

EDUCATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 4 – Powers of Intervention

Schools causing concern

Sections 54 to 59

Section 54: Duty to notify where inspection shows school causing concern

154. The section inserts a new provision as section 16A in the School Inspections Act 1996 (SIA) to place a duty on HMCI to notify the Secretary of State, or the NAW, where an inspector has concluded that a school has serious weaknesses or requires special measures. This change enables other provisions of this Part to allow earlier intervention by the Secretary of State, or the NAW, or by LEAs in such schools.
155. The section identifies the routes by which HMCI might be notified, whether by one of Her Majesty's Inspectors (HMI) or by a registered inspector, that a school has been judged to have serious weaknesses or to require special measures. It provides that HMCI must agree with a registered inspector that a school requires special measures.
156. The section requires HMCI to notify the Secretary of State, or the NAW, in writing that a school requires special measures or has serious weaknesses; and requires the Secretary of State, or the NAW, to notify the relevant LEA in writing that she has been informed of that judgement in respect of a named school. The section defines when a school is to be regarded for this purpose as having serious weaknesses. 'Special measures' is defined in the SIA.

Section 55: Cases in which powers of intervention exercisable

157. The section amends section 15 of the SSFA by replacing the subsections which define when the section applies to schools having serious weaknesses or requiring special measures. This change ensures that the steps taken by the Secretary of State, or the NAW, or by LEAs to secure improvement in such schools can commence more quickly after an inspection has reached such a conclusion.
158. The section provides that section 15 applies to a school having serious weaknesses when, following an inspection of that school, the Secretary of State, or the NAW, is notified in writing of the inspector's opinion, as required in section 54, (and no subsequent inspection has concluded that the school no longer has serious weaknesses or that the school requires special measures).
159. The section provides that section 15 applies to a school requiring special measures when, following an inspection of that school, HMCI notifies the Secretary of State, or the NAW, in writing of this judgement (and no subsequent inspection has concluded that the school no longer requires special measures).

Section 56: Power of the Secretary of State to appoint additional governors or direct closure

160. The section amends sections 18 and 19 of the SSFA so as to extend the powers currently available to the Secretary of State, or the NAW, to intervene in schools requiring special measures to those identified by HMCI as having serious weaknesses. It provides that the Secretary of State, or the NAW, may appoint additional governors and appoint one of those governors as chair of the governing body or may direct the maintaining LEA to discontinue (close) on a specified date a school which requires special measures or has serious weaknesses.

Schedule 5: Amendments consequential on sections 55 and 56

161. This Schedule amends existing legislation resulting from the changes proposed in sections 55 and 56, making changes to sections 14, 16 and 17 of the SSFA.
162. It amends section 14(3), so that LEAs may not use their powers in sections 16 and 17 to appoint additional governors and/or suspend a school's right to a delegated budget if the Secretary of State, or the NAW, has used the powers under sections 18 and 19 to appoint additional governors or direct an LEA to close a school, where a school requires special measures or has serious weaknesses.
163. It amends section 16 to allow an LEA to exercise their power to appoint additional governors for schools requiring special measures or having serious weaknesses: ten calendar days after the Secretary of State, or the NAW, has given notice to the LEA required by section 46.
164. It allows appropriate appointing authorities in voluntary aided schools to appoint additional governors from the same stage where a school is in special measures or has serious weaknesses, provided the Secretary of State, or the NAW, has chosen not to do so and to appoint an equal number of additional governors to those appointed by LEAs when a school has been placed under a formal warning.
165. It amends section 17 to allow an LEA to exercise its power to suspend a school's delegated budget at the same stage when a school requires special measures or has serious weaknesses.

Section 57: Power of LEA to provide for governing body to consist of interim executive members

166. This section provides the LEA with an additional power to appoint a specially constituted governing body in place of the pre-existing governors.
167. This power may be exercised only with the consent of the Secretary of State, or the NAW. The governing body must be given written notice of the exercise of the power. The section sets out the circumstances in which the LEA may exercise the power.
168. Before using the power the LEA 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 any other foundation or voluntary body those who appoint the foundation governors.

Section 58: Power of Secretary of State to provide for governing body to consist of interim executive members

169. This section enables the Secretary of State, or the NAW, to appoint a specially constituted governing body.
170. The section places a duty on the Secretary of State, or the NAW, before exercising the power, to consult the LEA; 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 any other foundation or voluntary body those who appoint the foundation governors. The consultation need not take place if the LEA has already consulted them in connection with a proposal to use its powers under section 16A.

Section 59: Governing Bodies consisting of interim executive members

171. This section inserts a new section 19A in SSFA and provides for the Schedule set out as Schedule 6 to the Act to become a new Schedule 1A to SSFA.

