

# The Learning and Skills Council's Proposed Statutory Intervention Policy

Consultation Document

January 2008

Of interest to everyone involved in delivering  
LSC-funded provision



# Foreword

The further education (FE) system is undergoing a significant transformational programme, with the aim of it becoming truly responsive to the needs of learners, employers and local communities, thus delivering economic growth and social mobility.

The provision of high-quality learning and training is vital to achieving this transformation. The Government and the Learning and Skills Council (LSC) are therefore committed both to continuous quality improvement and to eliminating unsatisfactory provision; and we are working with other national agencies and providers towards this goal.

The LSC has put in place policies to deliver this aim, and providers have a clear focus on quality improvement that is making a real difference. Going forward, the sector as a whole will, through self-regulation, clearly have a key role in addressing underperformance through peer support and challenge.

To support the reform process, the LSC National Council has been entrusted by the Government, through the Further Education and Training Act 2007, with wider powers of intervention.

The National Council takes these additional responsibilities with great seriousness and, as such, through the LSC, seeks to work transparently and fairly. This proposed intervention policy outlines how we would use these powers, and I encourage you to take the opportunity to feedback and potentially shape the final intervention policy, which will be published later this year.



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Chair, Learning and Skills Council



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# Introduction

- 1 The White Paper *Further Education: Raising Skills, Improving Life Chances* (published by the former Department for Education and Skills (DfES) in March 2006) set out an ambitious programme of reforms of the further education (FE) system. The Government has designed the reforms to equip learners with high-quality skills for productive, sustainable employment and personal fulfilment; and to ensure that employers have the right skills for their businesses to succeed in a competitive global economy.
- 2 While these reforms do provide new freedoms for high-performing colleges, coupled with this is a commitment to develop more robust and speedier action to address poor performance. The Learning and Skills Council's (LSC's) intention, however, is to support the efforts of providers in continuous improvement.
- 3 The LSC's approach to supporting the Government's commitment to eliminating underperformance was initially set out in *Identifying and Managing Underperformance*, published in January 2007. This saw the introduction of minimum levels of performance and Notices to Improve. An updated version of the document was published in January 2008.
- 4 An FE system based on trust and autonomy requires robust intervention not only to tackle poor quality, but also to complement the activities of the sector in raising its profile and reputation. In light of these reforms, it is now not only appropriate but also necessary to articulate the LSC's approach to intervention.
- 5 This proposed intervention policy, along with *Identifying and Managing Underperformance*, sets out our approach to managing both underperformance and failing providers. The policy will focus specifically on the exercise of the LSC's powers of intervention set out in section 56A of the Further and Higher Education Act 1992 (the 1992 Act) as amended by the Further Education and Training Act 2007 (the 2007 Act). It sets out when intervention may be required and how that intervention will operate in principle. These powers of intervention and the consideration of their use will apply only in the most serious cases of underperformance:
  - where a college has no capacity to improve and in those colleges where a serious risk to the delivery of education and training becomes apparent.
- 6 It is anticipated that these powers will be used only when a college has not met the conditions of a Notice to Improve, and in the unusual circumstances where the LSC and the governing body cannot agree an appropriate way forward (and they have exhausted all approaches to instigating positive change). This is discussed in paragraphs 33 to 44. In exceptional circumstances, there may be cause for immediate action, for example where there is an imminent, serious and exceptional risk to learners or to public funding (discussed in paragraphs 45 to 47).
- 7 This intervention policy statement relates only to the exercise of the powers under section 56A of the 1992 Act, as amended by the 2007 Act, and only applies to an institution in England within the FE system as defined by the 1992 Act. It does not apply to any other LSC-funded provider. An overview of the LSC's actions in relation to other types of providers is available at Annex E.

# Context

- 8 The FE system faces a significant but achievable set of challenges, which ultimately will lead to a truly demand-led, responsive system that delivers economic growth and social mobility. These challenges have been clearly set out in the following.
- The Skills Strategy (HM Treasury, DfES, Department for Work and Pensions, Department for Trade and Industry, 2003, 2005).
  - *14–19 Education and Skills* (DfES, 2005).
  - *Realising the Potential: A review of the future role of further education colleges* (DfES, 2005).
  - *Prosperity for all in the Global Economy – World class skills* (HM Treasury, 2006).
  - *Further Education: Raising Skills, Improving Life Chances* (DfES, 2006).
  - *Pursuing Excellence: the National Improvement Strategy for the Further Education System* (Quality Improvement Agency (QIA), 2007).
  - *Framework for Excellence: How the Framework Will Work* (LSC, 2007).
- 9 To support all these changes, the Government introduced the 2007 Act, which will facilitate the appropriate, and necessary, structural changes for reform.
- 10 Alongside these changes, the sector must meet the challenge of the agenda of self-regulation and take collective responsibility for its own future and reputation, thus forging a new relationship with the LSC. Self-regulation is, however, in its initial stages. Therefore, until the system of self-regulation is in place, the LSC may still need to intervene formally in a minority of cases. Even when self-regulation is in place, in some extreme cases formal intervention may still be required.
- 11 The FE Self Regulation Implementation Group, chaired by Sir George Sweeney, has recently put forward its proposals to the Secretary of State for Innovation, Universities and Skills for the further development of the self-regulatory system. The LSC intervention policy requires additional consideration in light of the move towards self-regulation. As such, the LSC has written to Sir George Sweeney asking that the group's future work incorporate consideration of the role of a self-regulating sector in intervention. The LSC will also engage with the Association of Colleges, the Sixth Form Colleges' Forum, the 157 Group and the Single Voice to determine their role in supporting their members to avoid escalation to LSC intervention.
- 12 Alongside work to develop self-regulation proposals, the Framework for Excellence is being developed as a single, unified framework that will assess the performance of providers, including the ways in which they meet the needs of all users. For each provider, it will measure performance against the Framework and underpin the LSC's future role in identifying where intervention is necessary.
- 13 The LSC will review its intervention policy on a regular basis. It is anticipated that the first review will occur in 2009/10, following the publication of the second version of the Framework for Excellence. Initial work is under way to assess how the Framework will be used to inform interventions such as Notices to Improve and other serious actions relating to identifying and managing underperformance. These changes will be implemented in 2010 and will not require further consultation.
- 14 Thereafter, it is intended that the policy will be reviewed every four years. Until this revision occurs, intervention will continue to be triggered by the definitions outlined in section 56A of the 1992 Act, and LSC actions will be informed by the principles outlined in paragraph 16.
- 15 As part of its Annual Report, the LSC will publish a statement of how it has used its powers of intervention as conferred under both the Learning and Skills Act 2000 (the 2000 Act) and the 1992 Act. The 2008–09 Annual Report will name the institutions concerned. To provide context, the statement will also detail the number of Notices to Improve issued in that year and any that remain active. The LSC will not name recipients of Notices in the Annual Report.



