



## Guidance

Chief Education Officers,  
Church and other faith  
groups, Learning and  
Skills Council and other  
interested parties

# Schools causing concern

## Overview

This guidance covers procedures on all categories of schools causing concern and on the intervention powers available to an LEA, the Secretary of State, the LSC, and Dioceses. New powers in the Education Act 2002 come into force in September and October 2002.

## Further information

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# Introduction

The White Paper *Schools: Achieving Success* published in September 2001 announced a number of new measures for supporting schools causing concern [www.dfes.gov.uk/achievementsuccess](http://www.dfes.gov.uk/achievementsuccess). The *Education Act 2002* has now put those proposals into effect. This guidance explains the procedures which schools, Local Education Authorities (LEAs) and others should follow in relation to schools causing concern. LEAs' Education Development Plans set out their planned actions and policies in relation to such schools [www.standards.dfes.gov.uk/lea/edp](http://www.standards.dfes.gov.uk/lea/edp).

LEAs are responsible for taking decisive action to support schools causing concern, including helping schools in special measures to recover as soon as possible. In 1998 the Government set a target that no school should remain in special measures for more than two years. Since then, the total number of schools in special measures has reduced by nearly a half. Nonetheless, at the end of the 2001/02 academic year more than 270 schools remained in special measures (more than one per cent of the total). There is evidence to suggest that too many schools initially judged by Ofsted to have serious weaknesses are subsequently found to require special measures.

The additional measures brought in by the *Education Act 2002* are designed to ensure that fewer schools are placed in special measures, and that those that are continue to recover more quickly. Specifically, these measures:

- enable the Secretary of State to intervene in schools with serious weaknesses as well as those requiring special measures in order to prevent weak schools from slipping into failure;
- provide for earlier intervention by LEAs or the Secretary of State to support both schools placed in special measures and schools with serious weaknesses;
- allow LEAs or the Secretary of State to replace the governing body of a school with an interim executive board (IEB) in the very rare cases where a governing body obstructs rather than contributes to progress; and

- introduce a reserve power for the Secretary of State to direct an LEA to take an external partner to provide advice on a consultancy basis to the authority or school where there is clear evidence that additional support to help improve the school is needed but has not been sought.

This guidance supersedes circular 6/99. Since that guidance was issued, two new categories of school causing concern can be identified via Ofsted inspection. First, schools can be judged to be underachieving. Second, secondary schools can be judged to have an inadequate sixth form.

The guidance therefore covers the following school categories:

- schools requiring special measures** ie schools identified via Ofsted inspection as failing or likely to fail to provide pupils with an acceptable standard of education;
- schools with serious weaknesses** ie schools identified via Ofsted inspection as schools which, though providing in general an acceptable standard of education, are nevertheless considered to have significant weaknesses in one or more areas of activity;
- underachieving schools** ie schools identified via Ofsted inspection as schools where pupils are not achieving as well as they could and should, and which are themselves not achieving as well as schools in similar situations;
- schools with inadequate sixth forms** ie schools identified by Ofsted as failing or likely to fail to give their sixth form pupils an acceptable standard of education, or which have significant weaknesses in one or more areas of their activities for pupils over compulsory school age.

The guidance offers advice on **LEA powers of intervention**. There are also separate sections on the powers available to the **Secretary of State**, the **Diocese** or other appropriate appointing authority and the **Learning and Skills Council (LSC)**.

LEAs have powers of intervention over schools which they see as being a cause for concern: ie schools which the LEA itself judges to be failing to provide an adequate standard of education or to have serious weaknesses (and which may therefore warrant a formal warning), or which are at risk of not meeting the Government's floor targets for achievement.

LSC has powers of intervention, set out in the *Learning and Skills Act 2000* and the *Education Act 2002*. The LSC will take into account the quality of provision in school sixth forms and 16-19 institutions (schools) as part of its remit to improve the quality of provision which it funds [www.lsc.gov.uk](http://www.lsc.gov.uk). LEAs should consult and work with the LSC on all post-16 provision causing concern.

Finally, the guidance provides advice on the new powers in the *Education Act 2002* to appoint an **IEB** in place of a governing body, and on the use of **external advisory services and partnerships** in supporting schools causing concern, and the Secretary of State's powers in relation to such partners. As anticipated in the White Paper, the expectation will now be that LEAs consider proposals from external partners and the range of possible partners is wide: another school, another LEA or another public, voluntary or private sector body.

Guidance is available separately on **schools facing challenging circumstances** (ie secondary schools which are not meeting the Government's floor targets at Key Stage 4) and **Fresh Start schools** (ie new schools established in place of schools which were in special measures or otherwise causing concern and which are eligible for support from the DfES programme) at [www.standards.dfes.gov.uk/schoolimprovement](http://www.standards.dfes.gov.uk/schoolimprovement).

Advice on the use of LEA powers is also provided in the Code of Practice on Local Education Authority – School Relations 2001 [www.dfes.gov.uk/lea](http://www.dfes.gov.uk/lea), which is to be revised to reflect new measures in the *Education Act 2002*.

### Standards Fund

The Standards Fund provides support for the Government's central priority of raising standards in schools. The major focus is on school self-improvement through targets agreed with LEAs and set out in their Education Development Plans (EDPs). The School Improvement Grant in particular supports activity designed to improve standards of pupil performance in order to meet school, LEA and national targets. Most of the money is devolved to schools to enable them to address the priorities identified in their school development plans. There is additional support within the grant to secure urgent improvement in schools causing concern, and for LEAs to fund their own central support for school improvement activities.

## Chapter 1

# Special measures

The *Education Act 2002* widens the intervention powers of LEAs and the Secretary of State in relation to schools placed in special measures by Ofsted. New measures in the Act aim to ensure that fewer schools are placed in special measures and that those that do are turned around and recover as quickly as possible. Schools and LEAs should consider all possible measures to bring about improvement in schools. Early and decisive intervention and the right support are essential to rapid and sustainable improvement.

The new provisions allow for an LEA or the Secretary of State to intervene as soon as a school is placed in special measures. LEA powers to intervene now come into force 10 calendar days after a letter from DfES indicating that they have been notified by Ofsted that a school requires special measures. Provisions in the Act also mean that LEAs may be expected to invite proposals to seek partners to help turn around a school placed in special measures, as anticipated in the 2001 White Paper *Schools: Achieving Success*.

## Procedures for schools requiring special measures

### Inspection by a Registered Inspector

A school requires special measures if the report of a school inspection by Her Majesty's Inspector (HMI) or a Registered Inspector states that the school 'is failing, or likely to fail, to give its pupils an acceptable standard of education'. If a Registered Inspector carried out the initial inspection, the report must state that Her Majesty's Chief Inspector of Schools (HMCI) agrees with this judgement.

Ofsted's *Handbooks for Inspecting Schools* [www.ofsted.gov.uk](http://www.ofsted.gov.uk) set out the criteria which an inspector must consider in reaching a judgement that a school requires special measures.

If the Registered Inspector and his or her team of inspectors believe that a school does require special measures, the Registered Inspector must make this clear in their oral feedback to the governing body and headteacher at the end of the inspection. The governors should invite the LEA to be present at that feedback meeting to provide the LEA with the maximum amount of time to support the school and assist the school with the preparation of an action plan.

The Registered Inspector must send a draft inspection report and relevant papers to HMCI as soon as possible and within five weeks of the end of the inspection. HMCI will decide, on the basis of documentary evidence and possibly a visit to the school by HMI, whether he agrees with the judgement that the school needs special measures. To allow adequate time for that assessment, HMCI may extend the deadline for the issue of the inspection report by a maximum of three months from the date when it was originally due.

The Registered Inspector may only issue the inspection report once HMCI has stated whether he agrees or disagrees with the inspector's opinion that the school needs special measures. The school requires special measures only if HMCI agrees with the Registered Inspector's judgement. If HMCI disagrees with the Registered Inspector's judgement, HMCI's judgement takes precedence and the school is not placed in special measures.

### Inspection by an HMI

If HMI find that a school needs special measures, they will give oral feedback at the end of the inspection to the governing body and headteacher. An inspection report will be issued to the governing body and copied to the LEA stating that the school needs special measures. This judgement does not need to be confirmed by HMCI. HMI inspections are carried out under section 3 of the *School Inspections Act 1996* but are also deemed to be section 10 inspections under the same Act. Under section 2(2) of the Act inspections may also be carried out following a request from the Secretary of State.

### School action

The governing body, in consultation with the LEA, should start immediately after the oral feedback to draw up an action plan to address the key issues identified by the inspectors. The headteacher and staff should be closely involved. Where these issues relate to sixth form provision the local LSC should also be consulted.

