



Education and Inspections Act 2006

2006 CHAPTER 40

PART 4

SCHOOLS CAUSING CONCERN: ENGLAND

Introduction

59 Meaning of “maintained school” and “eligible for intervention”

- (1) In this Part “maintained school” means any of the following schools in England—
 - (a) a community, foundation or voluntary school,
 - (b) a community or foundation special school, or
 - (c) a maintained nursery school.
- (2) In this Part, references to a school being “eligible for intervention” are to be read in accordance with—
 - section 60 (warning notice by local education authority),
 - section 61 (school requiring significant improvement), and
 - section 62 (school requiring special measures).

Schools that are eligible for intervention

60 Warning notice by local education authority

- (1) A maintained school is by virtue of this section eligible for intervention if—
 - (a) the local education authority have given the governing body a warning notice in accordance with subsection (2),
 - (b) the period beginning with the day on which the warning notice is given and ending with the fifteenth working day following that day (“the initial period”) has expired,

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- (c) either the governing body made no representations under subsection (7) to the Chief Inspector against the warning notice during the initial period or the Chief Inspector has confirmed the warning notice under subsection (8),
 - (d) the governing body have failed to comply, or secure compliance, with the notice to the authority's satisfaction by the end of the compliance period (as defined by subsection (10)), and
 - (e) the authority have given reasonable notice in writing to the governing body that they propose to exercise their powers under any one or more of sections 63 to 66 (whether or not the notice is combined with a notice under section 62(2A)(c) of SSFA 1998).
- (2) A local education authority may give a warning notice to the governing body of a maintained school where the authority are satisfied—
- (a) that the standards of performance of pupils at the school are unacceptably low, and are likely to remain so unless the authority exercise their powers under this Part, or
 - (b) that there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, such standards of performance, or
 - (c) that the safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise).
- (3) For the purposes of subsection (2)(a) the standards of performance of pupils at a school are low if they are low by reference to any one or more of the following—
- (a) the standards that the pupils might in all the circumstances reasonably be expected to attain,
 - (b) where relevant, the standards previously attained by them, or
 - (c) the standards attained by pupils at comparable schools.
- (4) For the purposes of this section a “warning notice” is a notice in writing by the local education authority setting out—
- (a) the matters on which the conclusion mentioned in subsection (2) is based,
 - (b) the action which they require the governing body to take in order to remedy those matters,
 - (c) the initial period applying under subsection (1)(b), and
 - (d) the action which the local education authority are minded to take (under one or more of sections 63 to 66 or otherwise) if the governing body fail to take the required action.
- (5) The warning notice must also inform the governing body of their right to make representations under subsection (7) during the initial period.
- (6) The local education authority must, at the same time as giving the governing body the warning notice, give a copy of the notice to each of the following persons—
- (a) the Chief Inspector,
 - (b) the head teacher of the school,
 - (c) in the case of a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority, and
 - (d) in the case of a foundation or voluntary school, the person who appoints the foundation governors.

- (7) Before the end of the initial period, the governing body may make representations in writing to the Chief Inspector against the warning notice, and must send a copy of any such representations to the local education authority.
- (8) The Chief Inspector must consider any representations made to him under subsection (7) and may, if he thinks fit, confirm the warning notice.
- (9) The Chief Inspector must give notice in writing of his decision whether or not to confirm the warning notice to the local education authority, the governing body and such other persons as the Secretary of State may require.
- (10) In this section—
- “the compliance period”, in relation to a warning notice, means—
- (a) in a case where the governing body does not make representations under subsection (7), the initial period mentioned in subsection (1)(b), and
- (b) in a case where the Chief Inspector confirms the warning notice under subsection (8), the period beginning with the day on which he does so and ending with the fifteenth working day following that day;
- “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in England.

