



Department
for Education

Supporting schools that are not making necessary improvements

Government consultation

Launch date 28th March 2022

Respond by 23rd May 2022

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Introduction

This consultation seeks views on the proposal that the Department for Education should introduce a new intervention measure from September 2022 applying to schools that are currently judged as Requires Improvement (RI) by Ofsted, and were also judged below Good in their previous full inspection. These plans deliver on the commitment in the Government's 2019 manifesto to intervene in schools where there is entrenched underperformance.

Who this is for

We are seeking views from anybody with an interest in schools in England, including:

- School leaders, teachers and staff
- Local authorities
- Religious bodies with responsibility for schools
- Parents and pupils

Issue date

The consultation was issued on 28th March 2022.

Enquiries

If your enquiry is related to the policy content of the consultation you can email:

underperformance.consultation@education.gov.uk

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: Consultations.Coordinator@education.gov.uk or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

The response

The results of the consultation and the Department's response will be [published on GOV.UK](#) within 12 weeks of the closing date.

About this consultation

This consultation document makes one proposal:

- That the department should introduce a new intervention measure from September 2022 applying to schools that are currently judged as Requires Improvement (RI) by Ofsted, and were also judged below Good in their previous Ofsted inspection under section 5 of the Education Act 2005.

We would like to hear your views on this proposal.

Respond online

To help us analyse the responses please use the online system wherever possible. Visit www.education.gov.uk/consultations to submit your response.

Other ways to respond

If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it.

By email

- underperformance.consultation@education.gov.uk

By post

Schools that are not making necessary improvements consultation (c/o Julian Butcher)
Department for Education
Sanctuary Buildings
Great Smith Street
Westminster
London SW1P 3BT

Deadline

The consultation closes on 23rd May 2022.

Supporting schools that are not making necessary improvements

Overview

This consultation seeks views on the Government's plans to use the Secretary of State's intervention powers to ensure that **schools that are not making necessary improvements** benefit from the support of academy trusts with the capacity to drive sustained school improvement.

As part of the Government's Levelling Up White Paper one of our education missions sets out that, by 2030, the number of primary school children achieving the expected standard in reading, writing and maths will have significantly increased. In England, this will mean 90% of children will achieve the expected standard, and the percentage of children meeting the expected standard in the worst performing areas will have increased by over a third. As a means of achieving this mission, the Department for Education has announced the introduction of new Education Investment Areas (EIAs). EIAs are 55 local authorities (LAs) in England where school outcomes are the weakest. To drive up standards rapidly, schools in these areas that have been judged less than Good in two or more successive Ofsted inspections could be moved into strong trusts to ensure they can benefit from working in collaboration with other schools. The department sees strong academy trusts as the key vehicle to improve educational standards by facilitating better collaboration, directing resources to where they are needed most, and enabling our best leaders to support a greater number of schools.

Regional Directors (RDs, formerly known as Regional Schools Commissioners) act on behalf of the Secretary of State for Education. Their role in the education system is to work with schools to ensure they are supported to improve and to address underperformance, taking intervention action where necessary.

The power to intervene in schools that are not making necessary improvements will apply nationally to schools in England. However, initially we are proposing to focus the use of this measure in schools located in the new EIAs. This will enable us to concentrate resources to level-up education provision in the areas that need it most. RDs may also consider taking intervention action in some schools struggling to make necessary improvements outside of EIAs. In these cases, we expect the RDs to prioritise schools that have spent the longest time being judged as less than Good by Ofsted. Regardless of geographical location, RDs will continue to hold schools to account for their performance and will take intervention action in schools judged Inadequate by Ofsted or where governance, safeguarding or financial failures are identified.

The EIA programme is intended to help deliver on the commitment in the Government's 2019 manifesto to intervene in schools where there is entrenched underperformance.

Our proposal

As the department's guidance on '[Schools Causing Concern](#)' notes, the Secretary of State has various powers to intervene on educational grounds in maintained schools and academies, but currently only uses these powers where Ofsted have judged a school to be Inadequate.

We will continue to take action in schools that are Inadequate. These are the very weakest schools in the country, which urgently need the support of a strong academy trust to improve. But we believe that a more ambitious approach is needed to support the small group of schools that are not currently Inadequate, but which have failed to improve to Good or Outstanding after having received a Requires Improvement judgement.

