

EDUCATION AND INSPECTIONS ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 4: Schools Causing Concern

Section 59: Meaning of "maintained school" and "eligible for intervention"

267. This section defines the expressions “maintained school” and “eligible for intervention” for the purposes of this Part of the Act. *Subsection (1)* defines “maintained school” as any school in England which is a community, foundation or voluntary school, a community or foundation special school, or a maintained nursery school.
268. *Subsection (2)* provides that the expression “eligible for intervention” must be read in accordance with sections 60, 61 and 62.

Section 60: Warning notice by local education authority

269. This section amends the legal procedure whereby local education authorities may issue formal warning notices to schools, as currently set out in section 15 of the 1998 Act.
270. Under *subsection (1)*, a school becomes eligible for intervention if the governing body have received a formal warning (which must be copied simultaneously to the persons listed in *subsection (6)*), and have failed satisfactorily to comply with the warning notice within “the compliance period” (defined in *subsection (10)*). The local education authority must also have provided reasonable notice to the governing body that they propose to exercise their powers of intervention. The school is not eligible for intervention if the governing body of the school has made a representation to the Chief Inspector under *subsection (7)* and the warning notice has not been confirmed by him under *subsection (8)*.
271. *Subsection (2)* sets out the circumstances in which a local education authority may give a warning notice to a maintained school, and is essentially a re-enactment of section 15(2)(a) of the 1998 Act. It provides a local education authority with the power to issue a warning when standards of pupil performance are unacceptably low; or when there is a serious breakdown in management or governance such as to impair standards; or when safety of pupils or staff is threatened.
272. *Subsection (3)* provides clarification in relation to the standards of pupil performance referred to in *subsection (2)(a)*. This provision, which is new, partly reflects the recommendations of the Education Select Committee (7th Report, paragraphs 50-52, December 2003). This report recommended that Ministers and educationalists should distinguish clearly between low performance and underperformance. The new provision is designed to catch schools that are underperforming in relation to the nature of their pupil intake, or the schools’ general context, as well as those at which absolute standards (attainment rates) are generally low.
273. *Subsection (4)* specifies what information a warning notice must contain in order to be valid. Pursuant to this provision, the notice must set out the reasons for the warning,

the action to be taken by the governing body, the compliance period referred to in *subsection (1)* and the action that the local education authority is minded to take should the governing body fail to take the necessary action set out in the warning notice.

274. *Subsection (5)* places a duty on local education authorities to inform the governing body of the school that they are able to make representations to the Chief Inspector within the compliance period against the issuing of the warning notice.
275. *Subsection (6)* sets out the persons to whom the local education authority must give copies of the formal warning notice at the same time as issuing it to the governing body of the school. These are: the Chief Inspector, the head teacher, in the case of a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority and, in the case of a foundation or voluntary school, the person who appoints the foundation governors.
276. *Subsection (7)* provides for the governing body of a school that has received a warning notice from the LEA to submit a written representation to the Chief Inspector within the compliance period against the issuing of the warning notice. This written representation should also be copied to the local education authority.
277. *Subsection (8)* places a duty on the Chief Inspector to consider any representations made by a governing body regarding the issuing of a warning notice. The Chief Inspector may confirm or reject the representations on the basis of the written information submitted. If that written evidence is inconclusive, the Chief Inspector may visit the school to determine whether the warning notice has been issued correctly under the criteria set out in guidance.
278. *Subsection (9)* requires the Chief Inspector to give written notice to the governing body of his decision whether or not the warning notice is justified. This notice should also be copied to the local education authority and other individuals specified by the Secretary of State in guidance.
279. *Subsection (10)* provides a definition of “compliance period” in relation to a warning notice, and a definition of “working day” for the purposes of the compliance period. If the governing body has made a representation to the Chief Inspector under *subsection (7)* and the warning notice has been confirmed, the period in which the governing body has to comply with the warning notice (“the compliance period”) begins on the day that the governing body receives the Chief Inspector’s written notice confirming the warning notice and lasts for 15 working days from this date. If the governing body has not made a representation to the Chief Inspector under *subsection (7)*, the compliance period begins on the day that the governing body receives the warning notice from the local education authority and lasts for 15 working days from this date.