Where financial delegation has been withdrawn before the school received the inspection report, it is the responsibility of the LEA to produce the action plan, but they will need to liaise closely with the school's governors and staff. If the LEA withdraws delegation after the governors' action plan has been submitted, the plan should continue to be implemented by the governing body, but the LEA should take responsibility for personnel issues and the budget in the school. Further information on arrangements where financial delegation has been withdrawn can be found on page 7 under LEA intervention powers and action.

When a school has been found to need special measures, Ofsted will notify the LEA and DfES, and both DfES and Ofsted will write to the governing body and to the LEA. This first contact will be made before the written report is issued. DfES will notify LSC where a school with a sixth form is placed in special measures.

The governing body (or the LEA where financial delegation has been withdrawn before the school is judged to require special measures) has 40 working days after receipt of the inspection report (excluding weekends, bank holidays and school holidays totalling more than five working days) in which to submit its action plan to the Secretary of State and HMCI.

### School action plan

The **action plan** should have a timetable, which will allow the school to be removed from special measures as soon as possible and no later than two years after the school is placed in special measures. The action plan must address all the key issues in the inspection report, and for each issue the plan should state:

- a what is to be done (in terms of clear and specific actions);
- b who is to do it (who is responsible for ensuring the action takes place, and who else is involved);
- c what external support the school will draw from (partner schools, the LEA and other sources);
- d when it will be done (timescale with key milestones);
- e what resources are required (in particular how the school intends to use Standards Fund grants, including funding for teacher development);
- f success criteria (quantitative targets where possible) against which progress will be judged; and
- g how progress will be monitored (by whom, when and how).

Copies of action plans should be sent to the LEA, Ofsted, DfES, LSC and the Diocese or other appropriate appointing authority where they have an interest. The DfES will write to acknowledge receipt of the action plan.

Ofsted will invite schools and their LEA Adviser or Inspector to attend a seminar on action planning when a school is placed in special measures. Further guidance on action plans is provided in the Ofsted document *Action Planning for School Improvement*.

### LEA intervention powers and action

When DfES receive notification from Ofsted (see paragraph on inspection by an HMI on page 5) that a school requires special measures, they will write to the LEA informing them of this and that the LEA's statutory powers of intervention (to appoint additional governors, withdraw a school's delegated budget or replace a school governing body with an IEB) will come into force 10 calendar days after the date of that letter. If the Secretary of State intends to use his own intervention powers at this stage, the LEA will be notified in writing before the end of this period. In the case of voluntary aided schools, DfES will also write to the Diocese or other appropriate appointing authority and they should be kept fully involved in the process by the LEA so that they can appoint additional governors if they wish.

If the LEA has withdrawn financial delegation from the school before the Ofsted inspection report was issued, the LEA, and not the school's governing body, is responsible for drawing up and submitting an action plan to address the inspection report's findings. The timetable for submission of this action plan is the same as if the governing body were drawing up the plan, ie the LEA has 40 working days to prepare the action plan. The LEA does not have to provide a separate commentary or statement of LEA action, but may do so if it wishes.

### LEA commentary, statement of action, and external partners

The LEA should work closely with the headteacher and governing body of the school and, where applicable, the Diocese or other appropriate appointing authority and the local LSC, to draw up the school action plan immediately following the Registered Inspector's or HMI's oral feedback. The LEA should also consider its own proposed action.

The LEA should consider inviting proposals for the provision of additional support and consultative advice from an external partner when the inspector's report is published. The choice of a partner has to be for the LEA, in consultation with the school and where applicable the Diocese or other appointing authority and the local LSC, and will depend on the particular circumstances and problems facing the school.

Such a partnership might be with another school, another LEA or some other public, voluntary or private sector body. The Secretary of State also has the power to direct an LEA to take a partner to provide advice on turning a school or schools around where the LEA has not already obtained advisory services. Further information on this issue is provided in the separate guidance on partnerships for supporting schools in chapter 10, page 43.

When the governing body has produced the school's action plan, the LEA must submit its own commentary and statement of action to the DfES, Ofsted, LSC and the Diocese or other appropriate appointing authority within 10 working days.

The **LEA commentary** should provide an assessment of the school's ability to implement its action plan successfully. It should:

- a assess the effectiveness of the governing body's action plan;
- b set out any points the governors have neglected to cover in their plan;
- c make clear how long the LEA has been aware of the school's problems and the action taken to remedy the issues in the inspection report;
- d assess the likely effectiveness of any partner's plan of action; and
- e set out how the LEA will monitor and support the school.

The **LEA statement of action** should provide a detailed explanation of the options for the future of the school. It should:

- a assess the scope for the school to be closed or federated, including an examination of the number of surplus places in better performing local schools;
- b where the school is to remain open, specify a target for removal from special measures within two years from the date of receipt of the inspection report;
- c explain the action the LEA has taken and will take to support the school (including resource implications, and quantified targets for evaluating the effectiveness of the LEA support);
- d clarify any decisions made about involving external support;
- e clarify the extent to which local authority services and partners will support the school;
- f propose alternative action if the LEA's commentary has said that the governing body's plan is unlikely to be effective in whole or in part; and

- g state whether the LEA intends to use its powers to appoint additional governors (and if so, name them and give details of their expertise: see also page 31 of the guidance on LEA powers); suspend the right to a delegated budget (see paragraph on page 31 of the guidance on LEA powers); or replace the governing body with an IEB (see chapter nine, page 39 on IEBs).

The LEA should copy its commentary and statement of action to the school's governing body and, where applicable, to the Diocese or other appropriate appointing authority and the local LSC.

### First HMI monitoring visit

HMI will make their first monitoring visit about six months after the school inspection. At this stage HMI will make a judgement on:

- a the quality of the action plan and the LEA statement;
- b the LEA's target date for removal of the school from special measures;
- c the effectiveness of the LEA support to the school;
- d whether the school should or should not be permitted to appoint newly qualified teachers (NQTs). This decision is dependent on the school's ability to provide support and an appropriate induction programme for the NQT; and
- e progress since the initial inspection which placed the school in special measures.

HMI's judgement on these issues will be reported in a letter addressed to the school's headteacher, copied to the Secretary of State, the Chair of Governors, the LEA and, where applicable, the Diocese or other appropriate appointing authority.

If necessary, HMI will identify any areas of weakness in the school's action plan and the LEA's statement. If the school's action plan or the LEA's statement of action is weak they may be required to send revised versions to HMI within 25 working days of the visit.

All partners (the LEA, governors, headteacher and, where applicable, the Diocese or other appropriate appointing authority and, if the school has a sixth form, the local LSC) will be expected to discuss and agree the next steps needed to enable an acceptable rate of progress to be achieved before the next HMI monitoring visit.

## Second and subsequent HMI monitoring visits

HMI will usually visit a school once a term. However, visits could be more or less frequent if HMI judge that this is required. The school will receive notice of the visit. At that point, the headteacher and chair of governors of the school (preferably in discussion with the LEA and, where applicable, the Diocese or other appropriate appointing authority and/or the local LSC) should prepare a short self-evaluation of the progress the school has made. It should include an outline of important actions since the last HMI visit, give clear evidence of the positive impact of those actions and provide a brief evaluation of the progress made in addressing each key issue. The completed summary should be sent to HMI at least one week before the monitoring visit.

After each monitoring visit, HMI will report in writing on two measures of progress – progress since the last monitoring visit, and overall progress since the initial inspection.

## DfES role

The Department will provide information on the appropriate action and timing in relation to statutory rights and duties. The progress of schools will be followed using the letters issued by HMI after each visit. Ministers expect schools to be turned around within two years or closed, and the Department will monitor progress closely in that context.

If there are problems, or it is clear that the school is not making progress, the Department will wish to review the situation fully with the LEA and, if applicable, with the Diocese or other appropriate appointing authority and/or the local LSC. The level and nature of intervention will depend upon the length of time the school has been in special measures, and the severity of the problems. For the most severe situations, follow-up action may include use of the Secretary of State's powers to appoint additional governors, appoint an IEB, and direct an LEA to take on an external partner in an advisory capacity, or direct the closure of the school.

Each school in special measures has a named DfES contact for general help and guidance. Schools, LEAs or Diocesan or other officers may raise any questions or concerns about a school with their contact at any time.

### Removal from special measures

If at the conclusion of a monitoring inspection HMI conclude that the school no longer needs special measures, a report will be produced giving this judgement.

