

# Proposals for Revisions to Legislation for Schools Causing Concern

## Summary

Under the Education and Inspections Act 2006, local authorities have a strategic leadership role to promote high standards in education, a vital part of the fulfilment of every child's potential. To this end they have a range of intervention powers for schools that have failed Ofsted inspections - they can add new governors, replace an entire governing body, require federations, de-delegate - and of course close the school.

They may also consider a formal warning notice which allows the authority to employ the range of intervention powers available – even where Ofsted has not graded the school as “inadequate” – for example because of a sharp decline since the previous inspection. There is evidence that some authorities are not taking the opportunity to use these powers appropriately. This is important because they are designed to prevent future failure and to address issues before they become more serious.

The Government therefore proposes to take a new legislative power in the forthcoming Education and Skills Bill to require authorities to consider formal warning notices when these are clearly justified by the school's performance. This would require adjustments to existing legislation in the 2006 Act, and detailed proposals for this are set out in this document.

It is also proposed to extend the Secretary of State's current power to require authorities to take additional advisory services. It is proposed that in future this power may apply to authorities with large proportions of schools with low standards, as well as to those with high proportions of schools that have formally failed inspections.

Views on the detailed proposals are invited by 25 September 2008.

# Introduction

1. Under the Education and Inspections Act 2006, local authorities have a strategic leadership role to promote high standards in education. This is a key part of their wider role in promoting the wellbeing of all children and young people in their local area. The 2006 Act provides the current legal framework for schools causing concern, and makes a crucial contribution to school improvement by enabling early action by local authorities to improve school performance. In particular, the Act enables local authorities to issue an underperforming school with a warning notice when it is not in an Ofsted category of concern. The Act also gives schools a balancing right to make representations to Ofsted against the issue of such a notice. A valid warning notice enables the authority to use the full range of its intervention powers, as if the school had failed an inspection.
2. This document sets out more detail on new legislative proposals for schools causing concern, building on lines already set out in the cross Government legislative programme Green Paper published in May 2008. The Government intends, subject to Parliamentary approval, to take new powers to augment existing legislation on schools causing concern.
3. Our new proposals are designed to make the system created by the 2006 Act more effective and ensure that it is implemented appropriately. In particular, we are proposing to require a local authority to consider issuing a formal warning notice when that would be clearly justified by the school's performance. In addition, the government proposes to extend its existing powers to require authorities to bring in additional partners to augment their advice and support for schools to cover cases where authorities have a large number or proportion of schools with very low levels of attainment or poor performance relative to their circumstances, and are failing to tackle the problems successfully.
4. The document describes these proposals in more detail and invites formal comments from all interested parties by 25 September 2008.

# The current legal framework for schools causing concern

5. Local authorities provide challenge and support to schools in line with their current progress and circumstances. Direct intervention is quite rare. When it is needed, the principal legal powers of local authorities, within the 2006 Act, relate to situations where a school has failed an Ofsted inspection and been placed in special measures or found to require significant improvement.
  - Create **Interim Executive Boards (IEB)** to replace poor Governing Bodies;
  - Require a weak school to **federate** with a willing strong partner; and
  - Remove the **delegation** of the school's budget.
6. Most schools in special measures or in need of significant improvement work systematically with the local authority to secure the necessary improvements as quickly as possible. For example, the great majority of schools requiring significant improvement have recovered within around 12 months, and on re-inspection have been found to be performing satisfactorily. Schools in special measures are spending less time in that category: 21 months for secondary schools and about 18 months for primary schools on average.
7. Local authorities do need, however, to take action in a few schools that fail to improve, make inadequate progress, or do not recognise the seriousness of their situation. Therefore, when a school has failed an Ofsted inspection, local authorities may, if necessary:
  - Appoint **additional governors**;
8. In individual schools these powers may be essential in order to make sure that the education and life chances of the pupils are safeguarded. Ultimately, in rare cases of complete failure, the local authority may use its general power to close the school.
9. The 2006 Act also set out the statutory powers of intervention available to the Secretary of State. These are reserve powers for unusual and difficult circumstances, and local authorities are normally expected to make appropriate use of their own powers before the Secretary of State will consider intervening.
10. Nonetheless, in exceptional circumstances, the Secretary of State may:
  - Appoint additional governors;
  - Appoint an Interim Executive Board; and
  - Close a school (only in cases of special measures).

11. The following table summarises the intervention powers of both local authorities and the Secretary of State. Further comprehensive details and statutory guidance of the legislation governing schools causing concern was provided by the Department in May 2007, and is currently available at <http://www.standards.dfes.gov.uk/sie/si/SCC/news/2007guide>

# Who can intervene in Schools Causing Concern, and when?

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

# Secretary of State's current powers in relation to local authorities

12. The Secretary of State also has a current power (under section 62A of the Education Act 2002) to direct an authority to enter into a contract or other arrangement to obtain services of an advisory nature in relation to schools in formal Ofsted categories of concern (i.e. schools in special measures or requiring significant improvement).
13. The triggers for this intervention are where it appears to the Secretary of State that an authority:
  - has not been effective or is unlikely to be effective in eliminating deficiencies in the conduct of that school;
  - is unlikely to be effective in eliminating deficiencies in the conduct of other schools which may require significant improvement or require special measures; or
  - maintains a disproportionate number of schools which require significant improvement or require special measures.
14. In addition, the Secretary of State has a general power of intervention under the Education Act 1996, amended by Children Act legislation, to intervene in an authority where there are inadequate judgements within any aspect of children's services as documented in a Joint Area Review, or Annual Performance Assessment.

