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ISBN - 07504 23471
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CODE OF PRACTICE ON LEA-SCHOOL RELATIONS

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INTRODUCTION

1. Section 127 of the School Standards and Framework Act 1998 (the 1998 Act) requires the Secretary of State to issue a Code of Practice containing practical guidance for securing effective relationships between local education authorities (LEAs) and schools. All local education authorities and the governing bodies and headteachers of schools they maintain, must have regard to the Code in carrying out their responsibilities. Responsibility for the Code passes to the National Assembly when it takes over the Secretary of State's education responsibilities.

2. The Code is in two parts. Part One sets out the principles upon which the partnership between LEAs and schools should be based and describes the role of each of the main players. Part Two sets out specific LEA powers and duties and explains how they may be appropriately used. An index is provided at Annex D to help readers find references to specific circumstances.

Purpose of the Code

3. In his foreword to the 'Building Excellent Schools Together' (BEST) White Paper for Wales¹ the then Secretary of State described education as the Government's top priority, with raising standards the key issue. That vision for improvement is set in the context of partnership involving the commitment and support of teachers, parents, pupils, education authorities and businesses. This document focuses on one of those key partnerships: that between local education authorities (LEAs) and schools. Only schools can deliver improved standards of teaching and learning, but the support they receive from the LEA is very significant in securing better outcomes.

4. The starting point is a presumption that schools should be able to make their own decisions about the way they operate. That is consistent with the wider trend to empower those responsible for delivering a service, so that they have a sense of ownership and responsibility for their own performance and the motivation to improve it; and is consistent also with the agenda for modernising local government.

5. But schools do not operate in isolation. They need to be accountable to the communities they serve; and they need to draw on the contribution of partners if they are to achieve the best they can for their pupils. Wales is fortunate in that few schools fall into the 'subject to special measures' category. But many schools are performing less well than they could. Expectations are often too low with schools in deprived areas using their social situation to justify underachievement and schools in more affluent areas accepting average performance too complacently instead of aiming for excellence.

6. The LEA has responsibility for securing educational provision for all children of compulsory school age in their area; and for funding that education. Current government policy requires local authorities to secure best value in the delivery of all its services and, in respect of education, to take a central role in improving schools.

¹ "Building Excellent Schools Together"; published by the WO in July 1997.

7. The provisions of the 1998 Act require local authorities to exercise relevant education functions with a view to promoting high standards. In that context this Code seeks

- to contribute to giving schools the freedom and responsibility to develop measures to improve standards
- to enable schools to look to the LEA for help and support in areas of weakness
- to enable LEAs to be pro-active in providing support and disseminating good practice
- to give LEAs the scope to intervene where schools are failing their pupils and
- to secure an appropriate balance between schools and LEAs.

8. To perform these roles each LEA needs a very good knowledge of its schools, derived from effective monitoring, and the capacity to help schools improve. But LEA involvement must be sensitive to each school's circumstances. The range of involvement needs to include light-touch monitoring of performance in all maintained schools; the provision of advice and, where necessary, challenge to help schools maintain and raise standards; and direct intervention in a few schools where their underperformance means that is necessary.

9. Relations between LEAs and schools in Wales are generally good and provide a sound platform on which to build to deliver improved standards in all schools. The purpose of this Code is to promote the development of those relationships by providing a common understanding of roles and objectives. The Code:

- a. sets out the principles which should underpin the relationship between LEAs and schools;
- b. explains how the role of LEAs in supporting schools is expected to work in practice; and
- c. provides guidance on the exercise of those LEA powers and responsibilities which are most relevant to raising standards, in order to ensure that schools receive effective support and challenge without being subject to unnecessary intervention.

10. There are many examples of good practice where LEAs are working with their schools, in line with the principles in this Code of Practice, and improving standards. Where this is happening it is because the LEA has earned the respect of schools for its leadership, the quality of the advice and services it provides and an approach which is always supportive, while being robustly challenging when necessary. Schools welcome the LEA's involvement, and value close partnership and frequent contact, while maintaining responsibility for their own performance. Where such relationships exist and are delivering results, they are a testament to the skill and commitment of both LEA and schools and nothing in this Code requires them to change. Equally nothing in this Code should discourage any forms of involvement or contact which LEAs and schools find mutually helpful in raising standards.

11. In most cases, relations between LEAs and schools are characterised by goodwill and partnership in a common endeavour to raise standards. The Government wishes all relationships to meet the standards of the best. LEAs want to be sure that they have the powers to engage with schools and intervene where necessary in carrying out their functions. Schools are looking for reassurance against inappropriate use of those powers.

12. The range of contacts between LEAs and schools is wide - not just those directly related to standards, but covering finance, personnel, buildings, health and safety, child protection and many other subjects. This Code does not attempt to cover the whole range. It covers:

- a. areas of contact relevant to raising school standards;
- b. areas of contact which are new - particularly those that flow from new LEA powers and responsibilities contained in the 1998 Act;
- c. areas of contact which are not covered elsewhere, (so SEN and admissions issues, both of which are the subject of separate Codes of Practice and specific legal requirements,² are not covered.)

13. This Code is intended to sit alongside Education Strategic Plans (ESPs) which all LEAs will have in place from September 1999 and the new arrangements for funding schools under sections 45-53 of the 1998 Act. ESPs focus on the role of the LEA in working with schools to set targets and identify priorities for raising standards. The Code focuses on securing the right balance of powers and responsibilities to underpin the LEA's functions of leadership, support and intervention without undermining the responsibility of schools for their own performance. The devolved funding framework ensures that resources are channelled in a way which reflects LEA and school functions, ensuring that LEAs have the funds necessary to carry out their functions while securing the maximum delegation of funds to schools.

Status of the Code

14. This Code is a statutory document, issued by the Secretary of State for Wales under Section 127(1) of the School Standards and Framework Act and approved by Parliament under section 127(3) of the Act. (Section 127 is reproduced in full at Annex A.)

15. Section 127(2) requires LEAs, governing bodies and headteachers to have regard to the Code. That means for all normal purposes they should observe its principles and guidance, departing from it only where there is good reason.

16. The Code also discharges the Secretary of State's statutory responsibility under Schedules 16 and 17 of the 1998 Act to issue guidance in relation to the LEA's powers:

- a. to make representations to the school where the LEA considers that a proposed candidate for headteacher is not a suitable person for appointment (paragraphs 96-97 below); and

² The Government published in October 1997 a Green Paper, "The BEST for Special Education" (Cm 3792), which made proposals for improving SEN provision, both in special schools and in mainstream schools. In the light of responses to the Green Paper, the Government published a programme to take forward the Green Paper proposals in January 1999. This includes plans for revising the SEN Code of Practice. An Admissions Code of Practice was issued early in April 1999 and applies to admissions arrangements for intakes from September 2000 onwards.

- b. to make a report to the chair of the governing body where the LEA has serious concerns about the performance of the headteacher (paragraph 98 below).

17. The 1998 Act does not create specific sanctions or rights of appeal for breaches of the Code. But the Secretary of State has long-established general powers of intervention under the Education Acts. In particular, he has power under Section 496 of the Education Act 1996, in any case where an LEA or governing body is acting unreasonably, to give directions as to the exercise of the relevant power or duty. In considering any complaints which are put to him under Section 496 alleging unreasonable behaviour as covered by the Code, the Secretary of State will consider whether the party complained of has carried out its duty to have regard to the Code. Each case will be considered on its merits, but if the Secretary of State concludes that an LEA or governing body has acted unreasonably in failing to have regard to the Code, he can give whatever directions he judges expedient to put the matter right. The Secretary of State also has a power under section 495 of the Education Act 1996 to determine any dispute between an LEA and a governing body relating to the exercise of any of their duties or powers.

18. At various points, the Code summarises provisions in the 1998 Act and other legislation. Those summaries have no legal force in themselves, and should not be taken as qualifying or amending the precise terms of the legal provision referred to. In all cases where the application of a particular legal requirement is at issue, the exact wording of the legislation should be checked since that is what counts in any legal proceedings.

19. The Code should be used:

- a. as background information for those involved in managing the relationship between LEAs and schools - LEA members and officers, school governors, headteachers and other school staff;
- b. for reference in helping to prevent disputes arising between LEAs and schools and to settle those that do occur. LEAs and schools should always look to settle any disputes locally by reference to the Code; and
- c. in extreme cases where, as noted above, schools or LEAs make a formal complaint to the Secretary of State. He will take into consideration the extent to which both parties have had regard to the Code in deciding how to respond.

20. The Code applies to all LEAs in Wales and to all types of school. The general principles in Part 1 of the Code come into effect as soon as the Code becomes statutory. Each section in Part 2 will take effect at the same time as, and in accordance with, the legislation to which it relates. In most cases, a school's category does not make any difference to the appropriate form of LEA action. But in some situations the category can matter - for example, because some schools employ their own staff and own their premises. Relevant differences are noted in the text.

21. This Code applies generally to the relations between LEAs, governing bodies and headteachers in their role of providing for children with special educational needs. However, they must also have regard to the Code of Practice on the Identification and Assessment of Special Educational Needs, which provides statutory guidance on the arrangements for identifying and providing for children with special educational needs. Guidance given in the SEN Code takes precedence over guidance in this Code where pupils with special educational needs are concerned. The needs of the pupils should always be the first consideration.

22. The text of the Code will be reviewed in the light of experience of the operation of the 1998 Act. In any event, it is likely that the National Assembly for Wales will want to review the Code in due course.

Relationship between Key Players

The Governing Body

23. Under Section 38 of the 1998 Act, the conduct of each maintained school is under the direction of its governing body; and the governing body is required to conduct the school with a view to promoting high standards. Regulations made under Section 38(3) set out in more detail the terms of reference for governing bodies, and the respective roles of governors and headteachers. Under section 38(4), governing bodies are required to comply with the school's instrument of government and (subject to any other statutory provision) any trust deed relating to the school.

24. Within the framework of legislation, the governing body sets the broad strategy for the school's development through the cycle of performance assessment, target setting, action planning, and review. The governing body is responsible for the school's budget. For voluntary aided, foundation and foundation special schools, the governing body is the employer of the staff; for other categories of school it undertakes many of the functions of the employer. In general, the governing body will look to the headteacher as the school's chief executive to provide professional advice and to lead and manage the school so as to achieve improved performance.

25. Day to day contact with the LEA is usually between the headteacher and other senior members of staff who liaise with the LEA at officer level. But there may be circumstances where the governing body needs to deal directly with the LEA, notably if it has reason to conclude that the headteacher is not keeping it properly informed and involved, or in cases where the LEA raises a concern relating to the headteacher's performance. In such circumstances it is appropriate for the governing body or LEA to inform the headteacher of their concerns and allow him or her an opportunity to respond to them.

26. The strength of the LEA's relationship with the governing body will depend on a number of factors. From the LEA side they include the prompt appointment of effective LEA governors; the quality of the information which the LEA provides to governing bodies, particularly about school performance; the quality and timing of LEA consultation with governing bodies and local governor associations; the quality of any governor training, clerking and support obtained by the school from the LEA; and the quality of the advice and support on staffing and other matters obtained by the school from the LEA. From the governing body side, there needs to be a willingness to recognise the LEA's role in securing an effective schools service for the area, to contribute effectively to raising standards, and to respond constructively if the LEA raises concerns about the school's performance or operation.

The Headteacher

27. The headteacher, with other senior members of staff, has responsibility for the leadership, direction and management of the school within the strategic framework set by the governing body. The headteacher's functions are partly determined by statute and by the headteacher's conditions of service contained in the School Teachers Pay and Conditions Document. Beyond that, the relationship between governing body and headteacher is a matter for each school, for example in relation to the delegation of powers to the headteacher over personnel matters and (subject to the school government regulations and the provisions of the LEA's scheme for the funding of its schools) over budget matters. There is no single model. In all cases the governing body and headteacher should be clear about their respective expectations and roles, and delegated authorities must be explicitly assigned. Many of these issues will be covered in regulations made under Section 38 of the 1998 Act.