A school no longer requires special measures if it has closed. A school that is closed in order to be given a 'Fresh Start' is no longer subject to special measures. The report of the first inspection on the Fresh Start school will trigger the need to produce a new action plan. Further advice on Fresh Start is available via separate guidance [www.standards.dfes.gov.uk/schoolimprovement](http://www.standards.dfes.gov.uk/schoolimprovement).

# Special measures

## TIMELINE

Week 1

The school is inspected. At the end of the inspection, or sometimes early the next week, the **Registered Inspector (Rgl)** tells the school, LEA and Ofsted that special measures are required.

The LEA and School (and where appropriate the Diocese) should begin to address the school's weaknesses in advance of the inspection report's publication.

Week 3-5

**HMCI** corroborates the Rgl's judgement. **Ofsted** informs the school of HMCI's decision about special measures.

**DfES** writes to the school and LEA. LEA powers to appoint additional governors, replace a governing body with an IEB or to withdraw delegation, and for VA schools, the powers of the Diocese or other appropriate appointing body, take effect 10 Calendar days after the date of the **DfES** letter.

Week 7

By the end of the week the final version of the inspection report is issued by the **Rgl** and sent to the school, LEA, Ofsted and the **DfES**. The 40-day deadline for the action plan is triggered by the school's receipt of the inspection report. **DfES** will confirm the deadline in writing.

Week 8-14

**Ofsted** will contact the school to offer a discussion with HMI about the drawing up of a good action plan, at an early stage in the process.

Week 15

The action plan is submitted to the **DfES** and **Ofsted**. The summary of the action plan is sent to parents. The **DfES** will acknowledge receipt and request the **LEA's** commentary and statement of action.

Week 17

The **LEA** submits its commentary and statement of action.

This must include a target date by when the action taken by the local partnership will have improved the school to the point where it no longer requires special measures. The **DfES** will acknowledge receipt.

6 months<sup>1</sup>

**HMI** will visit the school to undertake their first monitoring visit. **HMI** will make a judgement on the quality of the action plan and the LEA's statement, including the target date for removal from special measures. They will also check on the progress the school is making and how the LEA's support package is working in practice. **HMI** will report their judgements to the Secretary of State, the governors, the LEA and where appropriate the Diocese.

Where **HMI** believe that the recovery plans are unlikely to lead to the necessary improvement, advice will be given on the areas of weakness. **HMI** will then need to see a revised plan, or where appropriate LEA statement, within a short period of time – probably no more than two weeks.

If **HMI** are still not content at this point they will report to the Secretary of State on the areas which are causing them concern. The governing body can expect to be contacted by the **DfES** to account for the concerns that **HMI** have raised and to present its proposals for dealing with them (significant concerns at this stage might lead the Secretary of State to use his power to intervene directly in the school).

Subsequent monitoring visits

Before the second and subsequent monitoring visit(s), the **school** will complete and send to **HMI** a self evaluation of progress against the Key Issues. This evaluation should be copied to the LEA.

Where progress is reported by **Ofsted** to be limited overall or where there has been an unexpected dip in progress the **DfES** may wish to discuss with the governing body and the LEA (and where appropriate the Diocese) their options for better progress.

18 months<sup>2</sup>

Where there is no indicative date for the school's removal the **DfES** will seek a report from the LEA on the progress being made and any further action needed.

2 years<sup>3</sup>

Unless removal from special measures is imminent the school should be closed.

<sup>1</sup> After the inspection **HMI** will visit the school before the end of the term after the one in which the school went into special measures.

<sup>2-3</sup> Starting from the date that **Ofsted** notifies the school and the Secretary of State that the school requires special measures or **HMCI** has agreed with a Registered Inspector that a school requires special measures.

## Chapter 2

# Serious weaknesses

There is good evidence to show that more decisive action needs to be taken to prevent schools with serious weaknesses from ‘slipping’ into special measures.

The *Education Act 2002* introduces changes in two respects in relation to schools categorised as having serious weaknesses. As with schools placed in special measures, LEA intervention powers are extended to include a provision to appoint an IEB. The Secretary of State’s intervention powers have also been extended to bring them into line with his powers in respect of schools in special measures. He will now be able to appoint additional governors or an IEB, direct an LEA to take on a partner to provide advisory support, or direct the closure of a school. The monitoring and support of schools with serious weaknesses by Ofsted has also changed.

The new provisions allow for an LEA or the Secretary of State to intervene as soon as a school is judged to have serious weaknesses. LEA powers to intervene now come into force 10 calendar days after a letter from DfES indicating that it has been notified by Ofsted that a school has serious weaknesses. Provisions in the Act also mean that LEAs may be expected to invite proposals to seek partners to help turn around a school judged to have serious weaknesses, as anticipated in the 2001 White Paper *Schools: Achieving Success*.

### Procedures for schools with serious weaknesses

A school has serious weaknesses, as defined in section 15(5) of the *School Standards and Framework Act 1998* and section 16A of that Act, as inserted by section 54 of the *Education Act 2002*, ‘if, although giving its pupils, in general, an acceptable standard of education, it has significant weaknesses in one or more areas of its activities’. The inspection report by the Registered Inspector must include the conclusion ‘This school has serious weaknesses’. This judgement does not need to be corroborated by HMCI.

The Registered Inspector will give the governing body and headteacher oral feedback on his/her findings. The governing body should invite the LEA to be present at all or part of the feedback meeting. A written report clearly stating that the school has serious weaknesses will be sent to HMCI, the governing body, the headteacher, the LEA and, if appropriate, the Diocese or other appointing body.

When a school has been found to have serious weaknesses, Ofsted and the DfES will write to the governing body and the LEA to provide guidance on the action required. Where applicable, DfES will also write to the Diocese or other appropriate appointing body. The governing body, in consultation with the LEA, should start immediately after the oral feedback to draw up an action plan to address the key issues identified by the inspectors. The headteacher and staff should be closely involved. Where these issues relate to sixth form provision, the local LSC should also be consulted.

Where financial delegation has been withdrawn before the school received the inspection report, it is the responsibility of the LEA to produce the action plan. In such circumstances, the LEA will, however, need to liaise closely with the school's governors and staff. If delegation is withdrawn by the LEA after the governors' action plan has been submitted, the plan should continue to be implemented by the governing body, but the LEA will take responsibility for personnel issues and the school budget. Further information on arrangements where financial delegation has been withdrawn can be found on page 16.

The governing body (or the LEA where financial delegation has been withdrawn before the date the school received the inspection report) has 40 working days on receipt of the inspection report in which to submit its action plan to HMCI. This does not include weekends, bank holidays and school holidays totalling more than five working days.

### School action plan

The **action plan** should include a timetable designed to remove the causes of serious weaknesses within one year of receiving the inspection report. It must address all the key issues identified in the inspection report, and for each issue the plan should state:

- a what is to be done (in terms of clear and specific actions);
- b who is to do it (who is responsible for ensuring the action takes place, and who else is involved);
- c when it will be done (time scale with key milestones);

- d what resources are required (in particular, how the school intends to use Standards Fund Grant, including funding for teacher training);
- e success criteria (quantitative targets where possible) against which progress will be judged; and
- f how progress will be monitored (by whom, when and how).

Ofsted will invite schools and their LEA Adviser or Inspector to attend a seminar on action planning when a school is judged to have serious weaknesses. Further guidance on action plans is provided in the Ofsted document *Action Planning for School Improvement*. Copies of action plans should be sent to Ofsted, the LEA, and, where applicable, the Diocese or other appropriate appointing authority and the local LSC.

### LEA intervention powers and action

When DfES receives notification from Ofsted that a school has serious weaknesses, the Department will write to the LEA informing them of this, and that the LEA's powers of intervention (to appoint additional governors, withdraw a school's delegated budget or replace a school governing body with an IEB) will come into force 10 calendar days after the date of that letter. If the Secretary of State intends to use his own intervention powers at this stage, the LEA will be notified in writing before the end of this period. Where appropriate the Diocese (or other appointing authority) should be kept fully involved in the process, so that it can appoint additional governors if it wishes.

If the LEA has withdrawn financial delegation from the school before the Ofsted inspection report is issued, the LEA, and not the school's governing body, is responsible for drawing up and submitting an action plan to address the inspection report's findings. The timetable for submission of this action plan is the same as if the governing body were drawing up the plan, ie the LEA has 40 working days to prepare the action plan. The LEA does not have to provide a separate commentary or statement of LEA action, but may do so if it wishes.

### LEA commentary, statement of action and external partners

The LEA should work closely with the headteacher and governing body of the school and, if applicable, the Diocese or other appropriate appointing body, to draw up the action plan immediately following the Registered Inspector's or HMI's oral feedback. The LEA should also prepare a statement of action, which should be submitted to HMCI alongside the school action plan. The LEA should work closely with the school and, where applicable, with the Diocese or other appropriate appointing body to ensure that the school action plan and LEA commentary and statement of action are complementary.