# Intervention Policy: Purpose and Principles

**16** The purpose of the intervention policy is to provide a public and transparent accountability framework in which the LSC will operate, and to meet the requirements of section 56B of the 1992 Act. In devising and operating its intervention policy, LSC actions will be underpinned by the following principles.

- Intervention will occur only where necessary and the LSC will exercise any new powers only as a last resort.
- The level of intervention will be proportionate to the risk to learners and public funding.
- Actions will be agreed, as far as possible, between the governing body, the principal, the LSC and any other appropriate body.

**17** Intervention is just one element of wider arrangements aimed at supporting providers to address unsatisfactory provision. The actions taken prior to formal intervention are outlined in Stages 1 to 3 of this policy.

**18** The LSC has developed the intervention policy as a framework for action rather than as a series of procedures. This is because it is necessary to retain an element of discretion in managing intervention; the LSC will consider its response on a case-by-case basis. Therefore, of necessity, the response will vary according to the particular circumstances.

# The Route to Intervention

19 As outlined in *Realising the Potential*, a staged approach to intervention is necessary. This underpins LSC activity. It is, therefore, important to have a clear understanding of how decisions to intervene are arrived at. Intervention may occur at the end of a lengthy process of support and dialogue. As such, there is a series of stages leading to intervention. These are:

- the annual commissioning dialogue;
- identification of underperformance;
- support and challenge; and
- (as a last resort) intervention.

20 An overview of this process is set out in the diagram at Annex A and is explained in paragraphs 36 to 43. Annex B provides a more detailed description of the process as it relates specifically to invoking the use of the intervention powers. On each diagram, there are numbered boxes for ease of reference. They do not demonstrate the order in which events should occur.

## Stage 1: Annual commissioning dialogue

21 A college corporation is, through its senior post-holders, responsible for the quality of service it offers to learners and employers. This is realised through rigorous self-assessment and quality assurance, which in turn leads to continuous improvement. These factors are fundamental aspects of the ongoing dialogue between providers and the LSC. This annual commissioning dialogue allows the LSC to discuss any concerns with the college. It also allows the college to put forward evidence of its improvement and to demonstrate that it is actively managing any issues and bringing them under control.

## Stage 2: Identification of underperformance

22 In *Identifying and Managing Underperformance*, the LSC published its criteria for taking action where underperformance is evident, the specific action that should follow and the support given to colleges

and providers to address that underperformance. Whole college underperformance is identified by:

- Ofsted, through an inspection judgement of overall inadequate for 'Effectiveness of provision';
- the LSC, where 25 per cent or more of a college's long and short course provision is failing to meet the published minimum levels of performance; and
- the LSC, in relation to financial health and control.

23 Where underperformance is identified through one or more of the above factors, the LSC will expect the leaders of the college in question to act to address the situation. Underperformance in these circumstances will normally trigger the issuing of a Notice to Improve to the college. This sets out the conditions that the institution is required to fulfil within a set timescale, usually within 12 months.

24 The LSC, through its regional health and safety teams, will also assure itself that the provision it purchases takes place in a safe, healthy and supportive environment. If there is a risk that this cannot be guaranteed and there is a breach of the funding conditions associated with health and safety, the LSC will take the necessary steps to ensure compliance. It is anticipated that, in the majority of circumstances, this will apply only to some delivery areas of the college.

25 Where Health and Safety Executive (HSE) inspectors or their representatives identify concerns with a college and issue improvement or prohibition notices, formal cautions and so on, the LSC, through its regional health and safety teams and partnership teams, will support the HSE or enforcing authority to ensure that learners' health, safety and welfare are not compromised. In the event of either whole or partial underperformance in health and safety, if learners are in imminent danger the LSC will stop funding the learning/training with immediate effect.