We therefore plan to use provisions in the Education and Adoption Act 2016 to introduce a new definition of "coasting schools" from September 2022 through regulations. The regulations will mean that the following schools are eligible for intervention for the purposes of the Education and Inspections Act 2006:

- Schools which are judged Requires Improvement ('RI') by Ofsted; **and**
- Which were also rated below Good at their previous full inspection.

Below, we refer to these schools as schools '**that are not making necessary improvements**'. As of February 2022, they currently make up around 4.2% of state-funded schools in England and 5.7% of schools in Education Investment Areas. Over 400,000 pupils are currently attending a school that is not making necessary improvements with around 150,000 primary and 250,000 secondary pupils attending these schools.

This will allow the department to intervene in schools that are not making necessary improvements, using the powers available to the Secretary of State as set out in the Schools Causing Concern guidance, this includes matching a school with a strong academy trust who will help them to improve. As intervention will not always be appropriate where a school meets the criteria set out above, Regional Directors (RDs, formally known as Regional Schools' Commissioners), who act on behalf of the Secretary of State, will decide on a case-by-case basis whether intervention or support is required.

RDs will prioritise the consideration of intervention in schools meeting the new criteria (set out above) that are located in EIAs. However, the legal power to intervene in schools struggling to make necessary improvements will apply nationally in England

and some interventions will take place outside of these areas too. In particular, RDs will consider schools nationally for intervention where RDs assess that the school requires school improvement support, particularly where the school has repeatedly been judged as less than Good by Ofsted over a number of years.

Which types of school will the new measure apply to?

We intend to apply the schools not making necessary improvements measure to mainstream LA maintained primary, middle and secondary schools, as well as to academies (excluding 16-19 academies).

We believe it is right that special schools and alternative provision (AP) schools should be held to account just as robustly as mainstream schools where they have underperformed. We therefore intend to apply the schools not making necessary improvements measure to maintained special schools, special academies, pupil referral units (PRUs) and AP academies.

The schools not making necessary improvements measure will not apply to 16-19 providers. This is because the primary legislation that will allow us to intervene in these schools does not apply to 16-19 providers. More information on the legislation we propose to use is given below, in the section titled 'How we propose to make this change'.

At the present time, we do not see a need to apply the new measure to maintained nursery schools, as there are no maintained nursery schools that meet the definition. 99% of maintained nursery schools are rated 'Good' or 'Outstanding' by Ofsted¹ and cases of prolonged underperformance in the sector are very rare. However, we are seeking views on this issue as part of this consultation.

How we will use Ofsted judgements to determine whether a school is not making the necessary improvements

Ofsted's inspections offer a rounded, robust assessment of a school's performance and a clear view of its strengths and weaknesses. They are also well-understood by schools and parents. We therefore think that they offer a sound basis on which to identify schools that have underperformed.

In order for a school to be considered as not making necessary improvements, a school must have been judged Requires Improvement ('RI') in its most recent inspection and must also have been judged below Good in its previous inspection. Judgements below

¹ [State-funded schools inspections and outcomes as at 31 August 2020.](#)

good are: RI judgements; Satisfactory judgements (the judgement that was replaced by RI in 2012); and Inadequate judgements (where the school has been placed in a category of concern by Ofsted because it requires special measures or has serious weaknesses).

We propose that, for the purposes of this measure, the inspection histories of academies should be taken to include judgements that were issued to the school prior to its conversion to academy status, or while it was part of a different academy trust. This will allow RDs to hold academy trusts to account for improving their academies rapidly once they have converted or transferred.

However, RDs will not normally intervene in academies that have not made the necessary improvements where the academy has not yet received a full inspection (under Section 5 of the Education Act 2005) in their current trust. This will give academy trusts assurance that they will be given time to make the necessary improvements when a school that is poorly performing joins their trust.

We understand that many schools with existing multiple consecutive less than Good judgements will not have received a full section 5 Ofsted inspection recently, particularly due to the pause in inspections due to the COVID-19 pandemic and schools may have taken steps to improve since such previous inspections. As such, schools that have two, three or four consecutive judgements less than Good judgements, will only be considered for intervention under the new powers if they have received their most recent section 5 Ofsted inspection since 1 May 2021. Schools which have a long-term history of underperformance may be considered for intervention regardless of the date of their last Ofsted inspection. We expect this will be schools that have had 5 or more consecutive judgments of less than Good. As of February 2022, over 200 schools had 5 or more consecutive Ofsted judgements of less than good, with around 110,000 pupils attending these schools.

We recognise the uneven impact on schools and colleges of the COVID-19 pandemic. Ofsted will take account of the COVID-19 context and the disruption it has caused, and may continue to cause, to all education providers when making judgements.