The LEA should send copies of the LEA commentary and statement of action to Ofsted, the school's governing body and, if applicable, the Diocese or other appropriate appointing body and the local LSC.

The LEA should also at this time invite proposals for the provision of additional support and consultative advice from an external partner. The choice of a partner will be for the LEA, in consultation with the school and where appropriate the Diocese or other appropriate appointing authority, and will depend on the particular circumstances of the school. Such a partnership might be with another school, another LEA or some other public, voluntary or private sector body. In certain circumstances the Secretary of State also has powers to direct an LEA to take on an external partner where it has not done so. Further advice on this is provided in chapter 10.

When the governing body has produced the school's action plan, the LEA must submit its own commentary and statement of action to Ofsted within 10 working days.

The **LEA commentary** should provide an assessment of the school's ability to implement its action plan successfully. It should:

- a assess the effectiveness of the governing body's action plan;
- b set out any points the governors have neglected to cover in their plan;
- c make clear how long the LEA has been aware of the school's problems and the action taken to remedy the issues in the inspection report;
- d assess the likely effectiveness of any external partners' plan of action; and
- e set out how the LEA will monitor and support the school.

The LEA **statement of action** should provide a detailed explanation of the options for the future of the school. It should:

- a assess the scope for the school to be closed, including an examination of the number of surplus places in better performing local schools;
- b where the school is to remain open, specify a target for recovery from serious weaknesses within two years from the date of receipt of the inspection report;
- c explain the action the LEA has taken, and will take, to support the school (including resource implications, and quantified targets for evaluating the effectiveness of the LEA support);
- d clarify decisions made about involving external support;
- e clarify the extent to which local authority services and partners will support the school;
- f propose alternative action if the LEA's commentary has said that the governing body's plan is unlikely to be effective in whole or in part; and
- g make clear whether the LEA intends to use its powers to appoint additional governors (and if so, name them and give details of their expertise (see the paragraph on page 31 of guidance on LEA powers); suspend the right to a delegated budget (see the paragraphs on page 31 of the guidance on LEA powers); or replace the governing body with an IEB (see chapter 9 on IEBs).

The School Improvement Team in Ofsted will evaluate the school's action plan and the LEA's statement and advise on any areas of weakness. If needed, a revised action plan and/or a revised statement of action should then be sent to HMI, usually within two weeks.

### Monitoring and follow-up

Most schools will be visited about 6-8 months after the inspection. Ofsted will assess the progress made and the LEA support being given to the school. If satisfactory progress has been made, there will be no further monitoring visits and a full inspection will be carried out two years from the first inspection. If there are concerns that sufficient progress has not been made, a second monitoring visit may take place. On any monitoring visit a judgement will be made about the overall quality of education, and a decision may be reached that the school requires special measures.

### When a school is no longer judged to have serious weaknesses

All schools with serious weaknesses will be inspected by a Registered Inspector about two years after their first designation. If the school has made sufficient progress, the inspection report will show that the school no longer has serious weaknesses. If, however, the school has not made sufficient progress, it is likely that it will be found to require special measures.

### DfES role

DfES will write to the school and LEA initially, and will continue to follow the progress of all schools with serious weaknesses. The Department will be alerted by Ofsted where there are significant concerns.

# Serious weaknesses

## TIMELINE

Week 1

The school is inspected. At the end of the inspection, or sometimes early the next week, the **Registered Inspector (Rgl)** tells the school, LEA and Ofsted that the school has serious weaknesses.

The LEA and School (and where appropriate the Diocese) should begin to address the school's weaknesses in advance of the inspection report's publication.

Week 3-5

**DfES** writes to the school and LEA. 10 Calendar days after the date of the **DfES** letter the LEA has powers to appoint additional governors, replace a governing body with an IEB or to withdraw delegation, and for VA schools, the powers of the Diocese or other appropriate appointing body.

Week 7

By the end of the week the final version of the inspection report will be issued by the **Rgl** and sent to the school, LEA, Ofsted and the **DfES**. The 40 working day deadline for the action plan is triggered by the school's receipt of the inspection report. The **DfES** will confirm the deadline in writing.

Week 8-14

**Ofsted** will contact the school to invite representatives from the school and LEA to an action plan seminar. At the seminar **HMI** will provide guidance on drawing up a good action plan.

Week 15

The action plan is submitted to Ofsted. **HMI** will make a judgement on the quality of the action plan. Where **HMI** believe that the recovery plans are unlikely to lead to the necessary improvement, advice will be given on the areas of weakness. **HMI** will then need to see a revised plan within a short period of time – probably no more than two weeks. The summary of the action plan is sent to parents.

Week 17

The LEA submits its commentary and statement of action to Ofsted. HMI will make a judgement on the quality of the commentary and statement of action. Where HMI believe that they are unlikely to lead to the necessary improvement, advice will be given on the areas of weakness in the plans. HMI will then need to see a revised LEA statement, within a short period of time – probably no more than two weeks.

6 months<sup>1</sup>

HMI will normally visit the school to undertake a monitoring visit. They will check on the progress the school is making and how the LEA's support package is working in practice. HMI will report their judgement to governors, the LEA and where appropriate the Diocese. They will also report their judgement to the Secretary of State.

Schools will be judged to be making good, reasonable or limited progress in addressing the serious weaknesses. Depending on the judgement the school may require a further monitoring visit, or it may be judged to require special measures.

2 years<sup>2</sup>

Follow-up full S10 inspection. If the school is judged to be making sufficient progress it will be considered to no longer have serious weaknesses. If the school has not made sufficient progress it is likely that it will be found to require special measures.

<sup>1</sup> HMI will visit the school 6-8 months after the inspection which judged the school to have serious weaknesses.

<sup>2</sup> Starting from the date that Ofsted notifies the school and the Secretary of State that the school has serious weaknesses.

## Chapter 3

# Underachieving schools

Inspections carried out by a Registered Inspector and their team of inspectors may result in a school being judged to be 'underachieving'. An underachieving school's pupils may appear to be achieving satisfactory levels, for example in relation to age-related expectations or national averages. But on further examination of the school's work it may become clear that the pupils are not achieving as well as they could and should, and that the school is achieving less well than most schools in similar situations. There may be underachievement in one or more subjects, among particular groups of pupils, in certain classes, or at a particular key stage. The term 'underachieving' is the formal designation for a school that might be thought of as 'coasting'.

### Basis for judgement

Where the Registered Inspector and their team have concerns about a school after an inspection, they must first consider whether it requires special measures. If the standard of education is acceptable, they then must assess whether, nevertheless, the school has serious weaknesses. Where inspectors are satisfied that the school neither requires special measures nor has serious weaknesses, they should then consider whether the school is underachieving. However, underachieving should not be thought of as the next step in a continuum from special measures to serious weaknesses and then underachieving: it is a quite separate category.

The judgement that a school is underachieving is based on:

- performance data which show that the school's results are not as good as they could be when compared with schools in similar contexts;
- evidence that results are not improving sufficiently, and that the rate of progress is too slow;

- significant concerns about the school's expectations for its pupils, the level of challenge provided for different groups of pupils, and, based on prior attainment, the proportion of pupils improving at a satisfactory rate; and
- evidence that the trend of achievement and the school's targets are too low, that there is an insufficiently strong commitment to eliminating the causes of underachievement, and that the value added to pupils' attainment is unsatisfactory.

### Procedures for underachieving schools

The procedures for inspectors are set out in the Ofsted *Handbooks for Inspecting Schools*. When the registered inspector and team of inspectors reach the judgement that a school is underachieving, they must inform Ofsted and the headteacher. The school must prepare an action plan, which (as with all action plans) should be completed within 40 working days. The action plan should address all the key issues, and specify what actions will be taken to tackle underachievement and eliminate the causes of underachievement. About a term following the inspection, the school will be contacted by Ofsted and asked to send a copy of the action plan and an analysis of its most recent test and examination results.

The governing body should invite the LEA to be represented at the feedback given to it by the Registered Inspector. The LEA does not have to complete an LEA Commentary or Statement of Action. Nor should the LEA consider closure or the use of intervention powers to appoint additional governors, withdraw a delegated budget or replace a governing body with an IEB. The LEA should, however, be prepared to support the school and a summary of this support should be available to Ofsted on request.

HMI will consider the school's action plan and the analysis of test and examination results. A sample of underachieving schools will be visited by HMI to check on their progress in tackling the causes of the underachievement and eliminating it. Schools can expect a visit 6-18 months after the inspection in which they were judged to be underachieving.