Section 61: School requiring significant improvement

280. This section provides that a maintained school is eligible for intervention if, following an inspection under Chapter 1 of Part 1 of the 2005 Act, the Chief Inspector has given a notice under *subsection (3)(a)* of section 13 of the 2005 Act that the school requires significant improvement, as defined by section 44 of the 2005 Act.
281. *Paragraph (b)* has the effect that, where there is a further inspection, a school is only eligible for intervention under this section if, following the inspection, the notice to the Secretary of State has not been superseded by either a report that the school no longer requires significant improvement or an additional notice to the Secretary of State that the school requires special measures.

Section 62: School requiring special measures

282. This section provides that a maintained school is eligible for intervention if, following an inspection under Chapter 1 of Part 1 of the 2005 Act, the Chief Inspector has given

*These notes refer to the Education and Inspections Act 2006
(c.40) which received Royal Assent on 8 November 2006*

a notice under *subsection (3)(a)* of section 13 of the 2005 Act that the school requires special measures, as defined by section 44 of the 2005 Act.

283. *Paragraph (b)* has the effect that, where there is a further inspection, a school is only eligible for intervention under this section if, following the inspection, the notice to the Secretary of State has not been superseded by a report stating that the school no longer requires special measures.

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

284. This section provides local education authorities with a new power of intervention, allowing them to direct the governing body of a maintained school to take certain steps if the school is eligible for intervention.
285. *Subsection (1)* sets out what sort of arrangements a governing body might be instructed to enter into under this section: contracting with another party for the provision of advisory services to the governing body; collaborating with the governing body of another school; collaborating with a further education college or creating or joining a federation.
286. Before using the power the local education authority must consult the governing body of the school; in the case of a church school, foundation or voluntary, the appropriate diocesan authority and in the case of other foundation or voluntary schools, the body that appoints the foundation governors (*subsection (2)*).
287. If a school has not complied with a warning notice issued by the local education authority and therefore becomes eligible for intervention, *subsection (3)* provides that the power of the local education authority to require a governing body to enter into arrangements can only be exercised within two months of the end of the compliance period.

Section 64: Power of LEA etc. to appoint additional governors

288. This section re-enacts with modifications section 16 of the 1998 Act (in its application to England), giving local education authorities the power to appoint additional governors at a maintained school which is subject to special measures, in need of significant improvement or at which the governing body have not complied with a formal warning.
289. There is no longer a requirement for the local education authority to have received a notice of receipt of the inspection report from the Secretary of State, or for a 10 day period to have elapsed once that notice has been received, before the LEA can appoint additional governors.
290. *Subsections (4) to (9)* re-enact subsections (6) to (12) of section 16 of the 1998 Act.

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

291. This section re-enacts with amendments section 16A of the 1998 Act (as inserted by the 2002 Act), in its application to England. It gives local education authorities the power to appoint a specially constituted governing body in place of the existing governors at a school that is eligible for intervention under any of sections 53 to 55 of the Act. The specially constituted governing body is known as an “Interim Executive Board”. The power may only be exercised with the consent of the Secretary of State and the governing body must be given written notice of the exercise of the power. Before using the power the local education authority must consult the governing body of the school; in the case of a church school, foundation or voluntary, the appropriate diocesan authority and in the case of other foundation or voluntary schools, the body that appoints the foundation governors.

*These notes refer to the Education and Inspections Act 2006
(c.40) which received Royal Assent on 8 November 2006*

292. There is no longer a requirement for the local education authority to have received a notice of receipt of the inspection report from the Secretary of State, or for a 10 day period to have elapsed once that notice has been received, before the LEA can appoint a governing body to consist of interim executive members.

Section 66: Power of LEA to suspend right to delegated budget

293. This section re-enacts section 17 of the 1998 Act (in its application to England). It confers power on local education authorities to suspend a school's right to a delegated budget (as defined by Part 2 of that Act) if a school is eligible for intervention under any of sections 53 to 55 of the Act.
294. There is no longer a requirement for the local education authority to have received a notice of receipt of the inspection report from the Secretary of State, or for a 10 day period to have elapsed once that notice has been received, before the local education authority can suspend the right to a delegated budget.

