

**EXPLANATORY MEMORANDUM TO**  
**THE COASTING SCHOOLS (ENGLAND) REGULATIONS 2022**

**2022 No. 720**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument changes the definition of ‘coasting’ for the purposes of section 60B of the Education and Inspections Act 2006 to include schools (excluding maintained nursery schools and post-16 only settings) who were judged as ‘requires improvement’ at their most recent inspection under section 5 of the Education Act 2005, and judged as ‘requires improvement’, ‘satisfactory’ or ‘inadequate’ at the inspection that preceded it.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.  
4.2 The territorial application of this instrument is England only.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

**6. Legislative Context**

- 6.1 This instrument will allow the elements of the Education and Adoption Act 2016 that relate to coasting schools to be implemented by setting the definition of a coasting school.
- 6.2 The legislation on coasting schools is contained within the Education and Inspections Act 2006 (as amended by the Education and Adoption Act 2016) and the Academies Act 2010 (as amended by the Education and Adoption Act 2016). The legislation allows the Secretary of State to define the meaning of coasting, disapply the coasting regime for certain school types and intervene in schools that meet the definition.
- 6.3 This instrument revokes the Coasting Schools (England) Regulations 2017 (S.I. 2017/9).
- 6.4 The Secretary of State also has powers under Schedule 1 to the Education Act 1996 to apply, with or without modifications, legislation applying to maintained schools to pupil referral units (PRU). This instrument applies the coasting regime to PRUs, by way of amendments to the Education (Pupil Referral Units) (Application of

Enactments) (England) Regulations 2007 (S.I. 2007/2979). An amendment is also made to the Education (Pupil Referral Units) (Management Committees etc) (England) Regulations (S.I. 2007/2978) to provide that the Secretary of State's power to appoint an interim executive board applies to a coasting PRU.

## 7. Policy background

### *What is being done and why?*

- 7.1 The Secretary of State has various powers to intervene in maintained schools that are underperforming (set out in the Education and Inspections Act 2006, as amended) and in academies that are underperforming (by virtue of provisions in funding agreements between the Secretary of State and academy trusts). These include the power to intervene in schools that have met the 'coasting' definition.
- 7.2 The department's current policy has been to intervene in schools only:
  - where Ofsted have judged the school to be inadequate; or
  - where there has been a breakdown in governance or financial management at a school (regardless of the school's Ofsted rating).
- 7.3 However, the department is concerned about a minority of schools that are struggling to provide a "Good" standard of education (as rated by Ofsted) but are currently outside the scope of intervention and believes a more ambitious approach is needed to support this group of schools.
- 7.4 The 2019 manifesto contained a commitment to intervene in schools where there is entrenched underperformance.
- 7.5 The legislation relating to coasting schools was introduced in 2016 to allow the Secretary of State and Local Authorities (LAs) to take action in schools that were not judged to be outright inadequate but were consistently failing to fulfil the potential of their pupils. The legislation allows the Secretary of State to use powers of intervention in schools that have met the coasting definition and have been informed that they do so. To deliver on the manifesto commitment and support the government's 'levelling up' agenda, Regional Directors will begin to use coasting legislation again to take action in schools that have underperformed over a number of years.
- 7.6 The effect of this instrument will be to take into account a school's two most recent Ofsted judgments (special provision being made in cases where the school has at least one predecessor school). Where the judgments are each less than good, a school will be deemed to be coasting.
- 7.7 A predecessor school is any school that was discontinued and ultimately replaced by the current school; or a maintained school that converted under section 4 of the Academies Act 2010 into the current school. This is particularly relevant to academies who may have received at least one "inadequate" or "requires improvement" judgement from Ofsted as a maintained school, before they converted and became an academy. Where a school was formed due to the merger of two or more predecessor schools, all of the predecessor schools will need to have been judged as less than good in their most recent inspection immediately before merging in order for their Ofsted judgements to count towards being deemed coasting within the new definition.
- 7.8 Once this instrument comes into force, Regional Directors will inform those schools that meet the new definition of coasting, that they may now be subject to the use of

intervention powers. The use of the power is discretionary and Regional Directors will consider the wider context of the school, inviting the school and other relevant parties to provide any evidence of improvement, before deciding what intervention action is necessary, if at all.

