local authorities may appoint additional governors at any time if a maintained school is eligible for intervention.

138. In the case of voluntary aided schools, the local authority should keep the diocesan or other appointing authority informed so that they can also appoint additional governors if they wish. Diocesan and other appointing authorities' powers are detailed at Annex 1.

139. It is good practice for the local authority to provide the governing body with information about the appointees before the appointment is confirmed. This will give the governing body an opportunity to raise any concerns about the appointment of a particular individual, or about the terms of an appointment.

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

**Legislative provision:** Clause 65, Education and Inspections Bill 2006 (re-enactment of S16A of the School Standards and Framework Act 1998)

**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 (an “Interim Executive Board”)

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

Can be used with:

|  | Entering into arrangements | Additional governors | Suspension of delegated budget |
|--|----------------------------|----------------------|--------------------------------|
|  | ✓                          | ✗                    | ✗                              |

**Requirements before using power:**

- Local authority must consult the governing body, and – if a foundation or voluntary school – the diocesan or other appointing authority
- Local authority must obtain the Secretary of State’s permission for the establishment of the Interim Executive Board (IEB).

140. 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 the Secretary of State.

141. Approximately 30 IEBs have been established to date, some of which are still in place. They have proved successful in virtually every case, enabling a restructuring of the school’s leadership and management function and providing a catalyst for improvement. Some IEBs have also been used to support the school’s longer-term transition to becoming an Academy.

142. IEBs are governed by the provisions set out in Schedule 6 of the Education and Inspections Act, and regulations have been made under the Education Act 2002. Full guidance on these regulations is available from [www.standards.dfes.gov.uk/sie/si/SCC/](http://www.standards.dfes.gov.uk/sie/si/SCC/).

143. The Secretary of State's approval for an IEB should be sought in writing. Guidance on making an application is available from the website above, and the Secretary of State will favour applications which fulfil the conditions set out in this document.

### **Case study**

St Aloysius in Islington was placed in special measures in January 2003. The governing body was ineffective in holding the school's managers to account, and in challenging the school's very low academic standards.

The power to apply to the Secretary of State to replace a governing body with an interim executive board (IEB) was used. The IEB established a successful action plan for recovery and drew on the expertise of its members, including experienced head teachers from other schools.

The school was removed from special measures in October 2004. In two years, the proportion of pupils achieving 5 or more good GCSEs rose from 30% to 57%. A shadow governing body helped a smooth transition back to normal governance from the IEB.

## Power to suspend the school's right to a delegated budget

Legislative provision: Clause 66, Education and Inspections Bill 2006 (re-enactment of S17 of the School Standards and Framework Act 1998)

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

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

Can be used with:

|  | Entering into arrangements | Additional governors | Interim Executive Members |
|--|----------------------------|----------------------|---------------------------|
|  | ✓                          | ✓                    | ✗                         |

Requirements before using power: None

144. 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 Headteachers if necessary, or to take control of budget deficits. It also allows governors to focus their time and attention on other priorities for improvement.

145. If the local authority has appointed an Interim Executive Board (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.

## Decision to close a school

146. When a school is found to need Special Measures, it will receive substantial support from the local authority, and may be subject to the formal interventions described earlier in this section. Despite this support, there will be some instances when the second or subsequent Ofsted monitoring report shows that the school has failed to make satisfactory progress.

147. In such cases the Secretary of State can require the local authority to formally reconsider its plans for the school by informing it that the “case has become urgent” (see also Chapter 3), with a presumption that closure of the school should be seriously considered.

148. Regardless of whether the Secretary of State has issued this notice, a local authority may use school organisation powers to publish proposals to close the school in line with local policies. The Secretary of State may also direct the closure of a school in Special Measures (see also Annex 1).

149. The decision to close a school will often mean that replacement provision is needed, although consideration should be given to options which involve expansion of good schools in the area, or other alternatives to a new school.