The LEA

28. Section 5 of the 1998 Act gives LEAs a new duty, in carrying out all relevant functions, to promote high standards of education. This is underpinned by a set of specific powers for LEAs to act in cases where there is evidence that a school is giving cause for concern - notably those discussed in Part 2 of this Code. LEAs can retain funds centrally to support their role in relation to schools in four key areas: school improvement, access, special educational provision and strategic management. LEAs may also carry out other specific activities with funding from earmarked grants. Details are set out in Regulations made under Section 46 of the Schools Standards and Framework Act³. In broad terms:

- a. **school improvement** includes: action to set and meet performance targets and tackle schools causing concern, within the Government's framework for raising standards. The LEA's Education Strategic Plan should set out all the LEA's planned activities (see paragraphs 33-36)
- b. **access** includes: managing the supply of school places and the Authority's capital programme; administering a school admissions system; providing advice and support for excluded pupils; ensuring satisfactory provision for home-to-school transport; school meals and pupil welfare; and providing access to extra-curricular activities;
- c. **special educational provision** includes: assessing special educational needs; making statements; securing provision in accordance with individual statements; monitoring provision; and providing guidance and information to parents;
- d. **strategic management** includes: strategic planning for the education service as a whole; administering grants and monitoring and auditing expenditure; carrying out various personnel functions; investigating and resolving complaints; and facilitating LEA-wide provision such as computer networks which link schools with each other and with the LEA.

³ SI 1999/101 The Funding of Maintained Schools Regulations 1999

Some other activities will be common to all the above, such as providing leadership, facilitating partnerships and networks, promoting co-operation and co-ordination between education and other service providers, carrying out research, disseminating best practice, and providing information and advice. The Government expects LEAs to keep central expenditure to a minimum and delegate the maximum possible to schools. LEAs may secure or supply services for schools to purchase from their delegated budgets. However, the Government believes that schools should be free to judge the services they need and the source from which to obtain them. In a constructive relationship, all LEA-school contacts will be by mutual agreement, because both sides appreciate their purpose and value. But where a school is failing to achieve satisfactory standards, and has not shown the capacity or willingness to improve by its own initiative, the LEA must act to secure an acceptable standard of education for the pupils.

29. Part 2 of this Code focuses on the use of certain legal powers. But effective leadership does not rely on legal powers. It is about developing through partnership a culture in which schools want to work with the LEA because they have a shared view of the way in which schools should develop for the benefit of their community; they respect and trust the LEA's judgements even when their own performance is being challenged; and they value the ways in which the LEA can support them to do better.

30. To help develop a common understanding of the appropriate use of the powers covered by this Code, LEAs may wish to agree procedures for keeping their elected members informed and involved. This might cover for example, information to be reported to them by the Director of Education (DoE) and at what stage; the application of the standard conventions on what should be treated as confidential and what as public information; whether reports should be ad hoc or on a regular cycle; and how specific reports relate to any wider reports from the DoE about the performance and progress of the schools which the LEA maintains.

The Government

31. Until the National Assembly takes over his responsibilities, the Secretary of State has, under the 1998 Act and other education law, oversight of the education service in Wales. This includes responsibility for the statutory framework governing education, and powers of intervention, responsibility notably in cases where a school is subject to special measures; an LEA is failing to perform a function to an adequate standard; where a governing body or LEA is acting unreasonably; or where a governing body or LEA is failing to discharge a legal function. These intervention powers are summarised in Annex B. It is for LEAs, rather than the Secretary of State, to tackle underperformance by individual schools except where the LEA is unable to resolve the matter. The Government has, in relation to LEAs, much the same role as LEAs have in relation to schools - to monitor performance (particularly through OHMCI inspections and ESPs), to encourage good practice, and to intervene if an LEA is failing to perform its functions adequately and lacks the internal capacity to improve.

Churches and Voluntary Bodies

32. The Churches and other religious and voluntary bodies work in close partnership with LEAs in providing and supporting schools. The majority of voluntary aided and voluntary controlled schools are linked to a foundation separate from the school. In most cases this foundation connects the school with a wider faith group. The foundation generally owns the school's premises and appoints foundation governors. Schools with a religious character are designated as such under the 1998 Act. Designation is relevant to their religious education and collective worship, staffing, re-cycling of assets, the ethos statement in their instrument of government and in the case of voluntary aided schools, their admissions criteria. In these ways, the Churches are able to exercise a powerful influence over the schools they provide. The Church in Wales and the Roman Catholic Church have long-established diocesan structures which offer various forms of support for Church schools, complementing the support available from LEAs.

Education Strategic Plans (ESPs)

33. Section 6 of the 1998 Act places a new duty on each LEA to prepare an education development plan. These are known in Wales as education strategic plans (ESP). The ESP sets out the LEA's proposals for the action it will undertake to raise the standards of education provided for the children for whom it is responsible and to improve the performance of the schools it maintains. All LEAs must have an approved ESP in place by September 1999.

34. The ESP has to include attainment targets for the LEA, based on those established through discussion between the LEA and individual schools; and identify priorities for improvement. Section 6(7) requires LEAs to consult the governing body and headteacher of every school it maintains, the appropriate diocesan authorities, and any other persons they consider appropriate in preparing the plan. LEAs should aim to agree their ESPs with schools and other partners so that all of them understand and accept the part they have to play in achieving the plan.

35. The statement of proposals in the ESP is subject to approval by the Secretary of State. The Secretary of State may withhold or withdraw approval from the ESP if it does not meet the statutory requirements as set out in regulations.

36. Plans will be monitored annually to check whether the LEA's proposals are being implemented and its targets met.

CODE OF PRACTICE ON LEA-SCHOOL RELATIONS

PART 1: GENERAL PRINCIPLES

37. The partnership between LEAs and schools should be based on the following principles:

- a. **Raising standards:** All LEAs and all schools should have raising standards as their overriding aim. This is not just a matter of rectifying weaknesses but of pursuing a continuous process of evaluation and improvement, with the poor becoming good and the good becoming excellent. Primary responsibility for standards rests with each school. But LEAs have an important role to play in supporting schools and challenging them to do better; and LEAs have a duty under Section 5 of the 1998 Act to carry out all their relevant functions with a view to raising standards. LEA decisions about the nature and extent of their school support activities should always be tested against the contribution they will make to promoting high standards of education. Schools have a right to expect high quality advice and support from LEAs.
- b. **School self-management:** The principle of school self-management is well-established. Schools are responsible for their own performance and should be given the maximum discretion to make decisions for themselves. Best practice in LEAs recognises that unnecessary intervention is wasteful of resources, distracting for schools, and can undermine the school's sense of ownership for the standards it achieves. Every school should take the lead in working out, in discussion with the LEA and others, what needs to be done to raise standards and then to get on and do it. The school is accountable for what it does through OHMCI inspections, published performance information, reports to parents and LEA monitoring.
- c. **Intervention in inverse proportion to success:** The more successful the school, the more autonomy it should have. Throughout this code 'successful' denotes those schools which are effective in enabling their pupils to achieve their potential in acquiring knowledge, skills and understanding. It concerns the value added by the school. Some schools may be highly successful in helping pupils progress while still achieving modest examination and assessment results. Conversely, other schools may achieve good results but still be unsuccessful because their pupils could, given more effective teaching and learning, be developing significantly faster and achieving significantly more. The weaker the school's performance, the more it will need challenge and support. Intervention - as defined later on in Part One (paragraphs 38-47) - should occur only when monitoring has identified weaknesses or under-performance, and should be in proportion to the scale of the problem.

- d. **Partnership and co-operation:** LEAs, governing bodies and headteachers working in partnership can have a powerful impact in raising standards. But such partnership must be based on a mutual recognition of the functions and contribution of each party. There are occasions when an LEA needs to assert its legal powers (notably those in Part 2 of this Code) in the face of opposition from a school because the school is refusing to accept that it is failing its pupils. Schools for their part must not retreat into isolation or deny the proper involvement of the LEA in helping to raise standards. All schools need to keep in touch with the development of best practice and to benefit from the challenge of a regular infusion of fresh ideas. All need access to a range of support services from outside. All, particularly the most successful, can contribute to sharing and celebrating excellence. The principle of partnership also applies to schools working locally with each other; and to LEAs working with local governor associations, parent-teacher associations, dioceses, other services within their own authority and many others as part of their local leadership function.
- e. **Zero tolerance of under-performance:** All schools should be successful, improving or both. Where schools are successful, they should make their own decisions about school operation and improvement. But where a school has shown it is incapable of improving by its own efforts or refuses to acknowledge failure, the LEA must act to protect the interests of the pupils. Such situations will occur infrequently. When they do the LEA should act early to prevent failure. The new powers in the 1998 Act are designed to allow LEAs to differentiate their responses according to circumstances so that they do not hang back from engaging with the school until the problem becomes critical.
- f. **Value for money:** In planning and carrying out their activities, LEAs, governing bodies and headteachers alike should aim to obtain maximum value from the resources available, and to choose processes that will achieve an effective outcome at minimal cost.
- g. **Avoidance of bureaucracy:** It is important for LEAs, governing bodies and headteachers to ensure that they do not impose unnecessary burdens on each other. LEAs should take account of the principles in the WO circular on reducing bureaucratic burdens on teachers⁴.

LEA Intervention

38. For the purposes of this Code the term "intervention" is used to mean:

- a. any action the LEA takes to get a school to do things which, left to itself, it would not do. This includes the use of the various powers discussed in Part 2 which enable LEAs to raise concerns with the governing body and headteacher, and to push the school in a particular direction.

4 WO Circular 22/98 issued June 1998

- b. action whereby the LEA engages directly in making decisions about the school's conduct and operation in areas normally reserved for decision by the school. This covers the issue of a formal warning notice requiring the school to take specified action; the appointment of additional governors; the suspension of delegated budgets; and the issuing of directions where discipline has broken down (see paragraphs 99-104 below).

39. Defined in this way, "intervention" is only a small part of the contact which LEAs and schools have. The greater part of this contact is by mutual agreement because both sides recognise its purpose and value. In most cases where there are problems at a school the governing body and headteacher are as anxious as the LEA to sort them out and welcome any help and support the LEA can give, so "intervention" is not an issue. There may be instances where a governing body and headteacher welcome "intervention". For example, where delegation has been suspended as a result of financial mismanagement or because the school is judged to be failing, that may give the school space to resolve particular problems.

40. Thus intervention lies at one end of a spectrum of LEA interest in, and interaction with, schools. In many cases, given the generally close relations between LEAs and schools in Wales, it will be sufficient for the LEA:

- a. to monitor the standards of performance at each school⁵ and to draw the school's attention to any emerging trends or issues of concern;
- b. to establish with each school that the governing body has set appropriate targets for improvement; and
- c. to secure, in response to requests from schools, external support and guidance, whether provided directly by the LEA or through third parties, to help the school work out and implement its own strategies for improving performance.

41. Where a school is successful, the LEA is expected as a minimum to discuss with the governing body (or group of governors to whom they have delegated responsibility) and/or headteacher annually the school's targets for improvement; and to ensure that the school has a clear understanding of the Government's vision that even 'successful' schools have weaknesses and need to strive for continuing improvement. Beyond that, it is for the governing body and headteacher to keep developing the school's strategy for improving performance, drawing on advice and support from the LEA and elsewhere. The frequency and nature of a successful school's interaction with the LEA should take account of the governing body's views. The governing body in turn should take full account of the professional advice of the headteacher. Interaction is not limited to discussions or meetings but can be undertaken by exchanging views in writing or electronically.