Schedule 6: Governing Bodies consisting of interim executive members – to be inserted in the School Standards and Framework Act as Schedule 1A

172. This Schedule contains detailed provisions relating to the temporary replacement of the normally constituted governing body of a school with a specially constituted governing body consisting of interim executive members. The governing body remains in existence as a body corporate, but its membership is changed. The specially constituted governing body is referred to in the Schedule as an “interim executive board” (IEB), but it will run the school as “the governing body of School” and will have the responsibilities of a governing body.
173. The Schedule allows current members of the governing body to be appointed; provides for the number of interim executive members to be two or more; enables further members to be appointed at any time; requires the LEA or Secretary of State, or the NAW, to consult appropriate interests before appointing members. The Schedule provides that members can be removed for incapacity or misbehaviour; allows the duration of the interim period to be specified; provides for the LEA or Secretary of State, or the NAW, to nominate one member as chairman and for interim executive members to be paid. It also provides for the IEB to determine its own procedures; exempts it from regulations relating to normal governing bodies; and provides for the school’s instrument of government not to be applied.
174. The Schedule explains that during the interim period when the IEB is in place the LEA will not be able to use its usual powers to appoint additional governors and/or suspend a school’s right to a delegated budget. The Secretary of State, or the NAW, will also lose the power to appoint additional governors when an IEB is in place.
175. An IEB will not have the power to publish proposals to close a school, if it concludes that a school cannot be turned around. It will be able to report recommending that a school should be closed to the LEA and the Secretary of State, or the NAW.
176. The interim period and the appointment of the IEB may continue until the date of closure when the Secretary of State, or the NAW, or the LEA use their powers of closure or direction to close in SSFA. The LEA or the Secretary of State, or the NAW, is given the ability to specify in a notice a date on which a normally constituted governing body will return to the school.
177. The Schedule sets out when interim executive members will leave office, either when a school closes or where the duration of an interim period is specified, the last day, or where a notice is given for the restoration of a normally constituted governing body, the date specified. It provides for an LEA to make arrangements for the constitution of the normal governing body and enables regulations to be made for a shadow (transitional) governing body to be established and governors to be elected or appointed before the end of the interim period.

Local education authorities

Sections 60 to 64

Section 60: Powers of Secretary of State to secure proper performance of LEA's functions

178. The new section 497A(1) for the EA 96 enables the Secretary of State, or the NAW, to give directions in relation to all education functions, including for example those relating to early years education, rather than at present only those relating to compulsory age education. Section 497A(2A) enables the Secretary of State, or the NAW, to give a further direction when one direction comes to an end and she is not satisfied that the authority would perform the functions to an adequate standard were they to be taken back in-house.
179. Section 497A(4) as substituted enables the Secretary of State, or the NAW, to direct LEAs to take more specific action without the setting of objectives as presently required. This is in line with powers in section 15 of the Local Government Act 1999, which enable the Secretary of State, or the NAW, to take any action considered necessary or expedient to secure an authority's compliance with its duties. Section 497A(4A) enables the Secretary of State, or the NAW, to direct that a function is to be exercised by the Secretary of State, or the NAW, or by a nominee.

Section 61: Power to secure proper performance: duty of authority where directions contemplated

180. This section inserts in the EA 96 a new section 497AA which provides that when the Secretary of State, or the NAW, is satisfied that an authority is failing to perform its statutory functions to an adequate standard, and has notified the authority of her decision to intervene, and to whom the right of access granted by this section should apply. The authority is then obliged to give full co-operation to the nominee, rather than such a duty only arising after a direction is given under section 497A.

Section 62: Power to secure proper performance: further provisions

181. Section 497B is amended to take account of the amendments to the section 497A. In addition, the new section 497B (1A) defines to whom the general rights conferred by section 497B apply. Following a direction by the Secretary of State, or the NAW, that person is the contractor or nominee of the Secretary of State or the NAW.

Section 63: Power to require LEA to obtain advisory services

182. This section enables the Secretary of State, or the NAW, to direct an LEA to involve an external partner in providing advice to the LEA or the governors of a maintained school (or both). The power to direct applies when the LEA in question maintains at least one school which requires special measures or has serious weaknesses: and in addition it appears to the Secretary of State that the LEA has not made or is unlikely to make sufficient progress in eliminating such failings in such a school or schools, or is unlikely to eliminate such failings as may be found in the future in other schools it maintains, or has a disproportionate number of such schools. External partners could be successful schools, successful LEAs, FE or HE institutions, or from the public, voluntary or private sectors.

Section 64: Provisions supplementary to section 63

183. This section gives supplementary powers to the Secretary of State, the NAW or an external partner and requires an LEA to whom a direction under section 63 is or may be given to provide assistance.