## Stage 3: Support and challenge

26 Where the LSC issues a Notice to Improve, appropriate support is put in place to help the

college to make the necessary improvements. With regard to concerns relating to learner outcomes or teaching and learning, QIA works with the LSC and the college to identify the appropriate level of support required, which may include the allocation of a quality improvement adviser or appropriate support packages drawn from other improvement services. The college will also be able to consider feedback from any Ofsted monitoring visit or inspection.

- 27** Where there are financial concerns, the LSC will also provide improvement support. To prevent incidents of financial failure, LSC support may be provided where a college has emerging financial issues (showing a worsening financial position), requiring it to take action to improve its financial position before it reaches a point where it needs exceptional financial support. This approach mirrors our actions of setting improvement indicators, where a college is underperforming in a specific area of its business. This revised approach of taking action earlier will help prevent later, more serious, intervention, which is often more costly and disruptive for the LSC, the college and learners.
- 28** The improvement period of a Notice offers college leaders the appropriate level of support and the opportunity to identify and resolve problems within a reasonable period, without the need for the LSC to intervene by exercising its powers or using strategic drivers. The college is in control of its future and, as such, the college governors retain the ultimate responsibility for managing institutional affairs, meeting statutory requirements and improving its performance.
- 29** In some cases, normally by agreement with the college, earlier action may be required. The LSC, as part of a package of additional strategic support for the college, may exercise the power, under the 2000 Act, to appoint up to two additional members of the governing body to ensure that there is sufficient progress against a Notice to Improve. This may also occur when Ofsted has declared a college's 'Leadership and management' inadequate, but the college has not been declared overall inadequate. The aim of this action would be to avoid escalation to Stage 4, as described below in paragraphs 36 to 43.
- 30** The LSC would expect that, at the conclusion of a Notice to Improve, the majority of colleges would have addressed the underperformance identified. There may be, however, some colleges where insufficient progress is being made and which are unable to demonstrate that they have the capacity, capability and intention to bring about improvement. Evidently, the conditions of the

Notice to Improve will not have been met. This would demonstrate a significant risk to learners and public funding. In most circumstances, the LSC will simply cease to fund the provision that caused the underperformance. Where the LSC ceases to fund provision it will consider the impact on an area of any changes in delivery and monitor the overall volume, pattern, quality and range of provision from which learners and employers can choose in each area to ensure sufficient breadth, depth and responsiveness of provision.

- 31** Where funding is ceased, the LSC will not normally intervene further. It will intervene, however, if the viability of the college is compromised by the withdrawal of funding. If this arises, the LSC and the governing body will discuss the financial health and long-term role of the institution. The governing body, with support from the LSC, will then determine whether strategic option(s) should be adopted.
- 32** In the majority of cases where the college has not met the conditions of a Notice to Improve, the governing body and the LSC will agree an appropriate course of action. The outcome may, for example, include formal collaboration with another institution. The transitional period will be managed by the college through a short-term post-Notice record of actions, agreed with the LSC. This period and related actions will be led by the governing body in partnership with the LSC.

## Stage 4: Intervention

- 33** In rare cases, however, there may be occasions where a college which has not met the conditions of the Notice to Improve, the LSC and the governing body cannot agree a way forward. This could result from the governing body not providing the necessary leadership to take action. Alternatively, it could be because of non-co-operation or obstruction by the college executive and/or governing body. In these circumstances, and if it is considered that all the possible alternative approaches to instigating change have been exhausted, the LSC may exercise its statutory powers.
- 34** These colleges are also likely to demonstrate one or more of the following characteristics.
- Weak teaching and learning, with little or no evidence that the governing body and/or senior management team would be able to secure improvement within a reasonable period of time.

- Poor financial health, with little or no evidence that the governing body and/or senior management team would be able to secure improvement within a reasonable period of time.
  - Failures in management that result in serious and immediate risk to learner health and safety.
  - Serious and systemic failures in governance resulting in flawed decision-making and/or breaches of the instruments and articles of governance.
  - Significant failure to deliver adequate quality of provision, with little or no evidence that the existing governing body and/or senior management team would be able to secure improvement within a reasonable period of time.
- 35** The draft processes and procedures set out in this document (and illustrated at Annexes A and B) will be subject to and may be refined in light of the outcomes of an open consultation with the FE system.
- 36** Before exercising any of the statutory powers of intervention under the 1992 Act, the LSC will formally write to the governing body notifying the institution of its concerns, stating that it is minded to exercise its statutory powers under section 56A. The LSC's notification will set out:
- details of the action it is minded to take;
  - the rationale for being minded to exercise its statutory powers under section 56A, including the reasons why any previous plans or responses by the college are not considered to be sufficient; and
  - the relevant evidence.
- 37** If the LSC is minded to exercise its statutory powers under section 56A(10) to direct the governing body to consider dismissal procedures, it will additionally name the senior member or members of staff concerned and provide the reasons for such a direction.
- 38** At the beginning of this process, the LSC will also inform the Secretary of State for Innovation, Universities and Skills that it is minded to use the powers. Where the education and/or training of 16- to 19-year-olds would be affected, the notification would be copied to the Secretary of State for Children, Schools and Families.
- 39** The letter triggers a period of up to, but not exceeding, 30 working days for the governing body to make representations regarding the LSC's intention to exercise its powers. If the LSC's concerns relate to an identified post-holder, the governing body, in turn, would be expected to raise the issue with the post-holder and respond to the LSC with its view within the time period.
- 40** If, after considering the governing body's response, the LSC decides to proceed with intervention, it will set out its reasons in writing and allow the governing body a further opportunity to respond.
- 41** At the end of the 30-day period, the LSC's National Council will consider whether intervention powers should be exercised. Within 10 working days of the conclusion of the period of representations, the National Council will consider the recommendation of the Chief Executive and the Council Solicitor, the representations of the governing body and any other relevant evidence. If the National Council determines that the use of the intervention powers is appropriate, it will give notice to the Secretary of State for Innovation, Universities and Skills in accordance with section 56A(4) and, if appropriate, inform the Secretary of State for Children, Schools and Families. If the Secretary of State does not raise any concerns, the National Council will give notice to the governing body of its decision to exercise its powers of intervention in accordance with section 56A(5).
- 42** To protect the interests of learners, the LSC will ensure that funds are safeguarded during this period, and during any necessary transition arrangements that may follow.
- 43** Where a direction to a governing body to make collaboration arrangements, within the meaning of section 166 of the Education and Inspections Act 2006, has been made, the appropriate arrangements will begin. If the direction were to consider proceedings to dismiss a post-holder, the governing body will then follow its own dismissal procedures. The LSC will not control, participate (unless requested as a witness) or interfere in that process. The governing body will be responsible for the investigation, the process and the final decision.
- 44** The LSC's preferred option will be not to exercise the powers unless absolutely necessary, or where it has not been possible to resolve issues by working in partnership with the institution. However, the more serious the risk, the more robust the intervention is likely to be.