61 School requiring significant improvement

A maintained school is by virtue of this section eligible for intervention if—

- (a) following an inspection of the school under Chapter 1 of Part 1 of EA 2005, the Chief Inspector has given notice under section 13(3)(a) of that Act in a case falling within section 13(1)(b) of that Act (school requiring significant improvement), and
- (b) where any subsequent inspection of the school has been made under Chapter 1 of Part 1 of that Act, the notice has not been superseded by—
- (i) the person making the subsequent inspection making a report stating that in his opinion the school no longer requires significant improvement, or
- (ii) the Chief Inspector giving the Secretary of State a notice under section 13(3)(a) of that Act in a case falling within section 13(1)(a) of that Act (school requiring special measures).

62 School requiring special measures

A maintained school is by virtue of this section eligible for intervention if—

- (a) following an inspection of the school under Chapter 1 of Part 1 of EA 2005, the Chief Inspector has given notice under section 13(3)(a) of that Act in a case falling within section 13(1)(a) of that Act (school requiring special measures), and
- (b) where any subsequent inspection of the school has been made under Chapter 1 of Part 1 of that Act, the person making it did not state that in his opinion special measures were not required to be taken in relation to the school.

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Intervention by local education authority

63 Power of LEA to require governing body to enter into arrangements

- (1) If at any time a maintained school is eligible for intervention, then (subject to subsection (3)) the local education authority may, with a view to improving the performance of the school, give the governing body of the school a notice requiring the governing body—
 - (a) to enter into a contract or other arrangement with a specified person (who may be the governing body of another school) for the provision to the governing body of specified services of an advisory nature,
 - (b) to make specified arrangements authorised by section 26 of EA 2002 (collaboration between schools) with the governing body of such other school as may be specified,
 - (c) to make specified arrangements authorised by regulations under section 166 of this Act (collaboration arrangements: maintained schools and further education bodies) with a further education body within the meaning of that section, or
 - (d) to take specified steps for the purpose of creating or joining a federation, as defined by section 24(2) of EA 2002.
- (2) Before exercising the power conferred by subsection (1), the local education authority must consult—
 - (a) the governing body of the school,
 - (b) in the case of a foundation or voluntary school which is a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority, and
 - (c) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed.
- (3) Where the school is eligible for intervention by virtue of section 60 (school subject to formal warning), the power conferred by subsection (1) is only exercisable within the period of two months following the end of the compliance period (as defined by section 60(10)).
- (4) A notice under subsection (1)(a) may require the contract or other arrangement to contain specified terms and conditions.

64 Power of LEA etc. to appoint additional governors

- (1) If at any time a maintained school is eligible for intervention, then (subject to subsection (2)) the local education authority may appoint such number of additional governors as they think fit.
- (2) Where the school is eligible for intervention by virtue of section 60 (school subject to formal warning), the power conferred by subsection (1) is only exercisable within the period of two months following the end of the compliance period (as defined by section 60(10)).
- (3) In relation to any appointment made by the local education authority by virtue of subsection (1) to the governing body of a school, the instrument of government for the school has effect as if (despite anything in regulations under section 19 of EA

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2002) it provided for the local education authority to appoint such number of additional governors as they think fit.

- (4) If at any time—
- (a) a voluntary aided school other than one falling within section 61 or 62 is eligible for intervention by virtue of section 60 (school subject to formal warning), and
 - (b) the local education authority have exercised their power to appoint additional governors under subsection (1),

the appropriate appointing authority may appoint such number of additional foundation governors as is equal to the number of additional governors appointed by the authority.

- (5) Any additional foundation governors appointed under subsection (4)—
- (a) shall cease to hold office at the time when the additional governors appointed by the authority cease to do so; and
 - (b) shall not be eligible for re-appointment except where, and to the extent that, those governors are re-appointed.