Schools will be expected to make speedy progress in raising standards and tackling the causes of underachievement. At the conclusion of a visit by HMI, a report of the inspection findings will be given to the headteacher, the chair of governors and a representative of the LEA and/or Diocese or other appropriate appointing authority. Following the feedback, a letter confirming the findings will be sent to the school, the chair of governors, and other relevant parties including the LEA and, where applicable, the Diocese or other appropriate appointing authority.

There will not normally be a further visit by HMI before the school's next section 10 inspection although, for example, where HMI judge that progress has been limited, a further visit might be recommended. If there are major concerns about the quality of education provided by the school, it might then be placed in special measures.

All schools judged to be underachieving will have a section 10 inspection after around two years. If the school has made good progress, the inspection report will show that the school is no longer underachieving. Schools can, at any time, submit their case for an early inspection by writing to the Head of the School Improvement Division at Ofsted.

## Chapter 4

# Inadequate sixth forms

Sixth forms are inspected as part of an inspection of a secondary school under section 10 of the *School Inspections Act 1996*. The *Learning and Skills Act 2000* extended Ofsted's remit to include the inspection of all 16-19 education in, for example, sixth form colleges and other further education sector colleges. Inspection of schools with an increased focus on sixth forms began in September 2001. The inspection is conducted according to the same criteria as for other school provision, and has as far as possible been brought into line with the inspection of colleges.

Inspections can result in a school being judged to have an inadequate sixth form except in cases where inspectors have concluded that the school as a whole requires special measures. Where weaknesses in the sixth form contribute to the judgement that special measures are required, this is referred to in the report, but a formal judgement on the adequacy of the sixth form need not be made. A school can, however, be judged to have serious weaknesses or be an underachieving school, while also having an inadequate sixth form.

Schools may be judged to have an inadequate sixth form if:

- the school is failing or likely to fail to provide an acceptable standard of education for pupils over the compulsory school age; or
- the school has significant weaknesses in one or more areas of its activities for pupils over compulsory school age.

### Procedures for schools with inadequate sixth forms

A section 10 Schedule (see *Inspecting School Sixth Forms – Supplement to the Handbook for Inspecting Secondary Schools* on [www.Ofsted.gov.uk/public](http://www.Ofsted.gov.uk/public)) has been introduced with some modifications that will apply to sixth forms. The inspectors must give oral feedback to the governing body and headteacher at the end of the inspection if they consider the school has an inadequate sixth form.

Judgements that a school has an inadequate sixth form are subject to corroboration by HMCI. HMI will normally make a corroboration visit – or occasionally carry out a desk scrutiny of the documentation – and HMCI must agree or disagree with a Registered Inspector’s judgment. The findings on the sixth form are published as an annex to the full school inspection report.

When a school is judged to have an inadequate sixth form, both Ofsted and the DfES will write to the governing body of the school and the LEA, and to the relevant Diocese or other appropriate appointing authority to provide guidance in relation to the action required. This first contact will be made before the publication of the inspection report. DfES will also inform the LSC of Ofsted’s judgment.

### Action plans

Schools and LEAs will then have broadly the same responsibilities as if the whole school had been placed in special measures or identified as having serious weaknesses. The school will have 40 working days (excluding weekends, bank holidays and school holidays of more than five working days) to produce an action plan to remedy the weaknesses in the sixth form identified in the Ofsted report. The action plan should include a clear timetable showing how the sixth form will improve as quickly as possible. The target for improvement to the point where the sixth form is judged to be no longer inadequate must be within two years. Ofsted will provide advice on the preparation of action plans.

The **action plan** should have a timetable which will allow the school to be judged not to have an inadequate sixth form as soon as possible, and no later than two years from the date of receipt of the inspection report. It must address all the key issues in the inspection report, and for each issue the plan should state:

- a what is to be done (in terms of clear and specific actions);
- b who is to do it (who is responsible for ensuring the action takes place, and who else is involved);
- c when it will be done (timescale with key milestones);
- d what resources are required (in particular, how the school intends to use Standards Fund Grant, including funding for teacher development);

- e success criteria (quantitative targets where possible) against which progress will be judged; and
- f how progress will be monitored (by whom, when and how).

Copies of the action plan should be sent to the LSC and the Secretary of State, as well as to Ofsted and the LEA.

### LEA commentary and statement of action

The LEA, and where applicable the Diocese or other appropriate appointing authority, should work closely with the school to draw up the action plan as soon as possible after the oral feedback. The LEA must produce a commentary on this, and its own statement of action, within a further 10 working days. The LEA should consult with the local LSC on the action to be taken.

The **LEA commentary** should provide an assessment of the school's ability to implement its action plan successfully. It should:

- a assess the effectiveness of the governing body's action plan;
- b set out any points the governors have neglected to cover in their plan;
- c state how long the LEA has been aware of the school's problems and the action taken to remedy the issues in the inspection report; and
- d assess an external partner's plan of action.

The **LEA statement of action** should provide a detailed explanation of the options for the future of the sixth form. It should:

- a assess the scope for the sixth form to be closed, including a review of the number of places available in better performing local school sixth forms and other post-16 provision;
- b where the sixth form is to remain open, specify a recovery target within two years from the date of receipt of the inspection report;
- c explain the action the LEA has taken, and will take, to support the school sixth form (including resource implications, and quantified targets for evaluating the effectiveness of the LEA support);
- d clarify decisions made about involving external support;
- e clarify the extent to which local authority services and partners will support the school sixth form; and
- f propose alternative action if the LEA's commentary has stated that the governing body's plan is unlikely to be effective in whole or in part.

## Monitoring

Progress against the school action plan for the sixth form will usually be monitored by HMI on a termly basis. HMI will also make a judgement both on the school action plan and the LEA commentary and statement of action at the time of the first monitoring visit.

## Roles and intervention powers

Schools are responsible for improvement in their sixth forms. LEAs should provide support for governing bodies and headteachers in carrying out that responsibility. Sixth forms should be part of an LEA's overall strategy for school improvement as set out in its Education Development Plan (EDP), which it will have developed in consultation with the local LSC.

The LSC is responsible for raising standards across sixth forms, as well as in colleges and other providers, as part of its role in the planning and organisation of post-16 education. LEAs are expected to work in partnership with local LSCs on EDPs, target setting, learning strategies, performance data for post-16 education and training, and any proposals for the reorganisation of 16-19 provision.

Where on re-inspection a school that has been found by Ofsted to have an inadequate sixth form has not made the necessary progress for the inadequacy finding to be removed, the LSC can propose closure of the school sixth form. The LSC needs to publish proposals for closure and present these to the local School Organisation Committee (SOC). If the SOC cannot reach agreement, the proposals will be referred to the Schools Adjudicator. Further guidance on LSC powers is provided in chapter 7. Further separate guidance on regulations covering school organisation proposals by the LSC, which will come into force in April 2003, will be issued later by DfES.

## Funding

Funds to support the implementation of the post-inspection action plan (school improvement grant, available under the Standards Fund) are available to LEAs. These funds can be used to support all schools causing concern, and can therefore be used to support sixth forms.

## Chapter 5

# LEA powers

LEAs should have a clear strategy for identifying schools causing concern and supporting their improvement. This should be set out in their EDP and follow the principles of the *Code of Practice on Local Education Authority – School Relations*. They have a duty to monitor, support and challenge schools, and to take decisive action where schools are causing concern before the school receives an adverse inspection report. The aim should always be to provide support before using any formal powers of intervention.

Schools should seek LEA support where problems are emerging. Effective and open communication between schools and LEAs is essential. LEAs should work closely with schools and, where applicable, with other stakeholders, including the Diocese or other appointing authority and the local LSC for schools with sixth forms.

Where schools are placed in special measures or judged to have serious weaknesses, new powers introduced in the *Education Act 2002* allow LEAs, in partnership with the Diocese or other appropriate appointing body where appropriate, to intervene at an earlier stage in the process. They also enable LEAs to consider the temporary replacement of a governing body with an IEB where schools have not complied with a formal warning, are placed in special measures or are judged to have serious weaknesses.

### Use of a formal warning

Section 15 of the *School Standards and Framework Act 1998* (SSFA) provides for an LEA to issue a formal warning notice to the governing body of a maintained school where:

- the standard of performance of pupils at the school is unacceptably low and likely to remain so unless the LEA appoints additional governors and/or suspends the school's delegated budget;

- there has been a serious breakdown in the way in which the school is managed or governed which is prejudicing, or is likely to prejudice, pupils' standard of performance; or
- the safety of pupils or staff of the school is threatened, whether by breakdown of discipline or otherwise.