# Immediate Intervention

45 In exceptional circumstances, where there is immediate, serious and exceptional risk to learners and to public funding, and urgent action is required, the LSC may wish to intervene more immediately than the staged approach allows. These circumstances may include:

- evidence of serious misuse of public funds, fraud or deception;
- failures in management that result in immediate serious risk to learner health, safety and welfare; or
- evidence of a serious breakdown in employee relations within the institution because of the misuse of authority, which threatens its ability to deliver education and training.

46 In these circumstances, there will be an urgent and direct dialogue with the governing body and senior managers of the college to determine the extent and nature of any necessary action. This will be confirmed either in a formal notification of the immediate action to be taken or in a Notice to Improve, as appropriate.

47 In such circumstances, the LSC would not take action to use its powers if the governing body is able to demonstrate that it is capable of taking action to address the concern. Where the governing body is not able to demonstrate this capability, the LSC may exercise its statutory powers of intervention following the processes outlined in paragraphs 36 to 43.

# The Governing Body

- 48 Key to preventing intervention will be authoritative and informed governing bodies that are actively involved in improving performance and raising quality. Since incorporation, the role of the governing body has been defined in the context of the stewardship of public funds allocated to the corporation for the provision of FE (and higher education), and includes responsibility for the mission, strategic direction and quality of the corporation. There will need to be greater recognition by governing bodies of their own responsibilities where mismanagement has occurred.

# Checks and Balances

49 There is a range of safeguards already in place to prevent the arbitrary use of any intervention powers by the LSC. These include:

- the Secretary of State's powers under section 56C to direct the LSC to do one or more of the actions set out in section 56A(6), where he is satisfied that the circumstances are such that it would be appropriate for the LSC to do so, and the LSC must comply with those directions;
- the Secretary of State's powers under section 56B to give the LSC guidance on the intervention policy statement and consultation process, to which the LSC must have regard;
- that the LSC must act within its powers to give directions;
- that the LSC will consult the sector in the development of the intervention policy to ensure that stakeholders' concerns are considered and that appropriate processes are put in place;
- that the use of powers will be reasonable and proportionate and will take account of the relevant circumstances in each case;
- the right of the corporation (governing body) to make representations, having received detailed information from the LSC as to why it proposed to intervene;
- that the corporation is the employer of staff in an FE institution, and the LSC, in the exercise of its power to give a direction to the corporation to consider the dismissal process, should have regard to the corporation's obligations under employment and equal opportunities legislation; and
- that corporations can complain through the LSC's published complaints procedure about the LSC's administration and decisions. If complainants are not satisfied with the outcome, they can have recourse to the Parliamentary Ombudsman or seek a judicial review of the decision.

# The Consultation

- 50 The consultation will last for 13 weeks and conclude on Friday 2 May 2008. Following the consultation period, the LSC will consider the responses and readjust the policy as appropriate. The LSC will publish a final version of the policy approximately four weeks after the end of the consultation period. The commencement of the relevant section of the 2007 Act conferring the powers of intervention on the LSC will be 18 April 2008.
- 51 This policy has received an early equality impact assessment. When the policy is finalised following the consultation, a further impact assessment will be performed. This will be published as part of the final intervention policy.
- 52 In the unlikely event that the LSC seeks to use its powers under section 56A in the interim period between the date of commencement and publication of the final version of the policy, the LSC will follow the processes set out in this document.
- 53 The LSC cannot consult on the statutory provisions in the 1992 or 2007 Acts.