- (6) If at any time—
- (a) a voluntary aided school is eligible for intervention by virtue of section 61 (school requiring significant improvement) or section 62 (school requiring special measures),
 - (b) the Secretary of State has not exercised his power under section 67 (power to appoint additional governors) in connection with the same inspection falling within section 61(a) or 62(a),
 - (c) the Secretary of State has not exercised his power under section 68 (power to direct closure of school), and
 - (d) the appropriate appointing authority have received a notice in writing from the Secretary of State informing them that he has received a notice under section 13(3)(a) of EA 2005 from the Chief Inspector,

the appropriate appointing authority may appoint such number of additional foundation governors as they think fit.

- (7) In the case of any appointment made by virtue of subsection (4) or (6) to the governing body of a school, the instrument of government for the school has effect as if (despite anything in regulations under section 19 of EA 2002) the instrument provided for the appropriate appointing authority to appoint such number of additional foundation governors as they are authorised to appoint under subsection (4) or (6) (as the case may be).

- (8) Subject to subsection (9), references in this section to the appropriate appointing authority in relation to any voluntary aided school are references—
- (a) to the appropriate diocesan authority, if it is a Church of England school or a Roman Catholic Church school; or
 - (b) in any other case, to the person or persons by whom the foundation governors are appointed.

- (9) Where, in the case of any voluntary aided school not falling within subsection (8)(a), there are different powers to appoint foundation governors, references in this section to the appropriate appointing authority are references—

- (a) to all those persons who have any such power acting jointly, or

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- (b) if they are unable to agree, to such of them acting jointly, or such one of them, as the Secretary of State may, after consulting all those persons, determine.

65 Power of LEA to provide for governing body to consist of interim executive members

- (1) If at any time a maintained school is eligible for intervention, the local education authority may, with the consent of the Secretary of State, give the governing body a notice in writing stating that, as from a date specified in the notice, the governing body are to be constituted in accordance with Schedule 6 (governing bodies consisting of interim executive members).
- (2) Before exercising the power conferred by subsection (1), the local education authority must consult—
 - (a) the governing body of the school,
 - (b) in the case of a foundation or voluntary school which is a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority, and
 - (c) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed.

66 Power of LEA to suspend right to delegated budget

- (1) If at any time—
 - (a) a maintained school is eligible for intervention, and
 - (b) the school has a delegated budget within the meaning of Part 2 of SSFA 1998,then (subject to subsection (2)) the local education authority may, by giving the governing body of the school notice in writing of the suspension, suspend the governing body's right to a delegated budget with effect from the receipt of the notice by the governing body.
- (2) Where the school is eligible for intervention by virtue of section 60 (school subject to formal warning), the power conferred by subsection (1) is only exercisable within the period of two months following the end of the compliance period (as defined by section 60(10)).
- (3) A copy of a notice given under subsection (1) must be given to the head teacher of the school at the same time as the notice is given to the governing body.
- (4) A suspension imposed under this section shall have effect for the purposes of Chapter 4 of Part 2 of SSFA 1998 as if made under paragraph 1 of Schedule 15 to that Act.

Intervention by Secretary of State

67 Power of Secretary of State to appoint additional governors

- (1) If at any time a maintained school is eligible for intervention by virtue of—
 - (a) section 61 (school requiring significant improvement), or
 - (b) section 62 (school requiring special measures),

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the Secretary of State may appoint such number of additional governors as he thinks fit; and he may nominate one of those governors to be the chairman of the governing body in place of any person who has been elected as chairman of that body.