When and how we will intervene in schools that are not making necessary improvements

We do not propose that intervention should be 'automatic' in schools that are not making necessary improvements. Rather, RDs will decide on a case-by-case basis whether intervention is required, with reference to:

- Inspection evidence relating to the school and (if it is an academy) its predecessor institutions, in particular evidence concerning the quality of

leadership and management, including both graded inspections under section 5 of the Education Act 2005, and monitoring inspections under section 8 of the Education Act 2005;

- Performance data and other quantitative information, where it is available (recognising the commitments given around the publication and use of institution level data in 2020,2021 and 2022);²
- Other information about the school (and, where relevant, the academy trust or relevant religious authority).

We believe that the most effective means of making rapid and sustainable improvements in schools that are underperforming is to match them with a strong academy trust. Analysis shows that overall, pupil outcomes in sponsored academies have typically improved in comparison with similar schools.³

Accordingly, RDs will consider the use of all the intervention powers available to them but will normally expect to issue an Academy Order to a maintained school or PRU that is not making necessary improvements, so that these schools can join a strong MAT that can help them to improve. Before taking formal action in a maintained school or PRU that is not making necessary improvements, RDs will inform them of the policy presumption in favour of making an Academy Order and will invite representations from the governing body or management committee. They will also consult the relevant local authority and, in the case of a foundation or voluntary school, the trustees of the school, the person or persons who appoint the foundation governors, and (in the case of a school that has a religious character) the appropriate religious body.

RDs will also normally expect to issue a Termination Warning Notice (TWN) to a standalone academy that is not making necessary improvements. This includes both single academy trusts (SATs) and academies that are the only school in a MAT.

Where academies that is not making necessary improvements are already in MATs with more than one school, RDs will assess whether the current trust is able to deliver the necessary improvements. If RDs are not confident that the current trust has the capacity to secure rapid and sustained improvement, they will issue a TWN.

A TWN issued to an academy that is not making necessary improvements will set out specified actions that the academy trust needs to take to improve the academy by a specified date, and will ask the trust to respond by a given date, agreeing to take the specified actions or by making representations. Where the trust fails to comply with the specified actions or to respond by the dates given in a TWN, the RDs may terminate the

² [Coronavirus \(COVID-19\): school and college performance measures](#).

³ [An analysis of the performance of sponsored academies](#) (Department for Education, 2019)

funding agreement for the academy and transfer the academy to another trust with the capacity to improve the school. The RDs will take into account any representations the academy trust wishes to make before deciding whether to terminate the funding agreement and transfer the academy.

More detail on how we propose to intervene in schools that are not making necessary improvements is provided in our draft update to the department's statutory guidance on 'Schools Causing Concern' provided as part of this consultation.

How we plan to introduce the new intervention measure

Our overarching concern is the quality of education provided to pupils in schools that are not making necessary improvements. There is, however, a need to target intervention action in the areas that need it most. Initially, we intend to target intervention action in EIAs. These areas have been assessed as being in most need of school improvement and would therefore benefit most from school intervention action. RDs may also consider taking intervention action in schools that are not making necessary improvements outside of EIAs. In these cases, the RDs will prioritise schools where they believe it is necessary to secure school improvement, particularly those schools that have repeatedly been judged as less than Good by Ofsted over a number of years.

We intend to implement the measure from September 2022.

We considered several ways that inspection evidence could be used to prioritise the schools that have failed to improve that most urgently need support. Our view is that schools that are not part of a family of schools are least likely to be able to sustain school improvement. This is supported by recent research suggesting that the support of a strong MAT is particularly important for schools that have underperformed over a long period,⁴ and that many academies have benefited from the support of their academy trust during the COVID-19 pandemic.⁵ We therefore expect that the vast majority of LA maintained schools and academies either in a single SAT or that are the only academy in a MAT will be transferred to a MAT which has the capacity to drive and sustain the necessary school improvement. Academies that are already part of a MAT may be transferred to a different MAT if the relevant RD is not confident that the current MAT is likely to secure necessary improvements.

We are seeking views on this proposal through the consultation.