Section 67: Power of Secretary of State to appoint additional governors

295. This section re-enacts with amendments section 18 of the 1998 Act in its application to England. The section confers power on the Secretary of State to appoint additional governors to the governing body of a school that is eligible for intervention.
296. *Subsection (1)* provides for this power to be applicable in cases where the school is eligible for intervention under section 61 or 62 of the Act. It does not apply if the school has not complied with a formal warning issued by the local education authority under section 60.
297. *Subsection (2)* requires the Secretary of State, before using this power, to consult the local authority; the governing body of the school; in the case of a foundation or voluntary school which is a Church of England or Roman Catholic school, the appropriate diocesan authority; and in the case of other foundation or voluntary schools, the person or persons who appoint the foundation governors.
298. *Subsections (3) to (7)* re-enact *subsections (3) to (7)* of section 18 of the 1998 Act.

Section 68: Power of Secretary of State to direct closure of school

299. This section re-enacts section 19 of the 1998 Act in its application to England. The section gives the Secretary of State the power to direct the closure of a school if that school requires special measures (see section 62 of the Act).

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

300. This section re-enacts section 18A of the 1998 Act in its application to England. The section enables the Secretary of State to appoint a specially constituted governing body (called an "Interim Executive Board") to conduct the school in place of the normal governing body. It is only applicable if a school requires significant improvement (section 61) or special measures (section 62). The power is not available merely because the school has not complied with a formal warning issued by the local education authority under section 60.

Section 70: Governing bodies consisting of interim executive members

301. This section introduces *Schedule 6* and re-enacts section 19A of the 1998 Act, as amended by the 2002 Act, providing for various matters relating to Interim Executive Boards appointed by the local education authority or the Secretary of State.

Schedule 6: Governing bodies consisting of interim executive members

302. *Schedule 6* re-enacts Schedule 1A to the 1998 Act, as inserted by the 2002 Act, providing for various matters relating to Interim Executive Boards appointed by the local education authority or the Secretary of State, including the setting up of the Interim Executive Board, the duties of the Interim Executive Board and the transition from the Interim Executive Board to a normally constituted governing body.
303. As provided for by Schedule 1A to the 1998 Act, as inserted by the 2002 Act, *paragraph 19* of Schedule 6 provides a regulation making power with respect to Interim Executive Boards. There is no intention to make substantive changes to the regulations originally made in 2002.

Section 71: Amendments relating to schools causing concern

304. This section introduces *Schedule 7*, Part 1 of which makes amendments to sections 15 and 17 of the 2005 Act, dealing with measures that need to be taken by a local education authority following the receipt of an inspection report stating that a school requires special measures or significant improvement. Part 2 of the same Schedule makes minor and consequential amendments to existing legislation, including amendments that arise from re-enacting certain existing provisions for England only.

Schedule 7, Part 1: Amendments relating to schools causing concern

305. *Paragraph 1* amends section 15 of the 2005 Act, dealing with measures that a local education authority needs to take following receipt of an inspection report on a maintained school stating that the school requires special measures or significant improvement.
306. The new arrangements set out in *paragraph 1(3)*, which inserts a replacement for *subsection (2)* of section 15 of the 2005 Act and new subsections (2A), (2B) and (2C), are broadly similar to the existing ones, but with some modifications described below.
307. The revised *subsection (2)(b)* requires the local education authority to consider consulting the registered parents of registered children at a school on the action being considered to secure the school's improvement. Local education authorities may consider the appointment of an individual "parents' champion" under *subsection (2)(c)* to secure the views of parents and to represent their voices in meetings. Where they have consulted registered parents, local education authorities should also take account of these views in finalising the written statement.
308. Revised *subsection (2)(d)* requires the local education authority to prepare a written statement setting out what action they intend to take to secure improvement at the school and, where action is not taken, the reasons for not doing so. *Subsection (2)(d)(ii)* requires the local education authority to include a section on the arrangements they propose to make (or have made) for consulting registered parents as they are required to do under *subsection (2)(b)*.
309. Revised *subsection (2)(e)* requires the local education authority to send the written statement to the Chief Inspector, the appointing body of foundation governors in the case of a voluntary aided school and other persons as specified by the Secretary of State in guidance.
310. New *subsections (2A), (2B) and (2C)* provide a new power for the Secretary of State to give a notice to a local education authority that, in the light of evidence presented by the Chief Inspector through an interim inspection, the case of a particular school has become urgent. In such cases, local education authorities have a duty to consider the action they propose to take to secure improvements at the school in the light of the evidence from an interim inspection and prepare a written statement to this effect.