42. In reality few schools are uniformly good or bad. Most are a mixture, with one or two weaker areas existing alongside strengths. LEA support needs to be attuned to that, bearing in mind that every school must take active responsibility for its own standards. Part of the LEA role is to foster in every school the skills and willingness to monitor their own performance, work out what needs to be done to raise standards, and to act effectively to achieve it. That cannot happen if governing bodies and headteachers look to LEAs to tell

5 SI 1998/2196 The Education (School Performance Targets) (Wales) Regulations 1998

them the answers and solve their problems. So in taking any initiatives to promote short term improvement, the LEA should always seek to promote the development of school self-improvement.

43. Before the LEA's intervention powers described in Part 2 are used, there should be a process of informal discussion where the LEA draws its concern to the attention of the governing body and headteacher; seeks their view; offers advice and support in addressing the concern; and encourages the governing body and headteacher to take the lead in sorting it out. In the great majority of cases, that should be enough to ensure that formal intervention never becomes necessary. The sensitive handling of this process is central to the LEA's role in raising standards, and is a distinguishing feature of the effective LEA - its skill in early identification of warning signs; getting alongside the school to raise and tackle the issue in a non-confrontational way; and targeted use of resources to help the school help itself.

44. Exceptionally there may be cases where the best way of resolving a difference of view is to seek the opinion of an independent third party. If, for example, the LEA perceives a problem which the school does not accept, it may help to put the issue to someone with appropriate expertise and acceptable to both sides. Using a third party may also be an appropriate way of meeting an LEA's concern where it is unable to assess the school's scope for improvement purely from the data, but the school is unwilling to allow access to the LEA adviser for classroom observation. The Secretary of State would always expect this option to have been considered before a formal complaint is made to him about non-compliance with the Code.

45. But there are cases where intervention is needed. LEAs should have regard to the following when deciding whether, and in what form to intervene:

- a. The use of an intervention power should never come as a surprise to the governing body and headteacher. There should be informal contact with the school, and support offered to address any problems before proceeding to formal intervention.
- b. It is part of the headteacher's responsibility to ensure that the governing body is kept informed of any concerns raised by the LEA and involved in deciding how to respond to them. If, when the LEA starts considering the case for formal intervention, the issue which is causing concern has not been raised with the governing body or properly conveyed to them, the governors should have an opportunity to resolve the matter with the headteacher before the LEA intervenes. The governing body is not able to play a constructive part in resolving problems if LEA/school contacts are channelled exclusively between officers and the headteacher, leaving the governing body marginalised.
- c. A written explanation should always be given to the governing body and headteacher detailing the LEA's concern and the evidence the LEA is relying on. The school should be given an opportunity to respond and state its view. That should generally mean a response endorsed by the governing body and the headteacher. The school's response should always be given careful consideration before deciding on what further action is needed.

- d. In the case of a school with a religious character, the diocese and trustees must be kept informed of significant concerns and should be involved in the resolution of problems.
- e. Any action taken by the LEA:
 - should be proportionate;
 - should treat schools consistently and never be influenced by a school's present or previous legal status;
 - should never be influenced by whether or not the school chooses to use services provided by the LEA.

Questions the LEA Should Consider

46. In deciding whether to use its intervention powers, the LEA should consider:
- a. What course of action will best serve the interests of the pupils at the school, particularly in promoting higher standards?
 - b. What evidence is there of a problem? Does the issue reflect a legitimate difference of view about the right way to proceed, or is the school's performance demonstrably inadequate on some objective measure?
 - c. Is the problem significant enough to warrant LEA involvement? Or, under the principle of school self-management, should it be left to the school to handle within the governing body's legal responsibility for the conduct of the school?
 - d. Would help from another school or support from consultants be more effective than use of the LEA's own staff?
 - e. What will be the impact of the intervention on the development of a constructive, longer term relationship between the LEA and the school? Will intervention damage the relationship, and will the benefit to pupils outweigh that cost?
 - f. How would the LEA explain its actions publicly to a third party, including to the Secretary of State, if there were a complaint that its actions breached this Code?

Questions the School Should Consider

47. In responding to a situation where intervention of some sort is likely, the governing body and headteacher for their part should consider:
- a. What course of action will best serve the interests of the pupils at the school, particularly in promoting higher standards?

- b. If the LEA believes the school can and should do better, what the grounds are for disputing that? Has the school looked carefully at the evidence, including how it compares to similar schools? Whether they are making excuses for low expectations, or perpetuating ineffective ways of doing things simply because they have always been done that way?
- c. Whether the school is striking the right balance in being loyal to staff, pupils and parents without being over-protective and unduly resistant to suggestions for doing things better? Are personalities or past history getting in the way of focusing on standards and performance?
- d. Has the school identified a constructive way forward which it can propose to the LEA?
- e. How would the school explain its actions publicly to a third party, including to the Secretary of State, if there were a complaint that its actions breached this Code?

PART 2: SPECIFIC LEA POWERS AND DUTIES

LEA Rights of Access to Schools

48. Section 25 of the School Inspections Act 1996 gives the LEA the right to inspect any school maintained by them where they require information about the school for the purpose of exercising any of their functions, and where it is not reasonably practicable for them to obtain the information in any other manner. LEAs have no other general legal power to insist on entry to schools (although, as noted in paragraph 53 below, there are rights of access arising from other specific duties and functions). Section 25 applies to all the categories of maintained school defined by the 1998 Act - that is, community, foundation, voluntary, and community and foundation special schools - equally and without distinction.

49. In most cases, schools welcome visits by LEA officers and advisers as an important means of maintaining a close partnership in which each party understands the other's situation. But if the right of access does become an issue, before exercising their rights under Section 25, LEAs should consider:

- a. what the function is for which it needs access to the school? "Function" in this context means statutory functions assigned under education and other legislation. Some of those functions are very specific, others very general. But the LEA should always be clear about the function involved when considering whether it is appropriate to exercise the right of access;
- b. why it is not practicable to obtain the information in any other manner? What information it already has which is relevant to the issue? What relevant information could be obtained from the school without a visit or from other sources and what relevant information could only be obtained by visiting the school?

50. A visit may be the best or only way of collecting necessary information where the issue does not turn on a matter of fact but is a matter of judgement. This may be particularly true where the issue relates to the standards of achievement and the quality of teaching, learning, management and administration in the school, or to staff or pupil relationships within the school; and there is a need to discover the reasons for a problem in light of the duty on the LEA under Section 5 the 1998 Act to carry out all relevant functions so as to raise standards. In normal circumstances, LEA officers and advisers should agree in advance with the headteacher the timing and purpose of any visit. Any visits by the LEA should be organised so as to avoid unnecessary disruption to the work of school staff and pupils.

51. The LEA should insist on such visits for classroom observation only in cases where there are already grounds for significant concern and evidence of under-performance. Where such concern or evidence exists, it is for the school in the first instance to work out how to tackle it, and inform the LEA of the action they propose to take. That can include classroom observation undertaken by the school's own senior staff or a suitably qualified third party.

52. Part of the LEA's role is to identify, celebrate and disseminate good practice. The Government hopes that in any case where an LEA wanted to visit a school because it believed there was good practice there which others could learn from, the school would welcome that. It would not be appropriate however, to insist on access if the school felt that the number of requests for visits to the school by different parties risked causing disruption for pupils and staff.

53. LEAs generally own the premises of community schools and the playing fields and some subsidiary premises of other schools.⁶ Capital funding for all categories of schools except voluntary aided is channelled through LEAs. LEAs also have legal responsibilities for health and safety where they own the premises. They need to assess the state of repair of the premises of all schools and decide in an objective and systematic way the priorities for allocating capital funding between schools. As a result LEA staff or contractors working on the LEA's behalf need to visit and survey premises from time to time. Where such visits are in pursuance of the LEA's statutory responsibilities for buildings and capital works, the LEA should be afforded reasonable access, although the school should be consulted on the timing and purpose of the visit. Similarly, where the LEA is the employer of the staff (i.e. for community, community special and voluntary controlled schools), it has responsibilities as employer under health and safety legislation and should be afforded reasonable access in pursuance of those responsibilities.

Control of School Premises

54. Section 40 and Schedule 13 of the 1998 Act set out arrangements for the control of school premises. In summary:

- a. governing bodies have control over the occupation and use of school premises for all categories of maintained school, both during and outside school hours (subject to any provisions of a school's trust deed conferring rights on trustees or others);
- b. in exercising that control, governing bodies of all categories of school must have regard to the desirability of making the premises available for community use outside school hours;
- c. governing bodies of all categories of school may make transfer of control agreements giving third parties control of the premises for certain purposes if the objective, in whole or part, is to promote community use. In some circumstances, governing bodies of foundation schools may require the prior consent of the Secretary of State. Governing bodies of community, community special and voluntary schools may require the prior consent of the LEA; and
- d. in the case of community, community special, and voluntary controlled schools, the governing body's control is subject to any directions given by the LEA. The LEA may also give directions about the use of premises in particular circumstances⁷ to voluntary aided schools. In issuing any such direction, the LEA should take account of, and aim to avoid any conflict with, activities already planned by the school. LEAs may not give any directions to foundation or foundation special schools.

⁶ These subsidiary premises are those stated in the definition of school buildings in Section 579 of the Education Act 1996 - caretakers' houses, buildings for use in connection with playing fields, and facilities for providing meals and health services for pupils.

⁷ Those circumstances are set out in detail in paragraphs 5-7 of the 1998 Act.

55. School premises are a resource not only for pupils but also for the wider community. LEAs and schools should seek out opportunities to develop their community role, not least because appropriate community use can improve pupils' attainment and help to bring about among parents and other local people a sense of ownership of, and belonging to, the school. In seeking out such opportunities, LEAs and schools should therefore give priority to activities which support and promote pupils' learning and the wider community generally, such as homework and after-school clubs, other study support activities, basic skills courses, adult education, youth service activities and family learning opportunities.

56. Decisions about community use are usually a matter for the governing body but, as mentioned above, LEAs have rights in this matter also. Both LEAs and governing bodies should appreciate, in their dealings with each other, the role which each has to play in promoting community use. So, for example, governing bodies should recognise the validity, as well as the legal right, of LEAs to make reasonable directions about community use. For their part, LEAs should recognise the important role which schools can play in their local communities when, for example, governing bodies ask LEAs to authorise transfer of control agreements affecting the use of school premises during school hours.

57. In addition to recouping costs, as required by the law, there may be a wish to maximise profits from lettings to community users. But nothing in guidance from LEAs about the costs to be recouped or in decisions taken by governing bodies or by those to whom they have transferred responsibility for community use, should promote the maximisation of profits at the expense of existing, or potential, benefits to the wider community.

School Target Setting

58. Section 19 of the Education Act 1997 empowered the Secretary of State to make regulations requiring school governing bodies to set and publish annual performance targets. These targets must relate to pupil performance in National Curriculum assessments and public examinations. All schools are required to set targets. The precise content of these targets is set out in regulations⁸. Target Setting: Guidance for Headteachers and Governing Bodies⁹ provides detailed information on the target setting regulations. LEAs should hold discussions with schools about their individual targets which in turn inform the LEA's own targets in its ESP.

59. It is the responsibility of the governing body to set and publish the targets for the school in accordance with the regulations. There are various ways of fulfilling this requirement. The governing body may delegate their statutory responsibility to set the school's targets to a sub-committee made up of governors, but not to an individual e.g. the headteacher or chair of governors. This does not mean that the whole governing body or sub-committee have to be actively involved in discussions with the LEA or other parts of the process for setting the targets. Under normal circumstances, the headteacher should be involved at all stages. It is for the governing body to decide whether and how the chair, other members of the governing body, and other members of staff should be involved in the process. The aim should be to ensure that the governing body and teaching staff at the school understand how the targets were set and take 'ownership' of them.