# Annex A: The Route to Intervention

## Stage 1: Annual commissioning dialogue

1. Commissioning dialogue identifies any potential concerns, which the college addresses as part of its own quality improvement programme

## Stage 2: Identification of underperformance

2. College is identified as underperforming through Ofsted inspection and/or success rates and/or financial health and control

3. Is there a need to intervene immediately?

**LSC considers**

4. Does the college have the capacity to improve?

5. Can the college improve within an acceptable timescale? (approx 12 months)

6. Does the college have the capacity to improve its financial health and/or control?

9. Yes to all questions

10. No to one or more questions

7. Yes

8. No

11. LSC issues Notice to Improve

## Stage 3: Support and challenge

13. The college has approximately 12 months to address underperformance with support and feedback from QIA and a range of agencies

12. College continues as normal

14. Yes

15. No

16. Is there a risk that the college may require additional strategic support to achieve change?

18. Yes

17. Has the college met the conditions of the notice?

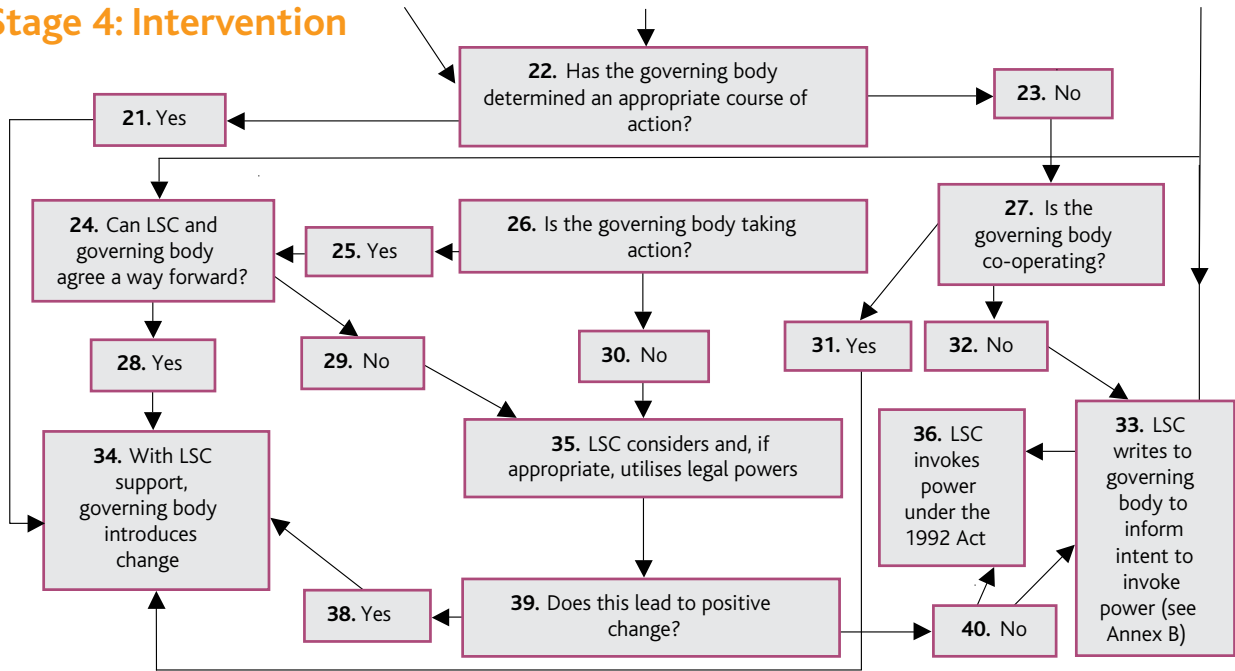
19. No

20. LSC provides additional support through advice or additional governance

Maximum 12 months

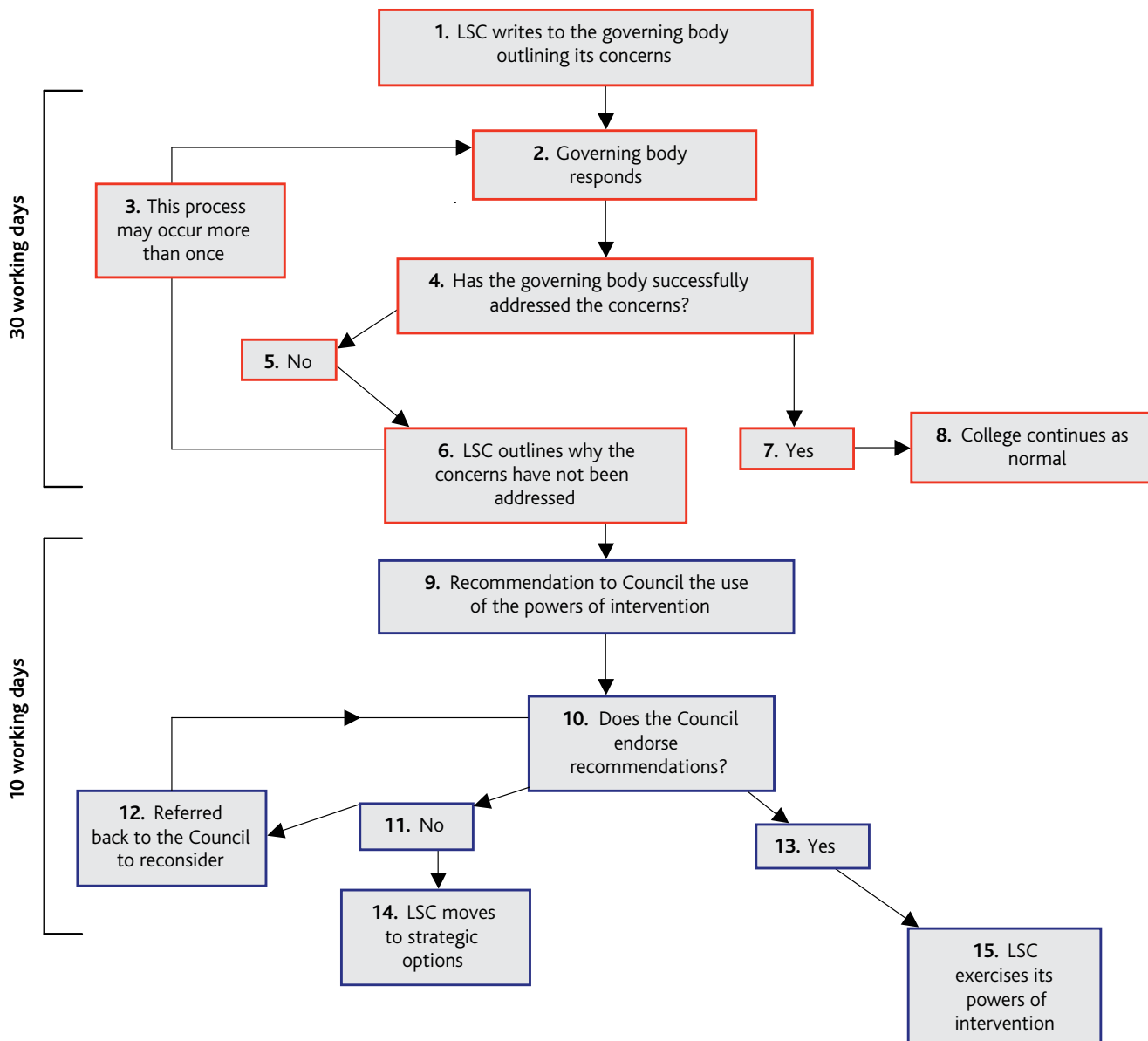
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### Stage 4: Intervention



# Annex B: The Process for Exercising Powers of Intervention under Section 56A

(See Annex A, box 33)



# Annex C: The Use of the Powers: the Decision-making Process

- 1 The appropriate regional director will discuss the intention to use the powers with the Chief Executive and council solicitor. Upon confirmation that there is a sound legal basis for action, the Chief Executive will then write to the Secretary of State for Innovation, Universities and Skills that the LSC is minded to use the powers of intervention under section 56A of the 1992 Act.
- 2 If the education and training of 16- to 19-year-olds is affected, the Chief Executive, at the same time, will write to inform the Secretary of State for Children, Schools and Families. Officials of the Department for Innovation, Universities and Skills and, where appropriate, the Department for Children, Schools and Families will also be informed.
- 3 The regional director will then formally write to the governing body notifying the institution of the LSC's intent to invoke its powers under section 56A of the 1992 Act. The letter should include:
  - details of the action it is minded to take;
  - the rationale for being minded to exercise its statutory powers under section 56A, including the reasons why any previous plans or responses by the college are not considered to be sufficient; and
  - the relevant evidence.

If the LSC is minded to direct the governing body to consider dismissal procedures, it will also name the senior member or members of staff concerned.
- 4 The date of the letter will trigger the start of the 30 working days period within which the institution can make representations.