⁴ [Fight or flight? How 'stuck' schools are overcoming isolation: evaluation report.](#)

⁵ [The trust in testing times: the role of multi-academy trusts during the pandemic - Ofsted blog: schools, early years, further education and skills.](#)

How we propose to make this change

We propose to make these changes through regulations made under section 60B of the Education and Inspections Act 2006. Section 60B allows the Secretary of State to intervene in coasting maintained schools and requires him to make regulations defining what 'coasting' means. Once a maintained school meets that definition and the Secretary of State has informed it that it is coasting, it becomes eligible for intervention and RDs and local authorities can use their statutory intervention powers to bring about improvement. These intervention powers, and the relationship between RD and local authority powers, are set out in statutory guidance on Schools Causing Concern. A draft update to this guidance is supplied alongside this consultation.

Under section 2B of the Academies Act 2010, the Secretary of State has powers to intervene in academies that are coasting and the definition of coasting set out in regulations applies equally to academies.

The current regulations (The Coasting Schools (England) Regulations 2017) define coasting by reference to pupil performance at Key Stage 2 and Key Stage 4, and pupil progress, over several years. We propose to revoke these regulations and make new regulations which define 'coasting' by reference to consecutive Ofsted judgements. This is consistent with the original intention behind the 'coasting schools' legislation, which was to enable intervention in schools where pupils are not fulfilling their full potential.

Special and AP schools were not subject to the previous, data-based coasting definition. This is because consultation on that definition in 2015 revealed mixed views on how, and whether, the department should use performance data to identify AP and special schools that were coasting. As our new proposal is to identify coasting schools based on successive Ofsted judgements, not performance data, we believe it is right that it should apply to AP and special schools, so that RDs can hold these schools to account robustly in cases where they are not making necessary improvements.

We therefore propose that the new regulations should apply the coasting definition to maintained and foundation special schools, special academies, and AP academies.

The coasting powers set out in Section 60B of the Education and Inspections Act 2006 do not automatically apply to PRUs, but the Secretary of State has powers to make regulations that apply maintained school legislation to PRUs. These powers are conferred by section 569(4) of, and Schedule 1 to, the Education Act 1996. We plan to use these powers to apply the legislation on coasting to PRUs, with the effect that from 01 September 2022, the Secretary of State will be able to issue an academy order to a PRU that has been notified is not making necessary improvements, or to institute an interim executive board (IEB).

Subject to the outcomes of this consultation and to securing Parliamentary approval for the necessary regulations, we intend to introduce the approach proposed in this document from 01 September 2022.

Questions for consultation

1. Do you consent to the personal data you provide being held in accordance with UK GDPR covered in the Department for Education's personal information charter?
2. Would you like us to keep your responses confidential?
3. What is your name?
4. What is your email address?
5. If you are answering on behalf of an organisation, please list the name of that organisation.
6. Please indicate which of the following best describes your position, role or viewpoint: head teacher, teacher or teaching assistant (TA), non-teaching member of school staff, governor of maintained school, member or trustee of academy trust, executive leader in academy sector, parent, pupil, local government employee, other, representative of a religious body, organisation (specify), would rather not say.
7. To what extent do you agree with the principle of intervening in schools which are rated 'Requires Improvement' (RI) by Ofsted and were rated less than Good at their previous inspection?
8. To what extent do you agree that the proposals should apply to alternative provision (AP) academies and pupil referral units (PRUs), as described above?
9. To what extent do you agree that the proposals should apply to maintained special schools and special academies, as described above?
10. To what extent do you agree that the proposals should not apply to maintained nursery schools at this stage?
11. To what extent do you agree that the 'schools not making necessary improvements' measure should take account of judgements issued to predecessor schools when assessing whether a school is not making necessary improvements?
12. To what extent do you agree that the intervention power should only be available in relation to schools which have been inspected since May 2021 with the exception of schools that have a long-term history of underperformance (5RI or worse)?
13. To what extent do you agree that RDs should invite representations from the governing bodies of maintained schools and the management committees of PRUs that are not making necessary improvements, as well as consulting the relevant local authority, before deciding whether to make an academy order?

14. To what extent do you agree that the department should adopt a presumption in favour of making an academy order to a maintained school or PRU that are not making necessary improvements? This means that cases will always be considered on their facts but that RDs will normally expect to issue an academy order compared to other intervention action.
15. To what extent do you agree that the department should adopt a presumption in favour of issuing a termination warning notice (TWN) to standalone academies that are not making necessary improvements? This means that cases will always be considered on their facts but that RDs will normally expect to issue a TWN compared to other intervention action.
16. To what extent do you agree that the department should issue a TWN where they are not satisfied that a trust has the capacity to improve an academy that is not making necessary improvements?
17. To what extent do you agree that intervention in schools that are not making necessary improvements should initially focus in Education Investment Areas?



Department
for Education

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