⁸ The Education (School Performance Targets) (Wales) Regulations 1998 SI 1998/2196

⁹ Welsh Office September 1998

60. The Government attaches great importance to effective target setting in helping to raise standards. It looks to schools to set targets which are challenging, so that all schools contribute towards achievement of the national targets adopted for Wales (see Target Setting guidance document)⁹. This applies to all schools including those whose performance appears acceptable but could in fact be much better because they are not stretching their pupils to achieve the standards of which they are capable. LEAs can play a valuable role in supporting and guiding schools as they analyse data, set suitable targets, and develop effective in-school mechanisms for performance review and action planning. In particular LEAs should challenge any schools that are under-performing so that they develop more effective approaches to teaching and learning, enabling all pupils to achieve their potential.

61. LEAs are also required to set their own overall targets as a part of the process of formulating their ESP. For those indicators against which schools are required to set targets the LEA targets should be calculated normally as weighted averages based on the schools' targets.

62. LEAs and schools have to agree the process for setting and discussing targets but the following general approach is appropriate:

- a. all governing bodies should have access to national and local school performance data including benchmark and subject analysis data published by the Welsh Office and guidance on target setting published by OHMCI.¹⁰ The LEA should consider whether there are related data and analyses which it could prepare to help schools set targets (for example indicative targets or bands within which the LEA consider the school should set its targets); and should ensure that governing bodies and headteachers are aware of any guidance and support which the LEA can offer. For schools whose characteristics make them difficult to compare with other schools in the LEA, the LEA should draw as appropriate on published national benchmark data. The LEA should ensure that any additional information offered by them is in a form which can be easily accessed and understood by the schools;
- b. each governing body should decide, against the background of that information and in the light of advice from the headteacher, the targets it should set, taking account of trends in the ability profile of its intake and other factors. Having decided its targets, and the action which will be needed to achieve them, the governing body should notify the LEA;
- c. as part of its responsibility for monitoring performance and establishing that schools are acting to raise standards the LEA should discuss with the governing body and headteacher the targets set, the process used to set them, and the action to be taken by the school to achieve them. For successful schools which are setting themselves challenging targets, these discussions do not need to be detailed. The LEA should use its time and resources to focus on those schools which need most help. LEAs should limit themselves to monitoring and advising on annual targets which governing bodies are required by regulations to ensure are in place; and to the school-level implications of the additional targets which LEAs are required to include in their ESPs.

¹⁰ Some guidance on target setting is contained in "Standards and Quality in Primary Schools - Setting Targets for Improvement" (OHMCI 1998); 'Improving Standards and Quality in Secondary Schools' to be published shortly by OHMCI; and Welsh Office guidance for headteachers and governing bodies issued in September 1998. 'Success in Secondary Schools' (OHMCI 1996) is also relevant.

- d. the aim should be agreement between the LEA and the school that the targets set by the governing body are appropriately challenging. The LEA and the governing body may initially have different views as to what would constitute an appropriate target. In such cases the aim should be to reach agreement by reference to other targets that have been set locally, benchmarking data or other relevant information. The governing body may revisit its targets in the school year prior to the year for which they have been set. Where an LEA considers that the targets proposed by a school are wholly inadequate the authority could pursue the matter through a statutory warning notice under section 15 of the 1998 Act. But this would only be appropriate where the disagreement was so fundamental as to merit the statutory criteria for formal notices - see paragraph 99 below. As described in paragraph 44 involvement of an independent third party may help in resolving a difference of view; the LEA has no legal power to oblige a governing body to set targets at a particular level or to change its targets.
- e. the school can decide where to obtain advice and support for setting targets and action planning. If the LEA has grounds for believing that any advice and support provided by others is misconceived, it should reflect that in its discussions with the school about targets. But the fact that the school chooses to get advice from a source other than the LEA should not itself be used as a reason for the LEA to dispute the targets or the action plan;
- f. The Secretary of State intends to make regulations under Section 63 of the 1998 Act to set targets for a reduction in unauthorised absence on the part of registered day pupils of compulsory school age. The actual target itself will be for the governing body to decide in light of local circumstances and in discussion with the LEA. The Government will however expect the target to be challenging. As with LEA targets, the national objective of reducing unauthorised absence by one third by the year 2002 should be borne in mind and the school-level target will clearly need to reflect, and contribute to, LEA targets. If there is disagreement this should be resolved through discussion with the Education Welfare Service.
- g. Setting attainment targets for special schools may present a particular challenge. LEAs can play a valuable role in helping special schools set additional targets for those pupils who will remain below level 4 of the National Curriculum throughout their school careers. Target setting criteria for these pupils will be contained in the forthcoming ACCAC guidance on targets for pupils with special educational needs. This will provide a basis for agreement between schools and LEAs in setting targets for this group of pupils.

62. Discussions between the LEA and its schools should take place on an annual cycle beginning in the Autumn term when national performance and contextual data are available, in order to agree targets by 31 December. These targets can then feed into the process of reviewing LEA and school targets.

Advisory Services

63. LEA advisory staff have a particular part to play in relation to school performance and standards of teaching and learning. They can help schools to analyse their current standards and the factors which influence them in order to identify effective ways of improving; to keep in touch with good and developing practice; to set targets and to plan for development.

64. As described earlier the LEA's role covers the light-touch monitoring of all maintained schools; ensuring the availability of high quality advice and consultancy, whether from the local authority's own staff or elsewhere, and whether paid for from schools' delegated budgets or LEA funds; and intervening where necessary. Given this role, the Government considers that the following principles should apply in relation to LEA advisory services:

- a. the school inspection programme is the responsibility of OHMCI, using Registered Inspectors. Many LEA advisers work as Registered Inspectors undertaking OHMCI inspections in other authorities. The work which they do on behalf of the LEA should not duplicate the OHMCI programme. LEAs should not see themselves as formally "inspecting" schools; that is what the OHMCI programme is for; and it is rarely an effective use of resources for LEA advisers to undertake pre-OHMCI inspections - whether funded from central budgets or delegated school budgets - simply to prepare a school for its OHMCI inspection;
- b. monitoring schools' performance should be done initially through the analysis of information about standards and other aspects of school performance already available to LEAs, and through the examination of school development plans and post-inspection action plans. But having established by such means that there is a question or problem, the matter will often need to be pursued through a visit particularly where judgement of the right follow-up action needs to be based on observation and an understanding of the situation at the school;
- c. LEAs need to ensure that all schools have equitable access to subject, phase and other professional expertise. It is for each LEA to decide the range of advisory staff it needs. LEAs do not need to staff their advisory services on the basis that they must cover all areas in depth. Particularly for smaller LEAs, this would not be cost-effective. They should consider sharing advisory services with other LEAs and finding ways to share the wide range of expertise and experience held by headteachers and teachers with other local schools. Above all, LEAs should keep in mind the requirement to direct as much resources as possible into schools' delegated budgets by identifying where high quality advice and support can be obtained from other LEAs, from diocesan authorities (who are often prepared to help schools outside their own denomination), from the private sector, and from other local schools; and to put schools in touch with relevant expertise;

- d. the standards agenda does not necessarily require either more or less visiting than LEAs have previously undertaken but it does imply a different approach to visits, moving to a planned cycle of engagement with each school, with a more purposeful focus on targets and standards. For the LEA to carry out its responsibilities in relation to evidently successful schools, there needs to be at least an annual discussion between the LEA's link advisor (or equivalent) and the school's governing body (or the headteacher and governors whom the governing body choose to represent them) for target setting purposes. In practice, both the school and the LEA are likely to want more regular contact. Termly visits are standard practice in many areas. LEAs need to ensure that whatever arrangements are made, they are consistent with making the best use of resources to raise standards in schools. For schools where standards are a cause for concern, more frequent visits will be needed, whether or not the school welcomes them;
- e. in identifying, disseminating and celebrating success and best practice, it may be appropriate for advisers to visit successful schools more frequently than would otherwise be necessary. The Secretary of State hopes that the schools concerned will welcome the opportunity to share what they have achieved so that other schools can learn from it;
- f. before arranging visits to underperforming schools, the LEA should explain its concern to the governing body and headteacher, and where appropriate the relevant diocesan authority, and it should take account of the school's response in deciding whether a visit is appropriate.

65. In many LEAs, link advisers form an essential channel of communication between school and LEA, and advisers have worked hard to establish good relationships with their schools. Where the schools respect the quality of the advice and support they get, their visits are valued as much by schools as by the LEA. That is the ideal, and nothing in the preceding paragraph should be taken as requiring a reduction in visiting wherever schools and LEAs are content that their current arrangements are promoting the raising of standards.

66. The LEA has a central role in managing and supporting the implementation of literacy and numeracy strategies in its primary schools. In addition to agreeing targets with each school, this includes providing training for all schools and ensuring that there are appropriate mechanisms for monitoring their progress and providing support where required.

Exchanging Information and Consultation

67. Section 42 of the 1998 Act places a duty on governing bodies and on headteachers to provide the LEA with:

"such reports in connection with the discharge of their functions as the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of their functions".

68. Headteachers are similarly required to provide such information to governing bodies as they may require to carry out their functions.

69. LEAs and schools need to exchange a variety of information, including performance data, budget and expenditure information, and information about the needs of individual children. Monitoring, particularly of school performance and the regularity and propriety of school expenditure, is one of the central roles of LEAs. The circulation of good quality data and advice on using them, particularly for target setting and development planning, is one of the ways in which LEAs can best support schools. ESPs should set out the information which LEAs will circulate for this purpose, and the drawing up of ESPs provides a context in which each LEA can agree with its schools the information and formats which would be most useful. Some LEAs already prepare an annual report for each governing body containing information and evidence-based judgements about the school's standards and progress.

70. All information collection has a cost, so it should always have a clear purpose. It should also take account of the principles set out in Circular 22/98 on reducing the bureaucratic burden on teachers. The Government considers that the following guidelines should apply:

- a. an LEA can require information from a school for the purposes of the exercise of one of its functions. The LEA should always be able to explain why it wants the information and how it will be used;
- b. before commissioning the collection of local data, the LEA should consider whether data already available nationally is sufficient to meet the need;
- c. there is advantage for both LEAs and schools if information is provided by all schools on a consistent basis, but the cost involved if schools have to change collection and recording systems devised to meet their own individual needs must be weighed against this;
- d. LEAs should agree with schools, and governing bodies with headteachers, an annual cycle setting out what information should be provided and when in the year. One-off requests for information should be avoided wherever possible;
- e. where any party - LEA, governing body or school staff - requests information from another, a reasonable period should be allowed for its provision unless there is genuine urgency. What counts as reasonable will vary according to the quantity and complexity of the information requested;
- f. in the case of schools with a religious character, it is good practice for LEAs, diocesan authorities and governing bodies to reach agreement on how they will share information. In general, it will be helpful for diocesan authorities to have access to the same information about a school as the LEA. Ideally, diocesan authorities should be able to obtain information direct from LEAs, rather than making a separate approach to schools, thus avoiding an unnecessary burden on schools.

71. There are various statutory requirements on LEAs to consult governing bodies and headteachers before taking action. Those consultation requirements include:

- a. consultation on ESPs (Section 6 of the 1998 Act);
- b. consultation about financial delegation schemes (Schedule 14 to the 1998 Act);

- c. consultation about the LEA's behaviour support plan under Section 527A of the Education Act 1996¹¹ .

72. The way in which consultation between LEAs and schools is carried out - including time allowed for responses, willingness to contribute constructive comments, willingness to amend proposals in the light of responses, and use of consultative groups - influences the perceptions of schools and LEAs as to whether each values what the other has to say and treats the other as an equal partner.