*These notes refer to the Education and Inspections Act 2006
(c.40) which received Royal Assent on 8 November 2006*

311. New subsection (2A) defines the cases where the new subsection (2B) applies. Subsection (2A)(b) refers to cases where, in the light of evidence presented by the Chief Inspector through an interim inspection, it appears to the Secretary of State that a case has become urgent.
312. New subsection (2B) then provides for the Secretary of State to issue a notice requiring the local education authority to produce a written statement explicitly considering the action to be taken in the light of the recent interim inspection (as defined by new subsection (2C)). The written statement should include details of how the local education authority will make arrangements for consulting with registered parents. It should also set out the action the local education authority will take, including the use of its intervention powers if appropriate, the period in which they propose to take that action, or if no action is proposed to be taken, the reasons why action is not to be taken.
313. *Sub-paragraph (5)* of paragraph 1 inserts a new *subsection (4)* into section 15 of the 2005 Act and places a duty on local education authorities to have regard to guidance issued by the Secretary of State in performing their functions under new *subsections (2) and (2B)*.
314. *Paragraph 2* of Schedule 6 amends section 17 of the 2005 Act, referring to the statement required to be prepared by a proprietor following an adverse report on a non-maintained school. This provision for non-maintained schools mirrors the provision for maintained schools discussed above.
315. The new arrangements are set out in *paragraph 2(3)* which inserts a replacement for *subsection (1)* of section 17 of the 2005 Act and new *subsections (1A) to (1D)*.
316. New subsection (1A) sets out the statement that needs to be prepared by the proprietor of a non-maintained school if that school is judged by the Chief Inspector to require special measures or significant improvement. This mirrors the requirement for the statement required to be produced by the local education authority for maintained schools in similar circumstances. The statement should set out what action will be taken to secure improvement at the school.
317. As required by *subsection (1A)(b)*, the proprietor should consider making arrangements for consulting the registered parents of registered children at a school on the action being considered to secure the school's improvement. The proprietor may consider the appointment of an individual "parents' champion" as provided by *subsection (1A)(c)* to secure the views of parents and to represent their voices in meetings. Where the proprietor has consulted registered parents, the proprietor should also take account of these views in finalising the written statement.
318. As set out in *subsection (1A)(d)* the written statement should also set out what action the proprietor intends to take to secure improvement at the school, and the period in which he proposes to take that action. If the proprietor does not propose to take any action, he must note this in the written statement and explain the reasons for not taking any action. *Subsection (1A)(d)(ii)* then requires the proprietor to set out the arrangements made under *subsection (1A)(b)* in the written statement.
319. New *subsection (1B)* defines the cases where the new *subsection (1C)* applies. *Subsection (1B)(b)* refers to cases where, in the light of evidence presented by the Chief Inspector through an interim inspection, it appears to the Secretary of State that a case has become urgent.
320. New *subsection (1C)* then provides for the Secretary of State to issue a notice requiring the proprietor to produce a written statement explicitly considering the action to be taken in the light of the recent interim inspection (as defined by new *subsection (1D)*). The written statement should include details of how the proprietor will make arrangements for consulting with registered parents as required by *subsection (1C)(b)(ii)*. It should also set out the action the proprietor will take, the period in which he

*These notes refer to the Education and Inspections Act 2006
(c.40) which received Royal Assent on 8 November 2006*

proposes to take that action or, if no action is proposed to be taken, the reasons why action is not to be taken.

321. *Sub-paragraph (5)* of paragraph 2 inserts a new *subsection (5)* into section 17 which places a duty on proprietors of non-maintained schools to have regard to guidance issued by the Secretary of State in performing their functions under new subsections (1A) and (1C).

Schedule 7, Part 2: Minor and consequential amendments

322. Part 2 of this Schedule makes minor and consequential amendments to the 1998 Act, the Learning and Skills Act 2000, the 2002 Act and the 2005 Act.
323. The effect of the changes made by *paragraphs 3 to 17* is that Chapter 4 of Part 1 of the 1998 Act (Intervention in schools causing concern) will no longer apply in England but will continue to apply in Wales. Part 4 of the Act re-enacts this Chapter in relation to England, with some modifications.
324. *Paragraphs 18 to 22* make amendments which are related to the other provisions of this Part of the Act.

Section 72: Duty of LEA to have regard to guidance

325. This Part of the Act confers discretionary powers on local education authorities. This section requires them to have regard to guidance issued by the Secretary of State.