- 5 Within five working days of receipt of the notification, the governing body must formally acknowledge receipt of the letter, in writing, to the LSC. This should include confirmation of whether or not it plans to make representations to the LSC. This decision should be taken by the governing body and should not be delegated by the governing body to an employee of the institution.
- 6 The governing body may determine that it does not intend to make representations. Where this is the case, LSC's National Council will consider whether to exercise the powers of intervention within 20 working days of receipt of written confirmation from the governing body that it does not intend to make representations.
- 7 If the governing body informs the LSC that it does intend to make representations, it will then have the remainder of the 30-working-day period to make representations, supported by any relevant evidence, to the LSC. The governing body should make representations as soon as possible to allow time for further clarification and dialogue. The governing body and the LSC may agree key dates in the period of representation on which evidence will be presented and considered.
- 8 Within 10 working days of the conclusion of the period, the LSC's National Council will consider whether or not to exercise the powers of intervention. The National Council will consider a recommendation from the Chief Executive and the council solicitor, any representations made by the institution and any other relevant evidence when reaching its decision.

- 9 If the National Council determines that the use of the intervention powers is appropriate, it will give notice to the Secretary of State for Innovation, Universities and Skills. The notice must state:
- the matter or matters listed in section 56A(2) as to which the National Council is satisfied;
  - the reasons why the National Council is satisfied;
  - the actions that the National Council proposes to take; and
  - the reasons why the National Council proposes to take those actions.
- 10 The National Council will, if appropriate, give notice to the Secretary of State for Children, Schools and Families. If the Secretary of State does not raise any concerns regarding the LSC's intended use of the powers, the National Council will give notice to the institution's governing body stating:
- the matter, or matters, as to which it is satisfied;
  - the reasons why it is satisfied; and
  - the reasons why it has decided to take the action or actions.
- 11 If the Secretary of State raises concerns about the LSC's use of the powers, the matter will be referred back to the National Council.
- 12 The National Council may decide that it would be inappropriate to exercise the powers. This decision may result from the National Council's desire to receive more information, or because it is its opinion that the information presented does not support or justify the use of the powers. If this occurs, the appropriate regional director will duly inform the governing body within three working days of that decision. The notification of the decision taken by National Council will include the information outlined in paragraph 10.
- 13 If the National Council determines that to exercise the powers would be inappropriate, the LSC will then move to alternative strategic options, as outlined in *Identifying and Managing Underperformance*.