# Warning notices: a means of preventing formal failure and addressing persistently low attainment

15. The 2006 Act and its associated guidance revised the way local authorities can issue statutory warning notices to poorly performing schools not in formal Ofsted categories of concern. A warning notice enables the authority to use intervention powers as if the school had failed an inspection. The 2006 Act did this by extending the definition of poor school performance to include schools that are doing badly in relation to the nature of their pupil intake or the school's general context, in addition to schools at which attainment rates were unacceptably low.
16. Local authorities usually engage schools effectively through a professional dialogue to address any issues causing the local authority concern. This dialogue is normally conducted by the School Improvement Partner (SIP), or (in future in National Challenge Schools) the National Challenge Adviser (NCA). He or she will discuss any concerns about the school with the school's head teacher in the first instance. The SIP or NCA and the school will agree with the local authority how any necessary support will be secured, deployed and monitored. However, there may be circumstances in which the SIP or NCA has concerns about the school and cannot secure agreement on action through professional dialogue with the head teacher and governors. If such circumstances persist, and the school fails to thrive, then the local authority should consider a statutory warning notice. However, as the statutory guidance makes clear, this is only likely to be needed when the relationship between the authority and the school has broken down. Judicious authorities will have used every channel to engage the school over the problem before resorting to legal powers.
17. Under the existing provisions of the 2006 Act, a warning notice may be triggered by any of the following circumstances:
- 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;
  - there has been a serious breakdown in management or governance which is prejudicing, or likely to prejudice, standards of performance; or
  - the safety of pupils or staff at the school is threatened (whether by a breakdown in discipline or otherwise).



**18.** In the current legislation “low” is defined further as meaning the standards are low by reference to:

- The standards the pupils might in all circumstances reasonably be expected to attain;
- Where relevant, the standards previously attained; and
- The standards attained by pupils at comparable schools.

More comprehensive guidance on when warning notices should be considered is currently provided in Chapter 2 of the Statutory Guidance on Schools Causing concern (see paragraphs 11 and 16 above).

**19.** There is evidence that, since the 2006 Act was implemented in April 2007, local authorities have not used warning notices in line with the guidance. This evidence includes:

- Cases where a school has fallen into special measures on inspection some 18 months to two years after the local authority first documented the grounds for concern, which were then confirmed by the Ofsted judgement. While it may be reasonable for the local authority to spend a few months negotiating with the senior leaders and governors on the changes necessary in the school, it is difficult to justify a cause of concern lasting for 18 months without intervention, or sign of improvement.
- The apparent absence of local authority action in cases of long-standing low attainment, both primary and secondary. Some low attaining schools have been stuck at unacceptable levels of performance for several years. For example, there are currently 104 primary schools

where Key Stage 2 level 4 attainment rates in both English and mathematics have been below the Government’s 65% floor target for five or more years. Most of these schools are not in a formal Ofsted category of concern; the majority have low contextual value added scores, suggesting that the persistently low attainment cannot be fully explained by difficult local circumstances.

- The relatively small number of valid warning notices issued since April 2007, despite a large number of potential candidates. Although it may be argued that the small number of such warnings reflects authorities’ successful negotiations with their schools, the evidence above for long-standing problems suggests that more warnings could have been used appropriately.
- 20.** There are two groups of schools outside Ofsted categories where more decisive action may need to be considered:
- Schools that are badly and sharply declining in performance, including some of those currently just above the Government’s primary and secondary floor targets, but in imminent danger of dropping below; and
  - Those schools that have been stuck with low attainment and little or no improvement for several years.
- 21.** These considerations apply equally to maintained primary and secondary schools. The Secretary of State will apply similar principles in relation to warning (and if necessary intervening) in the case of Academies when these schools are not responding to the need to raise standards.

22. The Secretary of State has therefore decided in the light of this evidence, that – subject to Parliamentary consent – he will bring forward new legislative measures to ensure that local authorities use their own powers responsibly, so that children do not remain unnecessarily in low-attaining schools, with serious implications for their future life prospects.

# Proposed New Legislation

## Definition of when a school may be warned

23. The existing criteria for warning notices (see paragraph 17–18 above) clearly allow such warnings to be made when a school has one or more of the following

- Absolute levels of raw attainment that are unacceptably and persistently low; and
- Persistently low value added or contextual value added.

24. This means that all persistently “coasting” schools as well as those with unacceptable and non-improving attainment could receive warnings under this legislation unless they convince the authority that they are addressing the identified problem. In addition, for the avoidance of all doubt, the Secretary of State will propose a further criterion indicating that a school with persistently poor rates of pupil progress may be eligible for a warning notice.