150. If closure of a school is deemed appropriate, local authorities should work to minimise the disruption caused to pupils, making suitable transition plans. It may, for example, be possible to transfer most pupils to one or more other schools in the adjacent area, with or without the schools’ expansion, while making suitable transitional arrangements, perhaps on the original site, for pupils at a sensitive stage of their schooling (e.g. year 6 or year 11 pupils).

151. In some circumstances it may be possible to close the school but retain some or all of the provision on the original site under the management of a stronger school, making use of executive headship models.

152. The rationalisation of provision in this way may come about during a strategic review of the school buildings within an authority, particularly in areas which are currently active within the Building Schools for the Future

(BSF) programme.

153. In circumstances where a replacement secondary school is essential, the options are:

- (a) a competition under Section 66 of the Education Act 2005 to create a new foundation, voluntary, Trust or community school, or an Academy, including where the new school would be opened as a Fresh Start or Collaborative Restart school.
- (b) An application to the Secretary of State for any of the above types of school to be established without a competition

Further information on secondary school competitions is available from <http://www.dfes.gov.uk/schoolorg/guidance-view.cfm?Id=60>.

154. Under the Education and Inspections Act 2006, competitions are also required for primary and special schools.

#### Proposals for re-organisation of post-16 education and training

155. The Learning and Skills Council (LSC) may put forward proposals for the reorganisation of 16-19 provision in an area as a result of an area-wide inspection of post-16 provision. The LSC can also make proposals relating to school sixth forms, where the proposals are made with a view to promoting one of the following objectives:

- an improvement in the achievement of 16 to 19 year-olds
- an increase in participation amongst 16 to 19 year-olds
- an expansion of the learning opportunities open to 16 to 19 year-olds

156. The LSC's proposals may involve the closure of one or more sixth forms, the opening of new sixth forms, or alterations such as a change in the age range or enlargement of premises. The LSC may also propose the establishment of 16-19 institutions under schools regulations or as FE institutions. In all cases, it is important that the LSC considers all options that

include alternatives to reorganisation, for example, encouraging more collaborative working between sixth forms and the FE sector. Regulations and associated guidance on the procedures which the LSC must follow when bringing forward proposals can be found at <http://www.lsc.gov.uk>.



## Annex 1

# Statutory intervention powers of other bodies in maintained schools

This Annex sets out the intervention powers which are available to:

- the Secretary of State
- a Diocesan body or other appointing authority
- the Learning and Skills Council

## Secretary of State's powers

157. Sections 67 – 69 of the Act set out the statutory powers of intervention available to the Secretary of State. However, local authorities are expected to make decisive and effective use of its own intervention powers (see Chapter 5); the Secretary of State's powers are reserve powers for exceptional circumstances.

### Appointment of additional governors

158. Section 67 of the Education and Inspections Act allows the Secretary of State to appoint additional governors at any time to a maintained school which requires Significant Improvement or Special Measures.

159. An additional governor appointed in this way may be nominated to be the Chair of Governors in place of any person previously elected as Chair.

160. Before using this power, the Secretary of State must consult with the local authority, the governing body, and – in the case of a voluntary or foundation school – the appropriate diocesan or other appointing authority.

161. The local authority may not suspend the governing body's right to a delegated budget if the Secretary of State has appointed additional governors.

If the local authority has already suspended the governing body's right to a delegated budget, the Secretary of State must reinstate the budget if requested to do so by the governing body.

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

162. Section 69 allows the Secretary of State to appoint an Interim Executive Board at any time if a school requires Significant Improvement or Special Measures.

163. The Secretary of State 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 absolutely necessary to secure rapid improvements at the school.

164. Before using this power, the Secretary of State must consult with the local authority, the governing body that is to be replaced, and – in the case of a voluntary or foundation school – the appropriate diocesan authority or other appointing authority, unless such consultation has already been carried out by the local authority in connection with a proposal of its own to appoint interim executive members.

### Power to direct closure of a school

165. Section 68 allows the Secretary of State to direct the closure of a school in Special Measures. This will usually be done where there is no prospect of the school making sufficient improvements.