Section 15 requires that an LEA may only issue such a notice if:

- the LEA has previously informed the governing body and the headteacher of the matters which have caused it to conclude that one or more of the tests above is met; and
- those matters have not been remedied to the LEA's satisfaction within a reasonable period.

Section 15 also requires that the formal warning notice must set out:

- a the matters which have caused the LEA to conclude that one or more of the tests is met;
- b the action which the LEA requires the governing body to take to remedy those matters; and
- c the period within which that action is to be taken by the governing body (the compliance period).

The principles which the Secretary of State expects will apply in using these powers are also set out in Annex 2 of the *Code of Practice on Local Education Authority – School Relations*.

If the governing body does not comply with a formal warning notice, sections 16, 16A and 17 of the SSFA allow the LEA to take one or both of the first two of the following steps, or the third step:

- a to appoint additional governors to the school's governing body (section 16 as amended by Schedule 5 to the *Education Act 2002*);
- b to suspend the school's delegated budget (section 17 as amended by Schedule 5 to the *Education Act 2002*); or
- c to replace the governing body with an IEB (section 16A, inserted by section 57 of the *Education Act 2002*).

Where an IEB is appointed, an LEA cannot suspend the school's right to a delegated budget. Where an IEB is appointed to a school which does not have a delegated budget, the suspension of the right to a delegated budget is revoked. Neither the LEA nor the Secretary of State can appoint additional governors while the IEB is in place.

## LEA powers of intervention

LEAs' powers of intervention are set out in sections 14-17 of the SSFA, as amended by sections 55, 57 and 59 of, and Schedules 5 and 21, to the *Education Act 2002*.

### To appoint additional governors

Under section 16 of the SSFA, as amended by Schedule 5 of the *Education Act 2002*, an LEA can appoint unlimited numbers of additional governors to a school in the following circumstances:

- when a school requires **special measures** or has **serious weaknesses**, the LEA may use its intervention powers from ten days after the DfES has notified the LEA that HMCI has informed the Secretary of State that a school requires special measures or has serious weaknesses. This is to provide adequate time for the Secretary of State to consider whether he wishes to use his own powers of intervention at that stage; or
- if the school has been subject to a **formal warning**, the LEA may appoint additional governors within two months of the end of the formal warning compliance period and after it has informed the governing body and the headteacher in writing that it intends to use this power.

An LEA cannot appoint additional governors to a school if the Secretary of State has already appointed, or has stated that he intends to appoint, additional governors to that school.

### To suspend the right to a delegated budget

Under section 17 of the SSFA, as amended by Schedule 5 to the *Education Act 2002*, the LEA may suspend the governing body's right to a delegated budget in the following circumstances:

- when a school requires **special measures** or has **serious weaknesses**, the LEA may use its intervention powers from ten days after the DfES has notified the LEA that HMCI has informed the Secretary of State that a school requires special measures or has serious weaknesses. This is to provide adequate time for the Secretary of State to consider whether he wishes to use his own powers of intervention; or
- if the school has been subject to a **formal warning**, the LEA may suspend the right to a delegated budget within two months of the end of the formal warning compliance period and after it has informed the governing body and the headteacher in writing that it intends to use this power.

The removal of delegation by the LEA should, where possible, be a measure to assist and support the school. The LEA should continue to work with the governing body and, where applicable, the Diocese or other appropriate appointing body, keeping them informed of decisions taken. In addition, the school's governing body will continue to have a responsibility to ensure that teaching standards are effectively monitored and that the school is meeting its statutory requirements in respect of the curriculum. Both the LEA and the governing body should be working towards a point when delegation can be returned to the school as quickly as possible.

In community and voluntary controlled schools, the LEA will take responsibility for personnel issues and the school budget. In the case of voluntary aided and foundation schools, the governing body remains the employer of staff, but the LEA is able to set conditions over personnel issues. These include determining the complement of staff at the school, a requirement to give consent to the appointment or dismissal of staff, and the power to give directions to the governing body as to the educational qualifications of staff to be appointed to the school.

The LEA must give the governing body written notice (and, at the same time, send a copy to the headteacher and, where applicable, the Diocese or other appropriate appointing body) of the intention to suspend the governing body's right to a delegated budget. The suspension has effect from receipt of the LEA's letter. There is no right of appeal against the suspension.

### Other measures

In certain circumstances, an LEA may also replace a governing body with a specially constituted governing body, known as an IEB. Further guidance on IEBs is given in chapter 9.

Encouragement to LEAs to obtain consultancy advice is discussed in chapter 10.

## Chapter 6

# Secretary of State's powers

The Secretary of State's powers to intervene where schools are placed in special measures or have serious weaknesses are set out in section 18 and 19 of the *School Standards and Framework Act 1998* (SSFA), as amended by sections 56 and 58 of and Schedule 21 to the *Education Act 2002*, and in section 18A of the SSFA (inserted by section 58 of the 2002 Act). The *Education Act 2002* introduces new powers of intervention, in effect extending the Secretary of State's existing powers to schools with serious weaknesses.

### Appointing additional governors

Under section 18 of the SSFA, the Secretary of State may, at any time, appoint as many additional governors as he sees fit in a school requiring **special measures** or which has **serious weaknesses**. He may also nominate one of these additional governors to be the chair of governors. The school's governors will be told of the Secretary of State's intention and asked for their views on the skills and expertise needed in those to be appointed.

The Secretary of State will determine the length of time of office and what, if any, allowances and remuneration they should be paid.

Before appointing additional governors to a voluntary aided school, the Secretary of State will consult the relevant Diocese or other appropriate appointing authority, or the person(s) responsible for the appointment of foundation governors. Where the Secretary of State appoints additional governors, the Diocese or other appointing authority may not appoint so many additional governors that the effect would be to outnumber the other governors as increased by the Secretary of State appointees.

If the Secretary of State has exercised his power to appoint additional governors, the LEA may not exercise its power under paragraph 1 of Schedule 15 to the SSFA to suspend the governing body's right to a delegated budget. If the LEA has already exercised that power or its power under section 17(1) of the SSFA, the Secretary of State will, if requested to do so by the governing body, revoke the suspension.

### Directing closure

Under section 19 of the SSFA, as amended by section 56 of the *Education Act 2002*, the Secretary of State may at any time give a direction to the LEA that a school subject to **special measures** or with **serious weaknesses** should be closed on a given date. In such circumstances, statutory proposals are not required.

The Secretary of State's power can be used at any time a school is in special measures or has serious weaknesses. He will normally allow a school and its LEA time to implement recovery plans that HMI have accepted within the agreed target. If a school has been failing for more than two years with no imminent date for recovery from special measures or serious weaknesses, the Secretary of State will consider using his power to direct the closure of the school if the LEA is unwilling to do so. If places are required in the local area, the LEA will have to consider options for providing them, including the possibility of creating a Fresh Start school. The power may also be used within two years if a school is in severe difficulties and it is considered unlikely that the LEA will be able to resolve the situation and ensure rapid improvement.

Before giving a direction to close a school, the Secretary of State must consult the LEA and the school governing body. In the case of a foundation or voluntary school, he will also consult the appropriate diocesan authority or those responsible for the appointment of foundation governors. In all cases he will consult any other persons or bodies as he considers appropriate, including HMCI and, for a secondary school with a sixth form, the LSC.

If, following consultation, the Secretary of State decides to direct the closure of the school, he will direct the LEA and give written notice to the school's governing body and the headteacher. He will also advise those he consulted. The LEA must give effect to the direction and close the school.

### Other powers

The Secretary of State may appoint an IEB in place of a normally constituted governing body. Further advice on this is provided in chapter 9. In exceptional circumstances, the Secretary of State may also direct an LEA to use an external partner to provide consultative advice for supporting a school causing concern. Further guidance on this is provided in chapter 10.

## Chapter 7

# LSC powers

The LSC has a responsibility for planning and funding the provision of almost all government funded post-16 education and training other than higher education. In addition, the LSC has a remit to improve the quality of the provision that they fund. The LSC and LEAs will therefore work together to support the improvement of sixth form provision.

The LSC's powers of intervention are set out in the *Learning and Skills Act 2000* and the *Education Act 2002*.

### Proposals for closure of school sixth forms

Section 113 and Schedule 7 of the *Learning and Skills Act* provide that where a school sixth form or institution for 16-19 year olds (maintained school) has been judged inadequate in two consecutive inspections by Ofsted the LSC may publish proposals for its closure. If the LSC decides that closure is the most appropriate form of action, it will need to publish formal proposals and present these to the local SOC. If the SOC cannot reach agreement, the proposals will be referred to the Schools Adjudicator.