## Power of the Secretary of State to direct consideration of warning

25. The main proposal on warning notices is a new power for the Secretary of State to require local authorities to consider the use of their existing warning notice powers, currently under section 60 of the 2006 Act. The evidence described above suggests that some authorities are not exercising this power appropriately, and therefore the Secretary of State may in future require such consideration when the grounds for poor performance (i.e. low standards in line with the legal definition) apply to a particular school. The Secretary of State would make such a judgement on the basis of the recent performance of the school in question, taking into account all relevant data, and the school's full context. He also believes that this is an area for future statutory guidance. We envisage that local authorities will have to respond in a time-limited period, currently proposed as 10 working days, and to provide reasons for their decision.

26. Therefore after such a direction, the authority would have to indicate in its response either

- that it has decided to initiate the warning notice procedure; or
- that it has considered its powers, but has declined to exercise them giving detailed reasons for not doing so, for example by specific actions taken.

We will propose that the authority must copy the response to Ofsted as well as to the Secretary of State.

27. Where the LA has responded that it has decided to initiate the warning notice procedure, it will be asked to give the governing body of the school a warning

notice within five working days from the date of the reply to the Secretary of State.

28. Where the LA initiates the warning notice procedure, whether on its own decision or following a direction from the Secretary of State, the procedure set out in current legislation, including the right of the school to make representations to Her Majesty's Chief Inspector during the "initial period" (that is, the 15 day period between the serving of the notice and its coming into force), would continue although the Government is minded to make one small additional requirement. The Secretary of State would like, in future, to receive a copy of the Warning Notice from the local authority.

29. The Secretary of State is also minded to widen the circumstances when he can exercise his own powers to appoint additional governors or an IEB. He believes there may be rare circumstances when he may wish to use such powers after a valid warning notice has been given, as well as when a school requires special measures or requires significant improvement.

## Amendment to power to require an authority to obtain advisory services

30. Paragraph 13 above describes how, under current legislation originally enacted within the Education Act 2002, the Secretary of State can require a local authority to take "advisory services" for the purposes of school improvement, naming the person, organisation or school who would provide such advice and support. The requirement may also name a school or schools where such advice is needed.

31. The present trigger point for this intervention is the Secretary of State's view that a local authority has not been effective (or in future will not be effective) in eliminating deficiencies in schools that have failed Ofsted inspection; or that there are too many schools in the authority that have failed inspection.
32. Our new legislative proposal in this area is to extend the criteria, so that the requirement for fresh advisory services can apply not only to schools in Ofsted categories of concern, but also when an authority maintains a large number or proportion of schools with very low levels of attainment or poor performance relative to their circumstances. In order to secure this, and to bring the policy into line with other aspects of schools causing concern, it is proposed that the trigger point should link to the legal definition of low standards, as described in paragraphs 17 and 18 above, and set out in section 60 of the Education and Inspections Act 2006.
33. The Secretary of State does not envisage that this power will be used extensively. Nonetheless, in situations where for example a local authority has a very high percentage of schools with low standards, compared with authorities of a similar size and context; and most of those schools are failing to make satisfactory progress, then the Secretary of State believes that such powers may have an important role in securing improvements. The standards in both primary and secondary schools will be reviewed when this power is considered.

### Consultation questions:

*We should appreciate views, especially from local authorities, on the reasons why formal warning notices are infrequently issued. Do local authorities and other partners have examples of negotiations with schools where the prospect of a warning notice has stemmed a school's decline (without the warning being issued)?*

*Are there other methods of last resort for preventing a school from inexorable decline into special measures?*

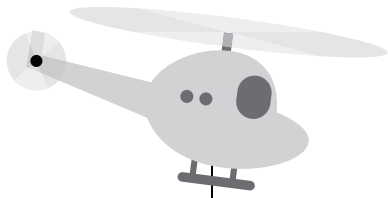
*Is the definition of when schools can be warned (a) sufficiently comprehensive; (b) sufficiently flexible?*

*Do partners agree that it will be valuable to include progression rates in the definition? Should any other performance criteria be used?*

*Is there sufficient clarity and detail in the description of when the Secretary of State might consider using this new power – that is, when he believes that there is clear evidence of consistently "low" standards as set out in paragraph 25 above? How may this be amplified in statutory guidance?*

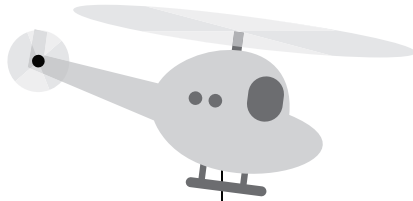
*Do partners agree with the proposed timescales?*

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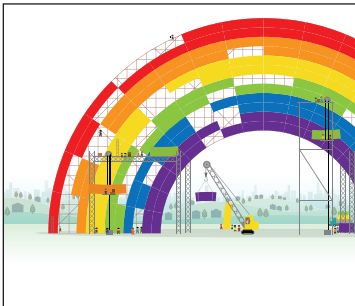
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