166. Prior to making the direction, the Secretary of State must consult with the local authority, the governing body that is to be replaced, and – in the case of a voluntary or foundation school – the diocesan or other appointing authority, and the Learning and Skills Council (if the school has a sixth form).

167. 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 (see also chapter 5).

## Diocesan or appointing authority powers

### Schools which have not complied with a Warning Notice

168. If a voluntary-aided school has failed to comply with a warning notice, and the local authority has appointed additional governors, the diocesan or other appointing authority may appoint additional foundation governors.

169. The number of additional foundation governors may match, but not exceed, the number of additional governors appointed by the local authority. This ensures that the foundation governors can continue to hold the majority of places on the governing body.

170. The additional foundation governors are subject to the same term of office as the additional governors appointed by the local authority (i.e. the same period of appointment applies, and they are only eligible for re-appointment if the local authority's additional governors are re-appointed).

171. It is good practice for the diocesan or other appointing authority to provide the governing body with information about the appointees before the appointment is confirmed, and for it to work with the local authority to ensure that all additional governors share the same objectives.

### Schools in Special Measures or requiring Significant Improvement

172. If a voluntary-aided school requires Significant Improvement or is in Special Measures, the diocesan or other appointing authority may appoint an unlimited number of additional foundation governors, regardless of whether the local authority has appointed additional governors. However, it may not appoint additional governors if the Secretary of State has exercised his powers under section 67 to appoint additional governors or section 68 to direct closure of the school.

173. If more than one person or body is responsible for appointing additional governors and they are unable to agree on additional appointments, the Secretary of State may, after consulting those within the appropriate authorities, decide on which individual(s) to appoint as additional governors.

174. It is good practice for the diocesan or other appointing authority to provide the governing body with information about the appointees before the appointment is confirmed. It is also good practice for the appointing body to work with the LA to ensure that all additional governors share the same objectives.

### Learning and Skills Council powers

175. The Learning and Skills Council (LSC) will work with local authorities to support the improvement of sixth-form provision. The LSC's powers of intervention, set out below, are enacted in the Learning and Skills Act 2000 and the Education Act 2002.

#### Proposals for closure of school sixth forms

176. Where a school sixth form has been judged to require Significant Improvement in two consecutive Ofsted inspections, or where a maintained school for 16-19 year olds has been judged to require Special Measures in two consecutive Ofsted inspections, the LSC may propose closure.

## 2: Guidance for proprietors of non-maintained schools

Academies, City Technology Colleges and Non-Maintained Special Schools are independent of the local authority and therefore legislation relating to local authorities' and other bodies' intervention powers at maintained schools are not valid for these types of school. However, expectations of them and methods of accountability are the same as those for maintained schools. They are expected to collaborate with other schools, professionals and organisations to deliver national priorities such as Every Child Matters and the 14-19 agenda. If they are found to be causing concern, it is important that appropriate actions are taken immediately in order to provide a better education for their pupils.

This Annex outlines the provisions applicable to non-maintained schools that are judged to require Significant Improvement or Special Measures.

### Introduction

177. The proprietor of an Academy is the Academy Trust; for a City Technology College (CTC), the CTC Trust; for a Non-Maintained Special School (NMSS), the controlling charity or charitable trust.

178. There is no provision similar to the warning notice system that is applicable to non-maintained schools. If local authorities have concerns about a non-maintained school, they should raise these with DfES.

179. Paragraph 2(5) of Schedule 7 of the Act (which will have the effect of inserting a new subsection paragraph (4) to Section 17 of the Education Act 2005) requires the proprietor of a non-maintained school to have regard to guidance in performing his functions as set out in that Schedule. Such

guidance includes this document, but also includes any further guidance provided by the Secretary of State on particular situations at individual schools through a nominated DfES Education Advisor. In the case of Academies, this guidance may arise from judgements made by the Academy's School Improvement Partner (SIP).