# Annex D: Intervention powers of the LSC

## Section 11: Learning and Skills Act

- 1 The LSC may appoint a person to be a member of the governing body of an institution within the further education sector as defined by section 91(3) of the Further and Higher Education Act 1992 and which mainly serves the population of England.
- 2 No more than two members of the governing body of a given institution may at any given time have been appointed under this section.

## Section 56A: Further and Higher Education Act 1992 – powers of intervention

- 3 This section applies if the LSC is satisfied as to one of the following matters in the case of an institution in England within the further education sector:
  - that the institution's affairs have been or are being mismanaged by the institution's governing body;
  - that the institution's governing body have failed to discharge any duty imposed on them by or for the purposes of any Act;
  - that the institution's governing body have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any Act;
  - that the institution is performing significantly less well than it might in all the circumstances reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training.
- 4 If the section applies, the LSC may do one of the following things:
  - remove all or any of the members of the members of the institution's governing body;
  - appoint new members of the governing body if there are vacancies – however arising;
  - give to that body such directions as it thinks expedient as to the exercise of their powers and performance of their duties.
- 5 The directions that may be given under the section include a direction requiring a governing body to make collaboration arrangements (within the meaning of section 166 of the Education and Inspections Act 2006) with such bodies and on such terms as may be specified in the direction.
- 6 The LSC may not direct a governing body to dismiss a member of staff. However, where the LSC considers that it may be appropriate to dismiss a member of staff whom the governing body have power to dismiss, it may give the governing body such directions as are necessary to secure that the procedures applicable to the consideration of the case for dismissal, of that member of staff, are given effect to in relation to that member of staff.
- 7 Directions may be given to a governing body under this section despite any enactment making the exercise of a power or performance of a duty contingent of the body's opinion.
- 8 Before it takes one of the actions set out above, the LSC must give the Secretary of State a notice stating:
  - the matter or matters listed in section 56A(2) as to which the Council is satisfied;
  - the reasons why the Council is so satisfied;
  - the actions that the Council proposes to do;
  - the reasons why the Council proposes to do those actions.

- 9 If the LSC takes one of the actions it must at the same time give the institution's governing body a notice stating:
- the matter or matters as to which it is satisfied;
  - the reasons why it is so satisfied;
  - the reasons why it has decided to take the action or actions.
- 10 A governing body must comply with any directions given to them under this section.
- 11 An appointment of a member of a governing body under this section shall have effect as if made in accordance with the instrument and articles of government of the institution concerned.

## Section 56B: Intervention policy

- 12 The LSC must prepare a statement of its policy with respect to the exercise of its powers under section 56A. It must keep it under review and if it considers it appropriate in consequence of a review, prepare a revised statement of its policy.
- 13 When preparing the statement or revised statement of its policy the LSC must undertake any consultation as it thinks appropriate and consider any representations made to it about the policy.
- 14 The Secretary of State may give the LSC guidance in relation to the preparation of and consultation on the statement of its policy and in particular in relation to the form and content of the policy. It is the duty of the LSC to have regard to any guidance given by the Secretary of State.
- 15 The LSC must send a copy of the statement or the revised statement prepared by it to the Secretary of State and if the Secretary of State approves it, he shall lay a copy before each House of Parliament.
- 16 The LSC must publish the statement or revised statement of its policy approved by the Secretary of State.
- 17 The LSC must have regard to the statement most recently published in exercising or deciding whether to exercise any of its powers under section 56A.

## Section 56C: Directions

- 18 This section applies if the Secretary of State is satisfied as to one, or more, of the matters set out in paragraph 3 (in the case of an institution in England within the FE sector) and that the circumstances are such that it would be appropriate for the LSC to do one, or more, of the actions set out in paragraph 4.
- 19 In such a case, the Secretary of State may give the LSC such directions as he thinks fit as to the exercise of the LSC's powers under section 56A. Where the Secretary of State gives the LSC a direction under this section, he must at the same time give the LSC a notice stating the matter or matters as to which he is satisfied.
- 20 The LSC must comply with any direction given to it under this section, and where it takes an action in compliance with the direction, it must give the institution a notice as set out in paragraph 9.