LEAs and Governing Bodies

73. Governing bodies are responsible for the conduct of their schools. That includes ensuring that the school has in place an effective process for reviewing performance, identifying priorities, taking action, and monitoring progress with a view to raising standards. The relationship between the LEA and the governing body should support this role. Where schools are successful, the governing body should have space to conduct their business as they see fit. Where there is evidence that the governing body is operating in a way which risks damaging the performance of the school, the LEA should draw its concerns to the governors' attention, and as necessary use its powers to ensure that the problem is addressed.

74. In the new school framework, the governing bodies of all categories of school include governors appointed by the LEA. Under schedule 9 of the 1998 Act, they range in number from a minimum of one in voluntary aided primary and the smaller VA secondary schools to five in the larger community secondary schools. LEA governors are the appointed representatives of the LEA on a school's governing body. They may present the LEA's view, in the same way as other categories of governor represent the views of their constituency. But like other governors, LEA governors are not delegates and cannot be mandated by the LEA to take any particular line. Their first loyalty should be to the school and the community it serves. An LEA may establish such links with its appointees as it and they see fit, but these links should not take the place of formal consultation with the governing body or local association of governing bodies.

75. Governors should be chosen on the basis of the contribution which they can bring to a school in terms of their skills and experience. LEAs should publish the process and criteria by which they identify candidates for appointment as LEA governors, and should ensure that appointments are made promptly when vacancies arise. LEAs should not allow vacancies to remain open indefinitely. There are many examples of good practice, including the use of appointment panels to select LEA governors. LEAs have the power¹² to dismiss any of their appointed governors for good reason. Persistent failure to attend meetings should be one. Governors failing to attend meetings for six months without valid reason are in any case disqualified under the school government regulations. LEAs should think very carefully before re-appointing any governor disqualified under the six month rule, or appointing him or her to another school. The Secretary of State would not consider it appropriate for an LEA to replace LEA governors or fill LEA governor vacancies while an appeal to the Secretary of State by the governing body against action taken by the LEA is under consideration.

¹¹ Section 527A of the 1996 Act was inserted by Section 9 of the Education Act 1997.

¹² Through regulations to be made under paragraph 3 of Schedule 11 to the School Standards and Framework Act.

76. School government regulations require the appointment of a clerk to the governing body of a maintained school. The clerk plays a vital part in organising the governing body's work, and can be a valuable source of expert advice. Governing bodies should bear this in mind when choosing a clerk. Some LEAs offer clerking services to schools on a buy-back basis, as part of the support they offer to governing bodies. That support should not be packaged in such a way that it prevents governing bodies who select their own clerks from receiving other support services.

Governing Body Meetings

77. There is no statutory right for the Director of Education, or his/her representative, to attend governing body meetings, except in relation to the appointment and dismissal of staff (see paragraphs 84-95 below). Each governing body has discretion to decide whether to invite the Director (or an officer representing the Director) to attend, and whether on a standing or occasional basis. Many governing bodies welcome the attendance of an LEA officer at meetings as a means of maintaining good communications and as a source of information and advice. Where it does not happen, if a DoE has an issue or concern which he or she wishes to raise with the governing body (particularly if he/she believes that the governing body may not be fully aware of the circumstances), it is open to the DoE to write to the governing body setting out the issue or concern, to ask to attend a particular meeting of the governing body, or to invite the governing body to attend a meeting with the DoE. This would apply particularly if the concern was of such significance that it might lead to a formal warning notice (see paragraphs 99-104 below) if a positive resolution were not found.

78. LEA arrangements for funding schools under Sections 45-53 of the 1998 Act may accord rights of attendance to the local authority's Chief Finance Officer for the discussion of agenda items which are relevant to the exercise of his/her responsibilities. Unless invited by the governing body for other parts of the meeting, the Chief Finance Officer's attendance should normally be limited to agenda items which relate to issues of probity or financial management.

79. Schedule 11 of the 1998 Act provides for regulations to require governing bodies to make minutes of their meetings, including draft minutes, available for inspection by the LEA.

80. Paragraph 7 of that schedule requires LEAs to:

"...secure that every governor is provided, free of charge, with such information as they consider appropriate in connection with the discharge of his functions as a governor".

Governing bodies can carry out their functions only if they have the information they need in a form they can understand. The headteacher is primarily responsible for providing the governing body with information about the school. The LEA should agree with governing bodies what further information it could usefully provide, particularly to help the governors set the school's performance in context.

81. Paragraph 7 also requires LEAs to:

"secure that there is made available to every governor, free of charge, such training as they consider necessary for the effective discharge of [his functions as a governor]."

LEAs should agree with governing bodies the forms of training which will best equip governors to carry out their functions. The duty to "secure" does not mean that the LEA must provide such training. It can be provided by a third party. The requirement that such training must be "free of charge" means that governors should not be asked to pay from their own pockets. It does not preclude arrangements whereby the school uses its delegated budget to buy training and other support for the governing body, whether from the LEA or a third party. Systems for promoting agreed standards of delivery for governor training and for evaluating its effectiveness need to be established by the LEA and its governor association.

Staffing: Induction of new teachers and teacher appraisal

82. Section 19 of the Teaching and Higher Education Act 1998 enables the Secretary of State to make regulations requiring that teachers successfully complete a period of induction in order to remain eligible for employment as a teacher in a maintained or non-maintained special school. The Department will be consulting on a proposal that a statutory induction year should be introduced for those coming new into teaching - probably with effect from September 2000.

83. Appraisal requirements are currently set out in The Education (School Teacher Appraisal) Regulations 1991. These will be amended in the light of the consultation on pay and performance management resulting from The BEST for Teaching and Learning Green Paper.

Staffing: DoE Attendance and Advisory Rights

84. The appointment of good staff, particularly a good headteacher, and the removal of any incompetent staff, are fundamental to raising and maintaining standards in all schools. Decisions on appointments and dismissals are the responsibility of the governing body. However for community, community special and voluntary controlled schools the LEA is the employer and the DoE has attendance and advisory rights. For voluntary aided, foundation and foundation special schools who employ their own staff the Director may apply for attendance and advisory rights and appeal to the Secretary of State if they are refused. If a governing body makes a misjudgement the LEA has powers to raise concerns and ultimately to intervene.

85. Although the LEA is the employer of the teaching and non-teaching staff in community, community special, and voluntary controlled schools, the governing body exercises many of the functions of the employer except in cases where the school's right to a delegated budget is suspended. The respective powers and duties of LEAs and governing bodies for these categories of school are set out in Schedule 16 to the 1998 Act.

86. The DoE or their representative has a legal right to attend, for the purpose of giving advice on:

- a. all proceedings of the governing body and any selection panel, including interviews, relating to the appointment of a headteacher or deputy headteacher;

- b. all proceedings, including interviews, relating to the appointment of other teachers;
- c. all proceedings relating to any decision that someone working at the school should be dismissed.

87. Any advice given by the DoE or his/her representative must be considered by those concerned before a decision is made.

88. This right of attendance applies whether or not the governing body has agreed that the DoE should have a right to attend its meetings in general. The DoE is not required to attend, but has the discretion to do so. The timing of proceedings is for the governing body to decide, but as part of a constructive relationship it should do its best to ensure that the DoE or his/her representative is available to attend on the dates and times chosen. For their part, DoEs should recognise the need for governing bodies to move swiftly in making the arrangements, and should always let the governing body know whether or not they are going to attend or be represented.

89. The governing bodies of voluntary aided, foundation and foundation special schools are in general the employers of the school's teaching and non-teaching staff (although the LEA may employ some non-teaching staff). Schedule 17 to the 1998 Act sets out the way in which their employer functions must be exercised. The DoE does not have the same automatic statutory right of attendance at appointment and dismissal proceedings as he or she has for community, community special and voluntary controlled schools. But the governing body may accord him/her rights to attend and give advice. The coverage of those rights can vary. They do not have to cover the same rights as the DoE has for community, community special and voluntary controlled schools, but may cover appointments or dismissals, or both relating to either the headteacher and deputy headteachers or all teachers.

90. If the governing body does not agree such rights, Schedule 17 entitles the DoE to seek a determination from the Secretary of State giving him/her such rights. In making any determinations about DoE advisory rights, the Secretary of State will want to know how the governing body will ensure that it always has access to high-quality expert advice in making appointments and dismissals, and the reasons for concluding that the DoE's attendance does not provide the most appropriate mechanism for obtaining it. Where the DoE is accorded advisory rights, any advice given by the DoE or his/her representative must be considered by those concerned before a decision is made.

91. Paragraph 20(3) of Schedule 16 to the 1998 Act requires the governing body of any school where the LEA is the employer to consult the DoE before selecting for appointment any non-teaching staff. This is designed to enable the LEA as employer to ensure that staff are employed on comparable terms, so as to avoid grievances over equal pay leading to legal claims. LEAs need to decide with schools how such consultation is best handled - at what stage in the selection process, the types of information the LEA will need, and whether the consultation requirements should apply in different ways for different categories of staff.

92. Paragraph 20 of Schedule 17 to the 1998 Act allows the LEA and the governing body of a voluntary aided, foundation or foundation special school to agree that the LEA rather than the governing body should appoint members of the non-teaching staff. Paragraph 26 of Schedule 17 provides that the procedures for dismissing such staff are those which apply in a community, community special or voluntary controlled school under Schedule 16 and not the normal procedures for dismissals in a voluntary aided, foundation, or foundation special school set out in Schedule 17. Catering staff employed by the LEA are subject to separate regulations.

93. If the school is a voluntary aided school with a religious character, the governing body must give the appropriate diocesan officer the same advisory rights as the DoE. If the school is a foundation or voluntary controlled school with a religious character, it is at the governing body's discretion whether to give the relevant diocesan authority the same advisory rights as the DoE. It could, for example, limit those advisory rights to certain types of teacher. The governing body's agreement must be given in writing and may be withdrawn only after the governing body have given notice of their intention and confirmed it in writing.

94. Under Section 57(5) of the 1998 Act, costs incurred by the LEA in respect of the dismissal or for the purpose of securing the resignation of a member of a school's staff are not to be met from the school's delegated budget unless the LEA has good reason for this. "Having a good reason" provides a safeguard for the LEA against ill-judged action by a governing body - for example, dismissals which lead to successful claims of unfairness before an industrial tribunal or excessive severance settlements. It is important that the LEA decides whether or not to meet the costs of the claim itself on the basis of all the facts rather than simply the outcome of the legal proceedings. Governing bodies must be prepared to accept the financial consequences if they decide to proceed with a dismissal against the advice of the LEA.

95. Under Section 57(4), costs arising from premature retirements are to be met from the school's delegated budget except where the LEA agrees with the governing body in writing to meet them centrally. Costs can also be incurred by LEAs through the action of governing bodies in exercising their staffing functions in other areas, for example discrimination claims in appointment procedures. LEAs, taking account of any guidance given by the Secretary of State on the content of their delegated funding schemes, must consider how such costs should be handled and provide for this in their funding arrangements.

Staffing: LEA Representations about Headteacher Appointments

96. As a matter of good practice it is sensible to involve the DoE from the start of the appointment process. However, for all categories of maintained school, the 1998 Act gives LEAs a new power to make written representations to the selection panel for a headteacher¹³ if they consider that the panel is shortlisting an unsuitable person. The selection panel must send its shortlist of candidates for interview to the LEA. At that stage the LEA has the right to make representations which the selection panel must consider. If they decide to recommend to the whole governing body, appointment of a person to whom the LEA has objected, they must notify the LEA in writing of their reasons and make the exchange of correspondence available to the governing body.

¹³ For community, community special and voluntary controlled schools, the power is contained in paragraph 6(4) of Schedule 16 to the School Standards and Framework Act; for foundation, foundation special and voluntary aided schools, it is contained in paragraph 7(4) of Schedule 17.