### Responsibilities on the proprietor following an adverse report on a non-maintained school

180. The proprietor of the school should start to take action to address weaknesses identified during the inspection immediately after the oral feedback that Special Measures or Significant Improvement is required.

181. When written confirmation is received that the school requires Significant Improvement or Special Measures, the proprietor is required to prepare a statement of action and send this to Ofsted under provision detailed in section 17 of the 2005 Act, as amended by paragraph 2 of Schedule 7 of this Act.

182. The statement of action should detail:

- The action the proprietor has taken so far
- The additional support the proprietor will commission to help the school address the areas of weakness identified by Ofsted
- What specific steps are needed to build the leadership and management capacity of the school, including the capacity of middle managers
- What arrangements the proprietor has made to inform parents and carers about the actions planned for the school, and how it will gather and take into account their views (see Chapter 4)
- Whether there is scope for partner organisations to be brought in to support the school (including other schools, trusts, colleges, or non-educational organisations), and how this collaboration will be facilitated

- The scope for the school to be closed or federated
- A plan of future action, including resource implications, quantified targets to evaluate the effectiveness of external support, target dates for key actions, and progress review points.

### Notice that the case has become urgent

183. For non-maintained schools requiring Special Measures, there is also provision in Schedule 7 for the Secretary of State to give notice that the “case has become urgent”. This notice requires the proprietor to re-consider the action being taken.

184. The Secretary of State will give notice that a case has become urgent based on the findings of the Ofsted monitoring visits. The usual trigger point would be a judgement of inadequate progress at the second monitoring visit. However, this power is discretionary and the Secretary of State will consider each case on its merits. There may be some exceptions about when a notice is triggered . For example:

- If Ofsted provides compelling evidence of major difficulties at any monitoring visit, the Secretary of State reserves the right to issue a notice. This includes an exceptionally severe series of findings at the first monitoring visit
- If recent changes to leadership and management have yet to take effect, the Secretary of State may decide not to issue a notice, even if Ofsted reports inadequate progress at the second monitoring visit
- If a school remains in Special Measures for an extended period, and is demonstrating no more than satisfactory progress at the fourth or fifth monitoring visit, the Secretary of State may issue a notice.

### Duty on proprietor if the case has become urgent

185. If the Secretary of State has given the proprietor a notice that the case has become urgent, the proprietor should prepare a new statement of action

as set out previously, but with additional specific reference to the evidence from the latest monitoring report from Ofsted. The statement should contain a reconsideration of the actions already taken, in order to determine why the school has not made progress.

## Interventions to secure school improvement

186. There are no statutory powers to intervene in non-maintained schools. However, the following non-statutory provisions apply.

### Academies

187. There are three non-statutory interventions at the Secretary of State's disposal in relation to Academies by virtue of an Academy Trust's articles of association and funding agreement. The Secretary of State is enabled to:

- appoint additional governors;
- stop funding the Academy;
- close the Academy.

This closely tracks the statutory intervention powers which LAs have in relation to maintained schools.

### City Technology Colleges

188. If a CTC no longer has the characteristics of a CTC or the conditions and requirements set out in the funding agreement (the contract between the Secretary of State and the individual CTC trust) are not being met, a CTC could be deemed to be in breach of its funding agreement. In such circumstances the Secretary of State could give notice to terminate the agreement.

### Non-maintained Special Schools

189. Placing local authorities retain responsibility for ensuring the provision specified in the child's statement is provided and for paying fees charged by



the schools.

190. NMSS are approved by the Secretary of State under section 342 of the Education Act 1996 and have to maintain the standards as set out in supporting regulations. Should a school fail to maintain the standards, including educational standards, then the Secretary of State has the power to remove its approved status, which would in effect close the school. However, unless the grounds for closure were those of health, safety and welfare of pupils the Secretary of State would not remove approval status without consulting the governing body and affording the school a period of time within which to comply with any requirements of the regulations. Should it be necessary to remove approval status and thereby close the school, it would be the responsibility of the placing LAs to find suitable alternative provision for the children they have placed there.