### Proposals for reorganisation of post-16 education and training

Under section 113A of the *Learning and Skills Act* (inserted by section 72 of the *Education Act 2002*) the LSC may also put forward proposals for the reorganisation of 16-19 provision in an area as a result of an area-wide inspection of post-16 provision. The LSC can make proposals relating to school sixth forms, in the absence of an area inspection report, where the proposals are made with a view to promoting relevant objectives.

The relevant objectives are:

- an improvement in the achievement of 16 to 19 year olds;
- an increase in participation amongst 16 to 19 year olds; or
- an expansion of the learning opportunities open to 16 to 19 year olds.

The LSC's proposals may involve the closure of one or more sixth forms, the opening of new sixth forms, or alterations such as a change in the age range or enlargement of premises. The LSC may also propose the establishment of 16-19 institutions under schools regulations or as FE institutions. In all cases it is important that the LSC considers all options that include alternatives to reorganisation, for example, encouraging more collaborative working between sixth forms and the FE sector. The LSC's new powers will come into force on 1 April 2003, with new regulations and associated guidance detailing the procedures for the LSC to follow when bringing forward proposals.

## Chapter 8

# Diocesan powers

The amendments made to intervention powers in respect of schools causing concern by the *Education Act 2002* mean that the powers available to a Diocesan body or other appropriate appointing authority in respect of voluntary aided schools will come into force at an earlier stage after the LEA and Diocese (or other appropriate appointing authority) have been informed by the Secretary of State that a school has been placed in special measures or that a school has serious weaknesses. These powers will now come into force 10 calendar days after the date of the letters of notification from the DfES to the Diocese or other appropriate appointing body and the LEA. If the Secretary of State intends to use his own intervention powers at this stage, the LEA will be notified in writing before the end of this period. The Diocese or other appropriate appointing authority should be kept fully involved in the process by the LEA so that they can appoint additional governors if they wish.

### Appointment of additional governors

If an LEA appoints additional governors to a **voluntary aided school with serious weaknesses** or **subject to a formal warning**, the Diocese or other appropriate appointing authority may also appoint additional foundation governors so that the number of new foundation governors is the same as the number of new LEA-appointed governors. The additional foundation governors will be subject to the same term of office as the additional LEA-appointed governors (ie the same period of appointment and only eligible for re-appointment if the additional LEA governors are re-appointed).

The relevant authority for **voluntary aided schools subject to special measures** may appoint an unlimited number of additional foundation governors regardless of whether the LEA has appointed its own governors. If more than one person is responsible for appointing additional governors and they cannot agree on additional appointments, the Secretary of State may, after consulting all those within the appropriate authority, decide which individual or individuals to appoint as additional foundation governors.

When appointing additional governors, the LEA and/or Diocese or other appropriate appointing authority must have due regard to the criteria in the 2001 *Code of Practice on Local Education Authority – School Relations*.

It would normally be good practice for the LEA, Diocese or other appropriate appointing authority to provide the governing body with information about the appointees before the appointment is confirmed. This will give the governing body an opportunity to raise any concerns about the appointment of a particular individual, or about the terms of that person's appointment. In the case of schools requiring special measures, the names and details of the additional governors should be provided to the Secretary of State.

### Voluntary schools and interim executive boards

In general, LEAs and the Diocese or other appointing authorities currently work very well together to support schools causing concern, and we expect these strong partnerships to continue. This will in many cases be sufficient but for the most extreme cases of schools causing concern there are new powers to enable both LEAs and the Secretary of State to appoint an IEB in place of the governing body. The powers will be used in very exceptional circumstances and we will expect to see evidence of the partnership with the Diocese or other appointing authority in action before an IEB is considered. They should be used only in extreme cases when it is clear that a governing body is preventing the school from improving. This is likely to involve circumstances where the governing body is actively obstructing progress, for instance, preventing the head and/or other staff from following LEA advice, rather than simply failing to take appropriate action.

There will also need to be evidence that other intervention strategies have been considered – including the appointment of additional governors and/or the removal of delegated powers – and that there has been full consultation over the process.

Where an LEA seeks to appoint an IEB, and where it is applicable, the Diocese or other appointing authority will have been consulted and the Secretary of State will expect to see evidence of their full involvement in any decision to establish an IEB. The LEA will no doubt welcome nominations, particularly of good quality governors, from the Diocesan or other appropriate appointing authority. Interim executive members will be required to ensure that the school's trust deed is preserved and developed and the character of the school is maintained.

Detailed guidance on the use of the new powers to appoint an IEB is provided in chapter 9.

## Chapter 9

# Interim executive boards

The *Education Act 2002* introduces new powers enabling LEAs and the Secretary of State to replace the governing body of a school causing concern with an IEB, in circumstances where the governing body is proving an obstacle to progress.

### LEA Power

Section 57 of the *Education Act 2002* inserts a new section (16A) into the *School Standards and Framework Act 1998*, providing LEAs with an additional power to appoint a specially constituted governing body of interim executive members to replace a normally constituted governing body for a temporary period. The power to replace the governing body of a school with an interim executive board (IEB) is available when a school:

- a is in special measures;
- b has been judged to have serious weaknesses; or
- c has failed to comply with a formal warning from its LEA;

The governing body should also be judged to be incapable, with support, of turning the school around. The power is intended to be used only in these exceptional circumstances, and may be used only with the consent of the Secretary of State. Where an LEA is minded to use this power, it should inform the DfES setting out the reasons for suggesting an IEB and give details of any steps the LEA has taken to turn the school around. It should also provide details of the proposed members, and the skills and experience they will bring.

In such circumstances, an LEA should have evidence that a governing body is obstructing rather than enabling progress to be made in improving a school, possibly preventing the headteacher and staff following advice from the LEA and not seeking support. The power should not normally be used unless it is clear that the use of other intervention powers (to appoint additional governors or withdraw the delegated budget) has failed or would fail to bring about the necessary improvement.

Before using the power, the LEA must consult the school governing body and, in the case of a foundation or voluntary school, the Diocese or other appropriate appointing authority. The normally constituted governing body must be given written notice that an LEA proposes to establish an IEB.

### Secretary of State's powers

Section 58 of the *Education Act 2002* amends section 19 of the *School Standards and Framework Act 1998* and extends the intervention powers available to the Secretary of State in respect of schools requiring special measures or with serious weaknesses by adding the power to appoint interim executive members to replace the governing body of the school. Before exercising this power, the Secretary of State must consult the LEA, the governing body that is to be replaced and the body responsible for appointing any foundation governors, unless that consultation has already been carried out by the LEA in connection with a proposal of its own to appoint interim executive members.

IEBs are expected to be appointed only in exceptional cases, and almost always by LEAs. The Secretary of State will be prepared to appoint an IEB only where an LEA chooses not to do so and where he believes that such action is absolutely necessary to secure the improvement that is needed at the school.

### The interim executive board

Schedule 1A to the *School Standards and Framework Act 1998*, inserted by Schedule 6 to the *Education Act 2002*, contains detailed provisions relating to the temporary replacement of a normally constituted governing body.

An IEB should be a small focused group with at least two members appointed for the full period which it is expected to take to turn the school around. The period of time can be specified in the initial notice of establishment. The IEB will take on all the responsibilities of a governing body with regard to the conduct of the school, including the management of the budget, the curriculum, staffing, pay and performance management and the appointment of the headteacher and deputy headteacher. The IEB will have a duty to ensure that the school improves and to promote high standards of educational achievement, putting appropriate targets in place.

An LEA must give a governing body a period of notice as to when an IEB will be established. For schools with serious weaknesses and those requiring special measures, the power may only be used when appropriate consultation has taken place with the governing body of the school and with the appropriate

Diocese or other appointing authority and, where the IEB is to be appointed by the LEA, the Secretary of State has informed the LEA in writing that he is satisfied that there is a need for an IEB and has consented to its appointment. Members of an IEB should be chosen on an individual basis, although existing governors can be appointed to the IEB.

The initial appointment should commence on the date specified in the notice. Once established, further interim executive members can be appointed at any time. Interim executive members hold office in accordance with their terms of appointment and can be removed for incapacity or misbehaviour by the LEA (or by the Secretary of State if appointed by him). Copies of the notice appointing a member should be given to each member, existing governors, the LEA or Secretary of State (whichever is appropriate), and the Diocese or other appropriate appointing authority where they have an interest.

LEAs or the Secretary of State may choose to pay interim executive members whatever amount they decide. They may also nominate a member to be chairman of the IEB.