97. In determining, for the purposes of this power, whether a person is suitable for appointment as headteacher, the Act requires LEAs to have regard to any guidance given by the Secretary of State. The following constitutes that statutory guidance.

- a. The power for the LEA to make representations is for use only where the LEA considers that there is good reason to believe that the candidate, if appointed, would have a significantly detrimental effect on the performance, management or conduct of the school.
- b. In all cases where the DoE or his/her representative has attended and given advice at earlier stages in the appointments process:
 - any concerns which the LEA has should be raised as soon as possible in that process;
 - if his/her concern is serious enough, the DoE should always warn the selection panel that he/she would expect the LEA to use its power to make formal representations if the selection panel persisted in including that candidate on the shortlist of applicants to be interviewed;
 - the power to make representations should not normally be used to register a new concern, unless the LEA first becomes aware of that concern after it is notified that the candidate has been included on the selection panel's shortlist.
- c. In the case of foundation, foundation special or voluntary aided schools, where the governing body has not agreed advisory rights with the DoE, paragraph 7(6) of Schedule 17 of the 1998 Act requires the selection panel's notification of applicants selected for interview to be accompanied by such information as will enable the LEA to determine each applicant's suitability for appointment. The governing body should provide the LEA with as much information about the candidates as possible in order to reduce the risk of the LEA using its powers to make representations at a later stage. The governing body also needs to weigh up the chance of receiving representations from the LEA and any inconvenience that may cause, compared to involving the DoE from the outset.
- d. It is often necessary to move very quickly, particularly in the later stages of the appointment process. The law gives LEAs 14 days to make representations about a candidate, beginning with the date on which the selection panel notifies the LEA of their proposed shortlist for interview. Within this limit, LEAs should respond as rapidly as possible. Where the DoE has been fully involved in previous stages and no concerns have arisen, the LEA should aim to respond immediately it receives notification of the shortlist, confirming that it will not be making any representations. The governing body should not invite candidates for interview until it has received the LEA's response.

- e. Persons appointed as headteachers or teachers must meet the requirements of the Teachers Regulations relating to qualifications, health and physical capacity, and fitness on education and other grounds (notably barring for misconduct or criminal record)¹⁴. The LEA is entitled to refuse to appoint a person who does not meet the requirements of the regulations if they are nominated for appointment by the governing body of a community, community special or voluntary controlled school. The governing body of a voluntary aided, foundation or foundation special school must not appoint such a person to their employment. If the LEA finds that an appointment has been made contrary to the regulations that appointment would not be valid.
- f. The Secretary of State considers that the types of concerns which might appropriately trigger the making of a representation by the LEA include (but are not limited to):
- the candidate is currently, or was recently, the headteacher or a senior teacher at a school which was found on inspection to be in need of special measures or to have serious weaknesses, and the inspection report found that the failures or weaknesses were due in part or whole to deficiencies attributable to the candidate's performance;
 - standards of performance in National Curriculum assessments or public examinations at the candidate's previous school or schools have worsened significantly for reasons attributable to the candidate's performance;
 - the candidate has never worked in the same sector of schooling as the appointing school - e.g. the candidate's whole career has been spent in primary schools, and the appointing school is a secondary school;
 - the candidate's experience is inadequate for that particular school in a respect which risks damaging the school's performance - either because the appointing school is facing particular problems and the new headteacher should be someone who can provide clear evidence that they have the skills to tackle such problems; or because the appointing school has particular strengths which are best developed by someone with a demonstrable ability in that area;
 - there has been a pattern of repeated and serious complaints about the candidate's performance, over a period of time, from parents, staff, governors or pupils at the candidate's previous school or schools - not all stemming from the same individual or group, but from a number of people who were originally acting in isolation from each other - which have not been satisfactorily addressed through action to investigate the substance of the complaints and rectify valid causes of complaint;
 - the LEA of the candidate's previous school or schools suspended the school's delegated budget for reasons of mismanagement attributable to the candidate, and the school has not successfully appealed to the Secretary of State against the suspension of delegation.

¹⁴ The regulations are made under Section 218 of the Education Reform Act 1988 and Section 15 of the Teaching and Higher Education Act 1998.

- g. The Secretary of State considers that the types of concerns which would not appropriately trigger the making of a representation by the LEA include (but are not limited to):
- the candidate is currently deputy head at the same school. There may be cases where, in the LEA's judgement the school needs an infusion of new ideas and a fresh approach from outside. But a deputy should not be ruled out, irrespective of his or her performance or the current needs of the school, merely by virtue of being the deputy. If the LEA has a concern about an individual's performance as deputy head, then that falls within (f) above;
 - the candidate has opinions, beliefs or practices about pedagogic, management or other issues to do with the conduct of a school which the LEA does not agree with, but which are within the field of legitimate professional debate and do not demonstrably risk damaging standards;
 - the candidate has not previously worked in the category of school concerned or has worked in another category of school not maintained by the LEA.
- h. In all cases the LEA's written representation should explain why it has concluded that the candidate is not suitable, and the evidence on which it is relying in reaching that conclusion.
- i. The representation from the LEA does not mean that the governing body is prohibited from interviewing or appointing the candidate. The final decision remains with the governing body but the selection panel is legally required to send the LEA a written response to its representation if it decides to recommend the candidate to the governing body. That response should set out the panel's reasons for not agreeing with the LEA that the candidate is unsuitable for appointment. This exchange of correspondence must be made available to the whole governing body.

Staffing: LEA Representations about Headteacher Performance

98. For all categories of maintained school, the 1998 Act gives LEAs a new duty to make a written report to the chair of the governing body in any case where they have a serious concern about the performance of the headteacher¹⁵. In determining whether to make any such report, the Act requires LEAs to have regard to any guidance given by the Secretary of State. The following constitutes that statutory guidance. The Secretary of State expects this provision to be used in accordance with the following principles:

- a. the LEA should make such a report only in rare cases. Having a "serious concern" should not be taken to mean merely that the LEA considers that the headteacher's performance could be improved in some way. The LEA should have grounds for concluding that the headteacher's performance is having a significantly detrimental effect on the performance, management or conduct of the school, or would soon have such an effect if action were not taken;

¹⁵ For community, community special and voluntary controlled schools, the duty is contained in paragraph 23 of Schedule 16 to the School Standards and Framework Act; for foundation, foundation special and voluntary aided schools, it is contained in paragraph 22 of Schedule 17.

- b. such a report should never come as a surprise either to the chair of the governing body or the headteacher. The LEA should always register its concern informally with the headteacher. If that does not lead to appropriate action, the concern should then be taken up with the chair of governors (see i. below on involving other governors). The LEA should always give advance warning of its intention to issue a formal report if action to secure the necessary improvement has not been forthcoming;
- c. before issuing a report, the LEA should always consider whether its concern would be better pursued through the appraisal mechanism;
- d. the Secretary of State considers that the types of concerns which might appropriately trigger the making of a report by the LEA include (but are not limited to):
 - the school has been found to need special measures or to have serious weaknesses and the LEA considers that the post-inspection action plan is seriously deficient;
 - standards of performance in National Curriculum assessments or public examinations at the school have worsened significantly for reasons attributable to the headteacher's performance;
 - the school is falling a long way short of the performance targets agreed with the LEA, or standards can be shown by analysis of benchmark information to be well below those achieved by comparable schools, for reasons attributable to the headteacher's performance;
 - there has been a pattern of repeated and serious complaints, over a period of time, from parents, staff, governors or pupils - not all stemming from the same individual or group, but from a number of people who were originally acting in isolation from each other - which have not been satisfactorily addressed through action to investigate the substance of the complaints and rectify valid causes of complaint;
 - there is significant evidence of continuing and systematic weakness in the management of the school or in its financial controls which, if not tackled, risks significant disruption to the school's operation;
- e. the Secretary of State considers that the types of concerns which would not appropriately trigger the making of a report by the LEA include (but are not limited to):
 - the headteacher has opinions, beliefs or practices about pedagogic, management or other issues to do with the conduct of a school which the LEA does not agree with, but which are within the field of legitimate professional debate and are not demonstrably damaging standards;
 - the headteacher has not co-operated with the LEA, or complied with a request from the LEA, on an issue where he or she is under no legal obligation to do so;

- although the headteacher's personality or style makes relations with the LEA difficult, there is no evidence that this is damaging standards or the satisfactory running of the school;
 - reaction by parties directly concerned to the efforts of the headteacher to tackle under performance of staff;
- f. the report should always state the grounds for the LEA's concern, and the evidence on which it is relying. In making the report, the LEA should also advise the chair of the governing body on action which it may be appropriate to take;
 - g. there is a legal requirement on the LEA to send a copy of the report to the headteacher at the same time as it is sent to the chair of the governing body. The headteacher should always have an opportunity to make representations to the chair of the governing body and to the LEA about the LEA's report. The headteacher should be allowed to be accompanied by a teacher organisation representative or "friend" at any meeting he/she attends with the governing body to discuss the LEA's report;
 - h. the chair of the governing body has a legal obligation to notify the LEA in writing of the action which he/she proposes to take in the light of the LEA's report. The chair of the governing body is not obliged to accept the LEA's report or to take any particular action indicated by the LEA. In particular, he/she is under no obligation to commence disciplinary or dismissal proceedings. However, the Secretary of State expects the chair of a governing body to take such a report very seriously, to examine carefully the LEA's reasons and evidence for raising the concern, and to give the LEA a properly considered response;
 - i. the chair of the governing body must decide whether the report should be put to and discussed by the whole governing body or a sub-committee. If there is any possibility of disciplinary action, the chair must ensure that there are sufficient governors who have not been a party to consideration of the report, available to carry out impartially the functions of any disciplinary and appeals panels. Members of these panels need not be left in complete ignorance; knowing about a situation does not constitute prejudice. The whole governing body should be informed that the LEA has issued a report and broadly the nature of the LEA's concerns, in view of their collective responsibility for the conduct of the school. However, prospective panel members should be careful not to become directly involved, either through expressing opinions or taking action which might be seen to have prejudiced their ability to hear a case fairly. They must avoid taking a view on the validity of the concern raised by the LEA and the appropriateness of any disciplinary or dismissal outcome in advance of the hearing. Where panel members receive reports or papers on a case prior to a hearing, they must take particular care not to divulge or discuss the contents with other panel members or any other persons before the hearing takes place.

Warning Notices

99. Section 15 of the 1998 Act provides for an LEA to issue a warning notice to a governing body in certain specified circumstances, namely where:

- a. standards of performance of pupils are unacceptably low and are likely to remain so unless the LEA appoints additional governors and/or suspends the school's delegated budget (see paragraphs 105-120 below); or
- b. there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or is likely to prejudice, pupils' standards of performance; or
- c. the safety of pupils or staff is threatened, whether by a breakdown of discipline or otherwise.

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

- a. the LEA has previously informed the governing body and headteacher of the matters which have caused it to conclude that one or more of the tests in paragraph 99 is met; and
- b. those matters have not been remedied to the LEA's satisfaction within a reasonable period.

101. Section 15 also requires that the warning notice must set out the matters which have caused the LEA to conclude that one or more of the tests in paragraph 99 is met, the action which the LEA requires the governing body to take to remedy those matters; and the period within which that action is to be taken by the governing body ("the compliance period").