- 7.9 Where a decision to intervene is taken, Regional Directors are likely to issue an academy order to allow a maintained school to convert into an academy. If the school is already an academy, then the Regional Director may issue a termination warning notice setting out what remedial action the academy trust is required to take. If the Regional Director assesses that the trust has failed to take the required action, then they may proceed to terminate the academy's funding agreement and transfer the school to a new academy trust.
- 7.10 In respect of PRUs, the Secretary of State may appoint an interim executive board to replace the management committee or issue an academy order.
- 7.11 We believe that the most effective means of making rapid and sustainable improvements in schools that are underperforming is to match them with a strong academy trust. Analysis shows that overall, pupil outcomes in sponsored academies<sup>1</sup> have typically improved in comparison with similar schools<sup>2</sup>. By intervening and offering further support to these schools, the department aims to raise school standards so that more children have access to a "Good" school place where they have the best opportunity to realise their potential. LAs also have the ability to use their intervention powers in maintained schools that meet the coasting definition. However, it is our expectation that Regional Directors will lead intervention action. The Schools Causing Concern guidance sets out the process for intervention in schools that meet the new coasting definition. An updated draft copy of which is provided alongside the department's consultation response and can be found here: <https://www.gov.uk/government/consultations/supporting-schools-that-are-not-making-necessary-improvements>.
- 7.12 This instrument will apply nationally to schools in England. However, initially we are proposing to focus the use of this measure in schools located in the new Education Investment Areas (EIAs). EIAs are 55 Local Authorities in England where school outcomes are the weakest. This will enable us to concentrate resources to level-up education provision in the areas that need it most. Regional Directors may also consider taking intervention action in schools outside of EIAs. In these cases, Regional Directors will prioritise schools that are not already in strong trusts and schools that have spent the longest time being judged as less than Good by Ofsted.
- 7.13 This instrument applies to maintained schools (other than maintained nursery schools), maintained special schools, and pupil referral units. The instrument will also apply in relation to academies, special academies and alternative provision academies by virtue of section 2B of the Academies Act 2010; in such cases, the mechanism for applying the measure is by way of the academy's funding arrangement.
- 7.14 Maintained special schools, alternative provision academies and pupil referral units had previously been excluded from the coasting measure. The department has chosen

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<sup>1</sup> Sponsored academies generally replaced under-performing local authority schools, many with a history of low attainment. This was not the case for all sponsored academies; some former independent schools used academisation to join the state-sector. Other sponsored academies were entirely new schools built in response to a need for school places (known as "academy presumption" schools).

<sup>2</sup> [An analysis of the performance of sponsored academies \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

to include these additional types of schools as the definition will now be based on Ofsted judgements which apply equally to all schools. It also reflects the view of the Rochford Review of assessment for pupils working below the standard of national curriculum tests (2016) that special schools should be subject to the same level of robust challenge and scrutiny as any other school, and that a ‘coasting’ measure for special schools should be based on Ofsted judgements<sup>3</sup>.

- 7.15 The department has chosen not to apply this instrument to maintained nursery schools on the basis that long-term underperformance in these schools is very rare. As of April 2022, there is only one maintained nursery school that has two consecutive Ofsted judgements of less than good with 99% of these schools being judged as Good or Outstanding. In response to a question asked in the consultation on whether maintained nursery schools should be included in the measure, more respondents agreed than disagreed (43% versus 38%) that nursery schools should not be included.
- 7.16 The department would normally try to provide at least a school term’s notice on changes being made to statutory instruments. However, many of the schools targeted by this measure went into the COVID-19 pandemic in a position of weakness, and there is now an urgent need to ensure that they are well-led, can benefit from the support of a strong multi-academy trust, and can properly support their pupils to catch up on the education they have lost over the pandemic. Therefore, in this instance, the department has not been able to provide that notice period. The new measure does not place any new burdens, expectations, or workload on schools that the school can prepare for in advance of being contacted by the Regional Director. The department’s intention to begin intervening in schools with multiple consecutive less than good judgements was first announced in April 2021 and has been publicly reiterated since then in the Schools White Paper, Opportunity for All.

### *Explanations*

#### What did any law do before the changes to be made by this instrument?

- 7.17 The Coasting Schools (England) Regulations 2017, set out a coasting definition based on a school’s performance data. That definition is based on the progress that pupils make in a school and considers a school’s performance over three years.

#### Why is it being changed?

- 7.18 In 2018 the Department for Education announced new principles for accountability which made clear that it was the role of Ofsted to judge school standards. In line with that role and to align the coasting definition with the rest of the school intervention framework, we are replacing these regulations so that Ofsted judgements will form the basis of the coasting definition. Ofsted’s inspections offer a rounded, robust assessment of a school’s performance and a clear view of its strengths and weaknesses. They are also well-understood by schools and parents. We therefore think that they offer a sound basis on which to identify schools that have underperformed. The existing ‘coasting’ regulations are unworkable because they define ‘coasting’ by reference to pupil performance over time, and there have been no published pupil performance measures since the start of the coronavirus pandemic in 2019.

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<sup>3</sup> <https://www.gov.uk/government/publications/rochford-review-final-report>

### What will it now do?

- 7.19 The Coasting Schools (England) Regulations 2022, will change the definition of coasting so that Ofsted judgements rather than performance data will be used to determine whether a school is coasting. Under the updated regulations a school will fall within the coasting definition if it was judged as ‘requires improvement’ at their most recent section 5 Ofsted inspection and were also judged as ‘requires improvement’, ‘satisfactory’ or ‘inadequate’ at the previous inspection including judgements given to its predecessor schools. This is consistent with the original intention behind the ‘coasting schools’ legislation, which was to enable intervention in schools where pupils are not fulfilling their full potential.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal).

## **9. Consolidation**

- 9.1 There is no plan to consolidate.