### Duties of the IEB and LEA

The IEB should be considered to be the governing body of the school for the time it is in office. Its main function is to secure a sound basis for future improvement in the school. The IEB may determine its own procedure to carry out the duties of a governing body and make such arrangements as it wishes for its functions to be carried out by any other person. The *Education Act 2002 (Transitional Provisions etc) (England) Regulations 2002* exempt an IEB appointed before September 2003 (when new school government regulations come into force) from some regulations in the *Education (School Government) Regulations 1999* see [www.dfes.gov.uk/governor](http://www.dfes.gov.uk/governor). Part of regulation 39(1) of these regulations calling for notes of meetings to be kept and signed by the person acting as the chairman is, however, applicable as is regulation 40 on the publication of minutes and papers, with the exception of 40(3) disapplying this regulation to temporary governing bodies. We would also suggest the LEA appoints a new clerk to the IEB. Section 37 and Schedule 12 of *School Standards and Framework Act 1998* relating to normally constituted governing bodies and the instrument of government of a school are not applicable to IEBs.

### Delegated budget

An IEB has a right to a delegated budget. If the school's budget has been withdrawn either under section 16A (1) or 18A (1) or paragraph 1 of Schedule 15 to the *School Standards and Framework Act 1998*, then the LEA must restore the budget from the date when the IEB commences its work.

If a notice has been given to the normally constituted governing body under Schedule 15 specifying a date when it is proposed to withdraw the right to a delegated budget for financial mismanagement or any other reason, the notice will cease to be valid from the date of commencement of the IEB.

### School closure

An IEB may recommend to an LEA, or recommend that the Secretary of State give a direction to an LEA, that the school should be closed under the normal statutory procedures. However, it cannot itself publish proposals for closure. If closure proposals are agreed and the LEA or Secretary of State does decide to close the school, the IEB should continue to hold office until the implementation date of the proposals when the LEA ceases to maintain the school.

### Resumption by normally constituted governing body

If the final date for an IEB to cease work was not given in the first notice of appointment, the LEA (or the Secretary of State where he has appointed the IEB) must specify a date when a normally constituted governing body will return in a second notice. The final notice should be sent to all those (listed above) who were given a copy of the first notice. IEB members will vacate office on the discontinuance date.

To achieve a smooth transition to normal governance arrangements a shadow governing body should be appointed before an IEB is discontinued. It is envisaged that this shadow governing body will be working alongside the IEB for a period of time to enable the temporary governing body to take back governance of the school. Regulations will be drawn up prescribing the powers and duties of the IEB and the shadow governing body during a period of transition to normal governance and further guidance on these will be issued.

## Chapter 10

# Partnerships for supporting schools

Most LEAs will have had schools placed in special measures and/or schools judged to have serious weaknesses, and all LEAs will have had concerns about individual schools at some time. School and LEA strategies for supporting these schools will inevitably vary according to the differing problems which individual schools face.

Where additional support to improve a school is required, schools and LEAs have a wide range of specialist advice available to them, including from external sources. Strategies based on partnerships might include the use of acting, seconded or consultant headteachers, mentors, staff and governor training, and various partnership arrangements with other schools such as the sharing of staff, IT and subject knowledge. In addition, support might be provided by an external partner such as another LEA, a college or university, or a private sector organisation.

The 2001 White Paper *Schools: Achieving Success* made clear that the Government expects LEAs to consider the use of an external partner in an advisory capacity as a matter of course whenever a school is designated as requiring special measures or having serious weaknesses. That is why the Secretary of State has the power, in exceptional circumstances, to insist that an external partner should be used. Section 63 of the *Education Act 2002* gives the Secretary of State the power to require an LEA to obtain an external partner where it has not done so and is, or appears likely to be, unable to remedy deficiencies in its school, or has a disproportionate number of schools in special measures and/or with serious weaknesses.

Before any direction can be made, the LEA will be able to make representations as to the applicability of such a direction, and what it will require of the LEA. The LEA may also highlight the likely effects of such a direction on its costs and staff and on all its other schools. A direction may require the contract or other arrangement with a partner to include specified terms and conditions, and the LEA will need to go through a procurement process. Section 64 of the *Education Act 2002* sets out in detail the terms in which the LEA would be required to assist an external partner in connection with the contracted work,

where a direction has been made. This includes the right of entry to premises, the right to inspect records and documents, and appropriate access to computers. In summary, the LEA, the school governors and the school staff should assist the consultant partners in any way they reasonably can.

Where weaknesses relate to sixth form provision and/or vocational education, schools may benefit from developing partnerships with colleges or work-based learning providers. The local LSC will be able to facilitate the development of such partnerships and should be consulted on the support they are able to provide through local discretionary funds.

We shall be offering further guidance on the use of external partners in the light of lessons learnt from a number of pilot projects currently being run by the Department.

# Glossary

<b>Action plan</b>	Following an inspection by Ofsted, all schools must produce an action plan, which addresses the key issues identified in the report. As with all schools, this action plan must be produced within 40 working days of receipt of the written report.
<b>Advisory Services</b>	In the context of sections 63 and 64 of the <i>Education Act 2002</i> , the provision of consultative services of an advisory nature to LEAs and school governing bodies to advise on school improvement
<b>Appropriate appointing authority</b>	In relation to powers in section 16 of SSFA 1998. In community and voluntary controlled schools, the LEA. In voluntary aided schools, the appropriate appointing authority is either the appropriate Diocesan authority (for Church of England or Roman Catholic Church schools) or in any other case, the person(s) that appoint the foundation governors.
<b>Area Inspection</b>	Inspection of education and training for 16-19 year olds in an area by Ofsted or the Adult Learning Inspectorate under section 65 of the <i>Learning and Skills Act 2000</i> . The age range will be extended to 14-19 in 2003.
<b>Education Development Plan EDP</b>	The Education Development Plan (EDP) is the strategic plan, which brings together all the action, funded and managed by the LEA, to support school improvement and ensure that targets for pupil achievement are met or exceeded. It is also the outcome of a process of review and development involving all schools and other partners.
<b>Fresh Start School</b>	A new school opened in the place of a school causing concern which has closed.

<b>Formal warning</b>	The process by which an LEA may notify a governing body of its concerns relating to the performance of the school.
<b>Her Majesty's Inspectors HMI</b>	Her Majesty's Inspectors (all references in this Guidance to HMI include Additional Inspectors, who are given powers under section 2 of Schedule 1, <i>School Inspections Act 1996</i> ). HMI will carry out monitoring visits once the school has been found to need special measures or has serious weaknesses
<b>Inadequate Sixth Form</b>	A school can be judged to have an inadequate sixth form by Ofsted if it is either failing or likely to fail to provide an acceptable standard of education post-16 or has significant weaknesses in the sixth form.
<b>Interim executive board (IEB)</b>	A specially constituted governing board, to replace a normally constituted governing body to undertake all its functions in exceptional circumstances for a temporary period.
<b>Key Issue</b>	The particular areas of weakness in a school identified by inspectors and included in their inspection report and which should be addressed in the action plan.
<b>Local Education Authority Commentary</b>	Commentary on the action plan of the governing body of a school requiring special measures or having serious weaknesses.
<b>Local Education Authority statement of action</b>	Local Education Authority statement of what it intends to do to support a school which requires special measures or has serious weaknesses in carrying out its action plan.
<b>Registered Inspector</b>	A Registered Inspector is an individual who has been approved by HMCI to carry out inspections in any school under section 10 of the School Inspections Act 1996.

<b>Serious weaknesses</b>	The term applied following an Ofsted inspection when a school is deemed to have significant weaknesses in one or more areas which need to be addressed but which is providing an acceptable standard of education overall.
<b>Special measures</b>	The term applied following an Ofsted inspection when a school is deemed by HMCI to be failing to provide an acceptable standard of education to its pupils.
<b>School Improvement Grant</b>	Part of the Standards Fund. Funding for schools to support activities designed to improve standards of pupils' performance in order to meet school, LEA and national targets. The grant includes support for secondary schools facing challenging circumstances and schools in special measures.
<b>Standards Fund</b>	The fund provides grants (one of which is the School Improvement Grant) which reflect the Government's central priority of raising standards in schools.
<b>Underachieving schools</b>	Term applied following an Ofsted inspection. An underachieving school's pupils may appear to be achieving satisfactory results but further examination of the school's work makes it clear that pupils are not achieving as well as they could and should; and, the school is achieving less well than schools in similar situations.
<b>Working Day</b>	Any day which is not a Saturday or Sunday, a bank holiday or part of a holiday longer than a week taken by the school in question.

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