102. The Secretary of State expects these provisions to be applied in accordance with the following principles:

- a. warning notices must only be issued in circumstances which meet one or more of the tests in paragraph 99. They are not designed as a general purpose mechanism for securing school improvement but to prevent or remedy situations which put at significant risk the standards, management or conduct of the school;
- b. sections 15 - 17 of the 1998 Act position warning notices as the step before the LEA appoints additional governors or suspends the school's delegated budget; and as indicating a situation of comparable seriousness to an inspection report which finds that the school requires special measures or has serious weaknesses;

- c. in judging whether a school meets the test of standards being unacceptably low, the LEA should have in mind the criteria which OHMCI use in identifying schools which are in need of special measures. These criteria are set out in the OHMCI inspection framework and guidance, and are summarised in Annex C. The LEA should have grounds for concluding that, if action is not taken, the school would be likely to be found to need special measures or to have serious weaknesses at its next OHMCI inspection. This power is for use where the LEA has identified problems through its normal monitoring of performance and other data. The LEA should consider, in looking at whatever evidence has caused it to conclude that a warning notice may be justified, whether that evidence meets the criteria in the OHMCI framework and guidance. This does not mean that the LEA should carry out a full inspection of the school using the OHMCI framework. However, it will usually be appropriate for the LEA to investigate its concerns more fully, by visiting the school before proceeding with the warning notice procedures;
- d. each LEA should establish the internal process to be followed before a warning notice is issued, including whether elected members should be involved prior to the issuing of a notice; and the form of reporting back to the local authority committee which deals with education matters. The issue of a warning notice must never be politically motivated;
- e. where a dispute has arisen between an LEA and a school - whether in relation to one of the specific areas covered by this Code or some other matter - the issue of a warning notice may be a suitable next step for the LEA to take. But there should be no assumption that it is appropriate to escalate matters in this way. If, for example, there is a dispute about rights of access or provision of information, a warning notice would be appropriate only if the LEA had grounds for concluding that the specific dispute was evidence of a wider problem concerning the school's operation such as to meet the tests for a warning notice in paragraph 99;
- f. the Secretary of State considers that the types of concerns which would not appropriately trigger the issue of a warning notice by the LEA include (but are not limited to):
- the school has adopted pedagogic, management or other practices which the LEA does not agree with but which are within the field of legitimate professional debate and where there is no evidence that they are damaging the school's performance or operation;
 - the school has declined to co-operate with the LEA where there is no legal obligation on them to do so or to use LEA advice and support services;
 - the school has made a decision about spending its budget or about a personnel matter which the LEA considers ill-advised, but which is within the school's discretion to take, and which does not constitute mismanagement of the budget or any breach of employment law;

- there has been a complaint about the school from an individual or from a group acting together, but there is no evidence of illegality or malpractice and the dispute relates to a decision or action which was within the school's discretion to take;
 - the LEA has a concern about what might happen in the future, even though there is no significant problem at present. The section 15 tests all relate to the present or the past - i.e. the problem raised in a warning notice must already be occurring or have occurred. This does not preclude the LEA from drawing the attention of the governing body and headteacher to issues and trends which it considers could cause problems in future if not addressed;
- g. section 15 requires the warning notice to state the "compliance period" within which the governing body should take the action required by the LEA. The appropriate length of the compliance period will vary. Where children are at risk, action needs to be immediate. The LEA should set a timescale which is challenging so that the school achieves an acceptable standard as quickly as possible but which allows the governing body sufficient time to comply with the terms of the notice;
- h. section 15 provides for warning notices to set out the action which the LEA "requires" the governing body to take. It is good practice for LEAs also to provide guidance to governing bodies on how they might comply. The governing body does not have a discretion to decide whether or not to comply; it must comply. If it fails to, the LEA is likely to have grounds (although this will depend on the circumstances of each case) for proceeding to appoint additional governors or to suspend the school's delegated budget; or the LEA could put a complaint to the Secretary of State under section 496 of the Education Act 1996 on grounds that the governing body is acting unreasonably in failing to comply, and seek a direction from the Secretary of State to the governing body.
- i. it would be open to the governing body, if it felt that the LEA had acted unreasonably in issuing the warning notice or in terms of the action or compliance period stated in the notice, to put a complaint to the Secretary of State under section 496. Where circumstances 'justified' it, the Secretary of State could issue a direction under Section 496 to the LEA that it refrain from action under Sections 16 and 17 of the 1998 Act, pending his determination of a complaint made about a warning notice under Section 15 of that Act.

103. If the governing body does not comply with a warning notice, sections 14 - 17 of the 1998 Act allow the LEA to appoint additional governors to the school's governing body; and/or to suspend the school's delegated budget.

104. There is no presumption that these steps follow automatically. The LEA needs to make a judgement whether such escalation is the appropriate way to tackle a school's failure to comply with a warning notice, or whether some other action is more likely to achieve the necessary improvement. In particular, if the school recognises that it has a problem, is working in partnership with the LEA, and is showing signs of improvement, action which the school sees as a form of penalty is unlikely to be appropriate. Also it is unlikely to be appropriate to use those powers of further intervention if:

- a. the governing body has very largely taken the action required in the formal warning notice;
- b. the governing body is close to completing the action by the end of the compliance period; or
- c. the failure to complete the action within the compliance period is attributable to reasons beyond the governing body's control which have developed since the warning notice was given.

Appointment of Additional Governors

105. Section 16 of the 1998 Act gives LEAs the power to appoint an unlimited number of additional governors to the governing body of any maintained school in specified circumstances, namely where the school:

- a. has been found by OHMCI to be in need of special measures; or
- b. has failed to respond satisfactorily to a warning notice.

106. In the case of a school requiring special measures, section 16(3) provides that, before the LEA appoints any additional governors, a period of at least 10 days must have elapsed after the Secretary of State has acknowledged receipt of the LEA's post-inspection statement of action. In the case of a school which fails to comply satisfactorily with a warning notice, the additional governors must, under section 16(2), be appointed within two months of the end of the compliance period. This is to ensure that the possibility of additional governors being appointed is not left hanging over the school for an indefinite period. If the LEA concludes that additional governors would help resolve the problem, it must act within a reasonable period to appoint them.

107. In the case of a voluntary aided school, section 16(6) enables the relevant diocese (in relation to any Church in Wales or Roman Catholic school), or whichever other body appoints the foundation governors, to appoint a matching number of additional foundation governors where the LEA has exercised its power to appoint additional governors. This is to ensure that the foundation governors can continue to hold a majority of places on the governing body. In the case of a voluntary aided school which has been found to require special measures, the diocese or other body which appoints foundation governors may appoint an unlimited number of additional governors irrespective of whether the LEA has first exercised its power to appoint additional governors.

108. In deciding whether to exercise the power to appoint additional governors, the LEA should always consider what it expects those governors to do to remedy the problem which has arisen at the school. Additional governors once appointed have no specific powers over and above those of ordinary governors. They become members of the wider governing body, with the same powers and functions, and subject to the same requirements as other governors. They are bound by the standard requirement for the governing body to act collectively, and have no power to act unilaterally unless such power is delegated to them by the governing body. Nor are they entitled to any payments as governors which are not paid to governors generally.

109. Additional governors can play a useful role if they have a particular expertise which is missing on the governing body - for example, in strategic planning or in personnel matters in cases where some restructuring of the school's staffing is needed. The additional governors may also be able to improve communication between the governing body and the LEA. LEAs may find it useful to identify a group of people who would be willing to accept such appointments, including those with experience of serving on the governing bodies of successful schools. Local governor associations may be able to help identify suitable candidates. Such additional governors are not bound by the normal rule that no-one can serve on more than two governing bodies but additional governors should not be asked to serve on more than two governing bodies unless it is clear that they will be able to devote the necessary time and energy needed to carry out their role effectively on all of them.

110. If the school's problems are wholly or partly due to divisions and factionalism on the governing body, the LEA should consider the impact of any new appointments so that they help remove, rather than reinforce, the divisions. There may be cases where the LEA, and other bodies who appoint governors, should consider whether it would be more appropriate to exercise their powers to remove the existing governors they have appointed if one or more of them is obstructing the effective operation of the governing body or is not demonstrably committed to the continuing good governance of the school.

111. In making additional governor appointments, the LEA should make clear to the appointees and to the rest of the governing body:

- a. the expertise and experience which the new governors will bring;
- b. the action which the governing body needs to take, reinforced by the new governors, to tackle the problem which has arisen;
- c. the way in which the LEA will work with the additional governors, including any specific briefing, information or backup which will be made available to them - bearing in mind the importance of not marginalising other governors, but involving all of them in the recovery action;
- d. any special terms of appointment, for example if the LEA and new governors have negotiated in advance a term of office substantially shorter than the normal 4 year term. This may be the case where the LEA expects the problem to be resolved fairly quickly and the original governing body can be relied on to consolidate and build on the improvements which have been made. But in most cases it should be assumed that the new governors will be appointed for the usual 4 year term of office.

112. The diocesan body appointing foundation governors should provide the same information in conjunction with its appointment of additional governors.

113. It will normally be good practice for the LEA, diocese or other appointing body to provide this information before the appointment is confirmed so that the governing body has an opportunity to raise any concerns about the appointment of a particular individual or their terms of appointment beforehand. Ultimately, however, the appointing body has the responsibility for deciding who to appoint and under what terms. They should endeavour to take account of any concerns raised by the governing body about the appointment, as far as is consistent with resolving the problems at the school as quickly and effectively as possible.

Suspension of Delegated Powers

114. Chapter IV of Part II of the 1998 Act includes provision for the delegation of schools' annual budgets to schools' governing bodies. As well as having the right to decide how the budget should be spent for the purposes of the school (subject only to any conditions contained in the LEA's financing scheme) the governing body of a school with a delegated budget has the power to make decisions about the appointment and dismissal of staff. LEAs have the power to suspend the governing body's right to decide how to spend its delegated budget, in cases where:

- a. they judge that the governors have been guilty of a substantial or persistent failure to comply with any delegation requirements under the LEA's scheme for the financing of its schools;
- b. they judge that the governors are not managing the delegated budget satisfactorily. Examples might include breaches of probity or a school operating with a substantial deficit which the governing body has no satisfactory plans to contain and eliminate.

When an LEA suspends delegation, the related staffing powers are also restricted.¹⁶

115. The governing body has a right to appeal to the Secretary of State against the suspension of delegation, or any decision by the LEA not to restore delegation when the suspension is reviewed once a year; and the Secretary of State may uphold or reject any such appeal.

116. At least one month's notice must be given in writing of any suspension under section 51 and Schedule 15, except in cases of gross incompetence or mismanagement or other emergency. In such a case the LEA may specify a shorter period or even give notice suspending delegation with immediate effect. The notice must specify the grounds on which the LEA proposes to suspend delegation and (if applicable) the LEA's reasons for giving less than one month's notice. Where an LEA does suspend delegation, it is able to devolve back to the governing body such decision making powers as it considers appropriate, allowing the LEA to select areas in which it needs to take decisions. For example, this allows the LEA to take direct responsibility for staffing decisions, if that is where the problem lies, while leaving the governing body to take decisions on non-staffing expenditure.

¹⁶ The form of restriction depends on the category of school. When delegation is suspended from a community, community special or voluntary controlled school, section 54 of the School Standards and Framework Act provides that the LEA may appoint, suspend and dismiss teachers and other staff at the school as the LEA thinks fit, although it must consult the governing body as it thinks fit. The exception to this is appointments of reserved teachers in voluntary controlled schools, for which the LEA must secure the consent of the foundation governors. Where delegation is suspended from the governing body of a voluntary aided, foundation or foundation special school, section 55 provides that the LEA determines the number of staff to be employed at the school; the governing body must get the LEA's consent before appointing or dismissing any teacher (other than certain teachers of religious education in schools with a religious character); and the LEA may, after consulting the governing body, give them directions requiring them to dismiss a teacher or relating to the educational qualifications of teachers to be employed at the school.