- (2) Before making any such appointment, the Secretary of State must consult—
- (a) the local education authority,
 - (b) the governing body of the school,
 - (c) in the case of a foundation or voluntary school which is a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority, and
 - (d) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed.
- (3) A governor appointed under this section—
- (a) shall hold office as governor for such term, and
 - (b) if nominated as chairman of the governing body, shall be chairman of that body for such period,
- as the Secretary of State may determine.
- (4) The Secretary of State may pay to any governor appointed under this section such remuneration and allowances as the Secretary of State may determine.
- (5) In relation to any appointment made by the Secretary of State by virtue of subsection (1) to the governing body of a school, the instrument of government for the school shall have effect as if (despite anything in regulations under section 19 of EA 2002) it provided for the Secretary of State to appoint such number of additional governors as he thinks fit.
- (6) Where the Secretary of State has exercised his power under this section in relation to a school, then—
- (a) in any such case—
 - (i) the local education authority may not exercise their power under section 66(1) or paragraph 1 of Schedule 15 to SSFA 1998 to suspend the governing body's right to a delegated budget, and
 - (ii) if they have already exercised either of those powers, the Secretary of State must, if requested to do so by the governing body, revoke the suspension; and
 - (b) in the case of a voluntary aided school, nothing in regulations under section 19 of EA 2002 is to be read as authorising the appointment of foundation governors for the purpose of outnumbering the other governors as augmented by those appointed by the Secretary of State under this section.
- (7) The revocation of a suspension under subsection (6)(a)—
- (a) must be notified to the local education authority in writing, and
 - (b) takes effect from such date as is specified in that notification.

68 Power of Secretary of State to direct closure of school

- (1) If at any time a maintained school is eligible for intervention by virtue of section 62 (school requiring special measures), the Secretary of State may give a direction to the local education authority requiring the school to be discontinued on a date specified in the direction.

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- (2) Before giving a direction under subsection (1), the Secretary of State must consult—
- (a) the local education authority and the governing body of the school,
 - (b) in the case of a foundation or voluntary school which is a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority,
 - (c) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed,
 - (d) in the case of a school which provides education suitable to the requirements of persons over compulsory school age, the Learning and Skills Council for England, and
 - (e) such other persons as the Secretary of State considers appropriate.
- (3) On giving a direction under subsection (1) the Secretary of State must give notice in writing of the direction to the governing body of the school and its head teacher.
- (4) Where the local education authority are given a direction under subsection (1), they must discontinue the school in question on the date specified in the direction; and nothing in sections 15 to 17 of this Act or in section 30 of SSFA 1998 applies to their discontinuance of the school under this section.
- (5) In this section any reference to the discontinuance of a maintained school is a reference to the local education authority ceasing to maintain it.

69 Power of Secretary of State to provide for governing body to consist of interim executive members

- (1) If at any time a maintained school is eligible for intervention by virtue of—
- (a) section 61 (school requiring significant improvement), or
 - (b) section 62 (school requiring special measures),
- the Secretary of State may give the governing body a notice in writing stating that, as from the date specified in the notice, the governing body are to be constituted in accordance with Schedule 6 (governing bodies consisting of interim executive members).
- (2) Before exercising the power conferred by subsection (1), the Secretary of State must consult—
- (a) the local education authority,
 - (b) the governing body of the school,
 - (c) in the case of a foundation or voluntary school which is a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority, and
 - (d) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed.
- (3) The Secretary of State need not consult the persons mentioned in subsection (2)(b), (c) and (d) if the local education authority have consulted them under subsection (2) of section 65 in relation to a proposed notice under subsection (1) of that section.

Governing bodies consisting of interim executive members: further provisions

70 Governing bodies consisting of interim executive members

Schedule 6 has effect in relation to any school in respect of which a notice has been given—

- (a) under section 65(1) by the local education authority, or
- (b) under section 69(1) by the Secretary of State.

Amendments relating to schools causing concern

71 Amendments relating to schools causing concern

Schedule 7 contains amendments related to the provisions of this Part.

Supplementary

72 Duty of LEA to have regard to guidance

A local education authority must, in exercising their functions under this Part, have regard to any guidance given from time to time by the Secretary of State.

73 Interpretation of Part 4

In this Part—

- “appropriate diocesan authority” has the same meaning as in SSFA 1998;
- “Chief Inspector” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills;
- “Church of England school” and “Roman Catholic Church school” have the same meaning as in SSFA 1998;
- “eligible for intervention”, in relation to a maintained school, has the meaning given by section 59(2);
- “maintained school” has the meaning given by section 59(1).