# Annex E: Action by the LSC in Relation to Independent Providers Other than Colleges

- 1 Although the statutory powers of intervention only relate to FE institutions, as defined by the Further and Higher Education Act 1992, the LSC will take action to address poor performance by all providers in receipt of LSC funds.
- 2 The Council will exercise its power to secure the provision of financial resources to providers of post-16 education and training, and its power to impose conditions in relation to that funding, to ensure that provision funded by the Council is of a high quality.
- 3 The LSC funds a number of providers under a contract for services that sets out the conditions of funding. These providers include:
  - independent schools;
  - specialist providers for learners with learning difficulties and/or disabilities;
  - FE providers that are not colleges – these may include adult learning providers (including local authorities, former external institutions, specialist designated institutions and third sector or voluntary and community providers);
  - providers delivering provision funded through the European Social Fund; and
  - work-based learning providers.
- 4 Stages 1 and 2 of the process are applicable to all LSC-funded providers with which it has a direct relationship. At Stage 3, where the LSC would normally issue a Notice to Improve to a college, the LSC can, and frequently will, consider whether to continue to contract with that provider.
- 5 The contract provides details about how breaches of contract should be addressed (this will depend on whether the breach is categorised as a minor or a serious breach). The contract also contains clearly stated expectations relating to quality, finance and health and safety. In addition, the contract provides for either party to give three months' notice to terminate the contract. The LSC can also decide not to renew a contract once an existing contract has terminated.
- 6 If the LSC decides to renew a contract where there are concerns about the quality of provision (normally this occurs where the provider has successfully won the provision through open and competitive tendering), improvement indicators will be set. These improvement indicators will be extremely stringent and will mirror the performance conditions that will be set under a Notice to Improve issued to a college. The one exception in place is with regard to specialist providers for learners with learning difficulties and/or disabilities. If after an Ofsted inspection judgement of inadequate the LSC does not seek to give immediate three-month notice to terminate the contract, a Notice to Improve will be issued. This Notice mirrors those issued to FE colleges where there is an Ofsted inspection judgement of inadequate. It is issued due to the vulnerable nature of the cohort that this part of the sector serves.
- 7 With regard to financial intervention of contracted providers, the LSC has very limited statutory powers to offer financial support. The Secretary of State would be unlikely to consent to the LSC making a loan to a private provider to prevent it becoming insolvent. It is also not permitted to re-profile payments to private providers to give advances of funding.



# Annex F: Consultation Response Form

This form is not interactive. If you wish to respond electronically, please download the form in Word format from [www.lsc.gov.uk](http://www.lsc.gov.uk).

The information you provide in your response will be subject to the Freedom of Information Act 2000 and Environmental Information Regulations, which allow public access to information held by the LSC. This does not necessarily mean that your response can be made available to the public, as there are exemptions relating to information provided in confidence and information to which the Data Protection Act 1998 applies. You may request confidentiality by ticking the box provided, but you should note that this will not necessarily exclude the public right of access.

**Please insert 'X' if you want us to keep your response confidential**

All UK national public consultations are required to conform to the following criteria.

- 1 Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- 2 Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- 3 Ensure that your consultation is clear, concise and widely accessible.
- 4 Give feedback regarding the responses received and how the consultation process influenced the policy.
- 5 Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- 6 Ensure that your consultation follows better regulation best practice, including carrying out a regulatory impact assessment if appropriate.

Further information on the Code of Practice can be accessed through the Cabinet Office website: [www.bre.berr.gov.uk/regulation/documents/consultation/pdf/code.pdf](http://www.bre.berr.gov.uk/regulation/documents/consultation/pdf/code.pdf)

Name

Organisation  
(if applicable)

Address

If you have a query relating to this consultation, please forward your query to: [qualityassurance@lsc.gov.uk](mailto:qualityassurance@lsc.gov.uk)

Please insert 'X' in the **one** box that best describes you as a respondent:

- |  |   |
|--|---|
| <input type="checkbox"/> FE college governing body and executive | <input type="checkbox"/> FE institution   |
| <input type="checkbox"/> Non-governmental body                   | <input type="checkbox"/> Adult learning provider  |
| <input type="checkbox"/> School                                  | <input type="checkbox"/> Work-based learning provider                                   |
| <input type="checkbox"/> Local authority                         | <input type="checkbox"/> Higher education institution                                   |
| <input type="checkbox"/> Employer                                | <input type="checkbox"/> Representative body  |
| <input type="checkbox"/> Sectoral body                           | <input type="checkbox"/> National organisation  |
| <input type="checkbox"/> Regional body                           | <input type="checkbox"/> Special school/specialist college                              |
| <input type="checkbox"/> Voluntary organisation                  | <input type="checkbox"/> Individual   |
| <input type="checkbox"/> FE college                              | <input type="checkbox"/> FE college governing body, principal or senior management team |
| <input type="checkbox"/> Other (Please specify below)            |   |

Please provide any comments on the intervention policy, its approach and principles.

You may wish to consider the following:

- the appropriateness of the principles and approach to intervention;
- the importance of flexibility in managing intervention;
- whether there are circumstances that might lead to an institution not fulfilling its obligations, and in which it would not be appropriate for the LSC to intervene;
- the definition of non-co-operation or obstruction;
- the appropriateness and fairness of the time scales;
- the grounds for immediate intervention;
- the impact of the use of the powers on the diversity of staff.

Please provide any comments on the intervention policy, its approach and principles (*continued*).

Please let us have your views on responding to this consultation (for example, were you happy with the number and type of questions? Was it easy to find, understand and complete?).

**Thank you for taking time to respond to this consultation. Please note that we do not intend to acknowledge individual responses.**

Completed questionnaires and other responses should be sent to the address shown below by Friday 2 May 2008.

Send by post to:

LSC Intervention Policy Consultation  
Quality Assurance Team  
LSC National Office  
Cheylesmore House  
Quinton Road  
Coventry CV1 2WT

Send by email to: [qualityassurance@lsc.gov.uk](mailto:qualityassurance@lsc.gov.uk)

# Notes