## Annex 3

# Glossary

|                                  |                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Appointing Authority</b>      | The body that appoints the foundation governors at a foundation or voluntary school.                                                                                                                                                                                                                                                                                                            |
| <b>Federation</b>                | Federations are pairs or groups of schools which share governance arrangements. In a 'hard' federation, all the schools share a single governing body. In a 'soft' federation, schools retain their separate governing bodies but delegate some powers to a joint governing committee. See <a href="http://www.standards.dfes.gov.uk/federations/">www.standards.dfes.gov.uk/federations/</a> . |
| <b>Formal Warning</b>            | See 'Warning Notice'.                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Fresh Start</b>               | A new school which is opened to replace a school causing concern as part of the DfES Fresh Start programme.                                                                                                                                                                                                                                                                                     |
| <b>Eligible for intervention</b> | A maintained school is eligible for intervention if it (a) is judged to require Special Measures, (b) is judged to require Significant Improvement, or (c) has failed to comply with a warning notice. Non-maintained schools are not eligible for intervention by local authorities.                                                                                                           |
| <b>Lead inspector</b>            | One of Her Majesty's Inspectors (HMI) or and Additional Inspector, who leads an inspection team.                                                                                                                                                                                                                                                                                                |
| <b>Low attainment</b>            | Attainment refers to the absolute standards achieved by pupils, usually measured by their performance in external examinations and achievement of qualifications. Attainment is low if these standards are below national averages or targets.                                                                                                                                                  |
| <b>Maintained school</b>         | A school that is maintained by the local authority. Maintained schools inspected by Ofsted are: community, foundation, Trust and voluntary schools; community and foundation special schools; and maintained nursery schools.                                                                                                                                                                   |
| <b>National Strategies</b>       | The National Strategies offer a range of programmes to raise standards of achievement,                                                                                                                                                                                                                                                                                                          |

with a specific focus on the quality of teaching and learning and on the effectiveness of leadership and management. They are also able to develop tailored support for individual schools causing concern. The National Strategies work in regional teams, the contact details of which are available from [insert].

|                                |                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Non-maintained school</b>   | A school that is not maintained by the local authority. Non-maintained schools inspected by Ofsted are: Academies; city technology colleges; city colleges for the technology of the arts; and special schools which are not community or foundation special schools, but which are currently approved by the Secretary of State.                                       |
| <b>Notice to Improve</b>       | See 'Significant Improvement'                                                                                                                                                                                                                                                                                                                                           |
| <b>Significant Improvement</b> | The term applied by Ofsted when a school is performing significantly less well than it might in all the circumstances reasonably be expected to perform. A school requiring Significant Improvement is said to have received a 'Notice to Improve'. NB The Ofsted judgements of 'Serious Weakness', 'Under-achieving' and 'Inadequate sixth form' are no longer in use. |
| <b>Special Measures</b>        | The term applied by Ofsted when a 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 at the school.                                                                                              |
| <b>Trust schools</b>           | Trust schools are a maintained foundation schools supported by a charitable Trust, which provides governors to the school(s). See <a href="http://findoutmore.dfes.gov.uk/2006/09/trust_schools.html">http://findoutmore.dfes.gov.uk/2006/09/trust_schools.html</a>                                                                                                     |
| <b>Under-performance</b>       | Under-performance refers to poor levels of pupil progress, relative to their prior attainment and potential. An under-performing school may appear to have reasonable standards of attainment, but closer examination shows that pupils are not achieving as well as they could, or the school is achieving less well than similar schools.                             |
| <b>Warning Notice</b>          | A notice by which a local authority may notify the governing body of a school of its concerns                                                                                                                                                                                                                                                                           |

relating to the school's performance, a breakdown in leadership or management, or pupil or staff safety. This is also sometimes referred to as a 'formal warning'. (See Chapter 5).

### Working day

Any day which is not a Saturday or Sunday, a bank holiday, or part of a holiday longer than a week taken by the school in question.