## **10. Consultation outcome**

- 10.1 A public consultation was held for 8 weeks between the 28<sup>th</sup> March 2022 and 23<sup>rd</sup> May 2022. The consultation was hosted on Gov.uk and was open to the public to respond either online or by post. During the consultation period, we engaged with various key stakeholders, including teaching unions, Ofsted, primary and secondary head teachers and faith bodies. Overall, there was a fairly even split between those who agreed and disagreed with the principle of intervening in schools which are rated ‘Requires Improvement’ (RI) by Ofsted and were rated less than Good at their previous inspection. 45% agreed with the principle with 40% disagreeing (15% either did not answer the question or neither agreed or disagreed).
- 10.2 The following themes came through the most strongly in both the consultation responses and the stakeholder engagement:
- Even amongst those who do not agree with the measure, respondents are generally in favour of more being done to support schools not making necessary improvements;
  - That decisions to intervene in schools in scope should only be taken after consideration of evidence relating to a school’s specific context;
  - There are some concerns that teacher recruitment, in particular of head teachers, will be impacted;
  - A number of respondents felt that a school with two Ofsted judgements of less than Good should not be in scope for intervention if it was on a clear upward trajectory, making improvements and had the right leadership in place.
- 10.3 In response to concerns around the school’s specific context, teacher recruitment and the school’s current trajectory, it is important to stress that all cases will be assessed on an individual basis by the Regional Director and their Advisory Board, with governing bodies able to make representations and provide evidence. All schools that fulfil the criteria will be considered for intervention by Regional Directors. Regional Directors will consider any evidence provided by a school, as well as other interested

parties such as trusts and religious bodies, when making a decision on whether to intervene. For example, Regional Directors will consider inspection histories (including if a school's inspections demonstrate an upwards trajectory), evidence regarding the capacity of leadership and management of the school to secure sustained improvement, performance and other quantitative data and evidence relating to the local context of the school. However, this list is not exhaustive, and any evidence provided will be considered by the Regional Director.

- 10.4 A full copy of the of the department's consultation response has been published online and can be found at: <https://www.gov.uk/government/consultations/supporting-schools-that-are-not-making-necessary-improvements>.

## 11. Guidance

- 11.1 The Schools Causing Concern guidance is statutory guidance<sup>4</sup> and provides advice to Regional Directors and LAs on the use of their intervention powers. The guidance is public facing and can be found on Gov.uk. We have updated the guidance to take account of the changes we are making with the introduction of this new measure. Our intention is to publish the updated guidance on Gov.uk over the summer and in time for the introduction of the measure on 01 September 2022. A draft copy of the guidance the department expects to publish over the summer was released alongside our consultation response and can be found here: <https://www.gov.uk/government/consultations/supporting-schools-that-are-not-making-necessary-improvements>.

## 12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 When a maintained school or PRU with a financial deficit becomes a sponsored academy due to intervention, the deficit (or surplus) remains with the LA, to be met from their core budget (unless an LA has agreed with their schools forum that they will de-delegate a contingency fund from the Dedicated Schools Grant for this purpose). This is the usual process when a maintained school is closed and follows from maintained schools legally spending their money on behalf of the LA (section 49 of the School Standards and Framework Act 1998). The LA will therefore be liable to cover any of the deficits of the additional schools that will become academies as a result of meeting the new coasting definition.
- 12.4 The implementation of the measure as set out in this memorandum, would not add significantly to the expectation on LAs, and must be seen in the context of the role that LAs have been playing in academy conversions since the Academies Act 2010. Based on current figures (April 2022), we expect c. 280 maintained schools to be eligible for intervention when the measure comes into effect (from September 2022).
- 12.5 After that, modelling suggests that around 124 maintained schools may flow into scope for intervention over the next 3 years due to this policy change. It is the view of the department that these costs are part of LAs' normal business under the Academies Act 2010, and LAs have dealt with far higher rates of conversion in recent years. Our view is that the policy change under discussion cannot be regarded as imposing a new

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<sup>4</sup> <https://www.gov.uk/government/publications/schools-causing-concern--2>

burden. During our consultation, the department received responses from the Local Government Association (LGA), the Association of Directors of Children's Services (ADCS) as well as 15 individual LAs. The LGA, ADCS and LAs that replied to our consultation raised various points regarding the implementation of the new policy but overall, the majority were supportive of the underlying principle and implementation of the measure. The cost or capacity implications of additional conversions were not raised by any consultation respondent.

- 12.6 A full Impact Assessment has not been prepared for this instrument because of the low impact we expect it to have on the public sector.

### **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

### **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation, as with all intervention powers, is to keep the new measure under regular review to ensure it effectively captures and supports the schools that need it most.
- 14.2 As already stated, we do not anticipate this instrument to impose significant additional burdens on LAs. However, we will keep this under review and continue to monitor the number of schools brought into the scope of intervention by the measure.

### **15. Contact**

- 15.1 Julian Butcher or Charlotte Hurton at the Department for Education. Email: [julian.butcher@education.gov.uk](mailto:julian.butcher@education.gov.uk) or [charlotte.hurton@education.gov.uk](mailto:charlotte.hurton@education.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Lesley Jones, Deputy Director for Intervention, Faith, and Accountability, at the department for education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Barran, Parliamentary Under Secretary of State for the School System, at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.