117. Under section 17 of the 1998 Act the LEA may suspend delegation in cases where:
- a. they have issued a warning notice to a school under section 15 of the 1998 Act but are of the view that the matter has not been resolved to their satisfaction; or
 - b. the school has been found by OHMCI to be in need of special measures, or to have serious weaknesses.
118. The same timescales apply as for the appointment of additional governors, that is:
- a. in the case of a special measures school, section 17(3) provides that, before suspending the budget, a period of at least 10 days must have elapsed after the Secretary of State has acknowledged receipt of the LEA's post-inspection statement of action;
 - b. in the case of a school subject to a warning notice, the budget must, under section 17(2), be suspended within two months of the end of the compliance period stated in the notice.
119. Suspension under section 17 works in the same way as a suspension for financial mismanagement, except that the school has no specific right of appeal to the Secretary of State. The Secretary of State would become involved only if the school made a complaint under Section 496 of the Education Act 1996 that the LEA was acting unreasonably in suspending delegation (including a complaint that the LEA was acting in contravention of its duty to have regard to this Code).
120. The Secretary of State considers that LEAs should use the power to suspend delegation in accordance with the following principles:
- a. suspension of delegation should only happen in exceptional circumstances. It is not a general purpose mechanism for improving school financial management or performance, but to prevent or remedy situations which put at significant risk the standards, management or conduct of the school. As with other intervention powers, how often it is appropriate to use this power will vary from LEA to LEA. If a number of schools refuse to set balanced budgets, contrary to the provisions of the LEA's scheme for the financing of its schools the LEA may have no alternative but to suspend delegation in each case;
 - b. the LEA must be clear, and must tell the school, whether it is acting under section 17 or section 51 of the 1998 Act in suspending delegation;
 - c. suspension of delegation should only be used for a constructive purpose, and the LEA should always have thought through how suspension of delegation will assist in resolving the school's problems;
 - d. the LEA should always explain the reasons which have led it to conclude that delegation should be suspended, the evidence on which it is relying in reaching that conclusion, and how it believes that suspension will help;

- e. suspension of delegation should always be seen as a transitional mechanism and never as a permanent state. The principle of school self-management means that delegation should be restored as soon as practicable and legally possible after the problem has been resolved and the governing body can be relied on to consolidate and build on the improvements which have been made;
- f. suspension of delegation should only be used as a means of creating an opportunity in which positive action can be taken, to resolve the immediate problem and ensure that it does not recur. This means that it is not enough to get someone outside the school to take decisions for a while. The school's capacity to take its own decisions must be strengthened, and the LEA should explain how that is to be done.

Breakdown of Discipline

121. Schools have the main responsibility for pupil discipline. Under section 61 of the 1998 Act, the governing body is responsible for ensuring that "policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school". It has a duty to set the framework of a school's discipline policy, within which the headteacher determines measures to be taken for promoting discipline and good behaviour.

122. The LEA has a duty under section 527A of the Education Act 1996 to prepare a behaviour support plan, setting out the arrangements it makes for pupils with behavioural difficulties, including providing advice and resources to schools. The LEA must consult the governing body and headteacher of each maintained school in its area when preparing the plan, which should incorporate performance measures by which the effectiveness of the behaviour support arrangements can be assessed.

123. LEAs have for some years had a reserve power to take whatever steps they think necessary, including giving directions to the governing body or headteacher, to prevent or put right a breakdown of discipline at a county, voluntary controlled or maintained special school. Section 62 of the 1998 Act extends this power to cover all categories of school in the new framework. LEAs may use this power where, in their opinion, the behaviour of pupils at the school or any action taken by pupils or their parents is such that:

"the education of any registered pupils at the school is (or is likely in the immediate future to become) severely prejudiced".

124. LEAs should view this as a reserve power of last resort. Many will never need to use it. No LEA should expect to use it other than extremely rarely.

125. Where any LEA believes it necessary to use this power, it should be exercised in accordance with the following principles:

- a. the power is only to be used in exceptional cases. There must be, either at the time or in immediate prospect, a breakdown of discipline at the school. "Breakdown" implies problems such that the school can no longer function in an orderly way, that staff cannot maintain discipline, that large numbers of pupils are truanting, or that the safety or welfare of pupils or staff is at risk;

- b. the LEA must, under section 62 inform the governing body in writing before it acts. In any case where there have been warning signals that a problem is developing, such a notice should not come as a surprise to the governing body, because the LEA should already have been drawing those signals to the attention of the governing body and the headteacher. But there must be no delay in any circumstances where pupils or staff may be at risk, and in such cases the LEA has a right and responsibility to act urgently;
- c. as with other intervention powers, the section 62 power should only be used for the purpose of creating an opportunity in which constructive action can be taken to resolve the immediate problem and ensure that it cannot recur. If there has been a breakdown in discipline, the internal procedures of the school will need strengthening, and the LEA should indicate the changes it believes the school should make, and any support the LEA will provide, with a view to restoring responsibility for discipline to the school as quickly as possible.

ANNEX A: SECTION 127 OF THE SCHOOL STANDARDS AND FRAMEWORK ACT 1998

"Code of practice for local education authorities and maintained schools"

(1) The Secretary of State shall issue, and may from time to time revise, a code of practice containing such practical guidance as he thinks appropriate with a view to securing effective relationships between local education authorities and the schools maintained by them -

- (a) in relation to promoting high standards of education in such schools; and
- (b) in relation to the discharge of relevant functions of such authorities in relation to such schools.

(2) In discharging their functions in relation to any maintained school, it shall be the duty of-

- (a) the local education authority,
- (b) the governing body, and
- (c) the head teacher,

to have regard to any relevant provisions of the code.

(3) Section 85 shall apply in relation to the code as it applies in relation to a code of practice under section 84¹⁷

(4) The Secretary of State shall publish the code as for the time being in force.

(5) The Secretary of State may under subsection (1) make different provision for England and Wales (whether or not by means of separate codes of practice); and references in this section to "the code" accordingly apply to any such separate code of practice.

(6) For the purposes of this section the relevant functions of a local education authority are the functions exercisable by or on behalf of such an authority under-

- (a) sections 6 and 7 (so far as they relate to schools maintained by the authority),
- (b) section 15(2),
- (c) section 16(1),
- (d) section 17(1),
- (e) section 41(3) and (4),
- (f) sections 54 and 55,
- (g) section 62(1),

¹⁷ Section 84 of the School Standards and Framework Act provides for a code of practice on school admissions. Section 85 prescribes how the Secretary of State should consult on draft versions of the code of practice and sets out the process for obtaining Parliamentary approval in order to make the code of practice statutory.

- (h) Schedules 9 and 11 (so far as they relate to the appointment and removal of LEA governors),
- (i) Schedule 13,
- (j) paragraphs 1 and 2 of Schedule 15,
- (k) Schedules 16 and 17,
- (l) section 25 of the School Inspections Act 1996,

and such other functions exercisable by or on behalf of a local education authority as the Secretary of State may determine for the purposes of this subsection."

ANNEX B: RELEVANT POWERS OF THE SECRETARY OF STATE

Education Act 1996

Sections 10 and 11: General Duty to Promote Education

1. Section 10 gives the Secretary of State a duty to promote the education of the people of England and Wales.
2. Section 11 requires the Secretary of State to exercise his powers to regulate the provision made in schools and further education institutions with a view to improving standards, encouraging diversity and increasing opportunities for choice.

Section 29: Provision of Information by LEAs

3. Section 29 requires LEAs to provide to the Secretary of State any reports, returns or other information he may require in order to exercise his functions under the Education Acts.
4. LEAs must compile information, and arrange or assist in research, in order to provide the Secretary of State with prescribed information about primary and secondary education. LEAs must also publish prescribed information about their policy and other arrangements relating to primary or secondary education.

Sections 312-336 and Schedules 26 and 27: Children with special educational needs

5. These Sections provide for the Secretary of State to issue a statutory Code of Practice on SEN to which LEAs and governing bodies must have regard. The Sections also specify general requirements of LEAs, governing bodies and headteachers regarding special education provision, set the arrangements for the identification and assessment of children with SEN, and provide for an independent Special Educational Needs Tribunal.

Sections 495, 496 and 497: Determination of Disputes, Preventing the Unreasonable Exercise of Functions, General Default Powers

6. Section 495 gives the Secretary of State the power to determine disputes between an LEA and governing body about the exercise of any power or duty of theirs under the Education Acts. It also provides for the Secretary of State to determine any dispute between two or more LEAs about which of them is responsible for the provision of education for any pupil.
7. Section 496 gives the Secretary of State the power to give whatever directions he considers expedient to an LEA or governing body about the exercise of any power or duty of theirs under the Education Acts, where he is satisfied that they have acted, or are proposing to act, unreasonably.
8. Section 497 gives the Secretary of State the power to give whatever directions he considers expedient requiring an LEA or governing body to carry out a statutory duty of theirs under the Education Acts, where he is satisfied that they have failed to discharge that duty.

Section 507: Power to Direct Local Inquiries

9. Section 507 gives the Secretary of State the power to cause a local inquiry to be held for the purpose of exercising any of his functions under the Education Acts.

Sections 537 and 538: Power to Require Information from Governing Bodies

10. Section 537 gives the Secretary of State the power to obtain prescribed information from school governing bodies, and to publish it.

11. Section 538 places a general duty on the governing bodies of all maintained schools to make such reports and returns, and give such information, to the Secretary of State as he may require to exercise his education functions.

School Inspections Act 1996

12. Section 5 provides that, when asked to do so by the Secretary of State, the Chief Inspector of Schools must:

- a. give advice to the Secretary of State on any specified matters;
- b. inspect and report on any specified school or class of school.

Education Act 1997

Section 19: School Performance Targets

13. Section 19 gives the Secretary of State the power to make regulations requiring governing bodies of maintained schools to set annual targets for pupil performance:

- a. in public examinations or National Curriculum assessments for children aged 5 - 16;
- b. in public examinations or in connection with the attainment of other external qualifications, for pupils aged 16 - 19.

14. The regulations may also require the targets, and information about the past performance of pupils in examinations, assessments or other qualifications relating to the targets, to be published.

Sections 38 - 41: Inspection of LEAs

15. Section 38 gives the Chief Inspector of Schools the power to arrange for an LEA inspection, and requires him to do so where this is requested by the Secretary of State.

16. Such inspections must consist of a review of the way an LEA is performing any of its functions relating to the provision of education for school age pupils. When requesting an inspection, the Secretary of State must specify the LEA(s) to be inspected and the functions to be covered. He must consult the Chief Inspector about the matters to be specified in his request.

17. Section 39 requires a report on each LEA inspection to be written and published. Section 40 gives inspectors rights of entry to premises and access to information for the purpose of such inspections. Section 41 provides for the Audit Commission to assist with such inspections where requested to do so by the Chief Inspector.

School Standards and Framework Act 1998

Sections 6 and 7: Education Development Plans¹⁸

18. Section 6 requires every LEA to prepare an Education Development Plan (EDP), focused on proposals for raising standards of education for pupils and improving the performance of schools.

19. Section 7 requires that all EDPs must be submitted for approval by the Secretary of State. It is open to the Secretary of State to approve the statement of proposals (wholly, in part, for a limited period or subject to conditions), require the LEA to make modifications, or reject it. If the EDP needs to be modified or is rejected, the LEA must submit a revised version.

20. The Secretary of State must keep the LEA's EDP, and progress against it, under review. His approval may be withdrawn if he thinks the statement should be modified or the proposals are not being properly implemented. Where approval is withdrawn, a revised EDP must be submitted for approval.

Section 8: Power to Secure Proper Performance of LEA Functions

21. Section 8 gives the Secretary of State power to secure the proper performance of LEA functions which relate to the provision of education for school pupils and others of compulsory school age. If the Secretary of State is satisfied that an LEA is failing in any respect to perform any such function, he may:

- a. give directions to an officer of the LEA to secure that the function is performed in such a way as to meet specified objectives; or
- b. require that the function be undertaken by a third party specified by the Secretary of State on behalf of the LEA and at their expense, in such a way as to meet specified objectives. The Secretary of State may require that any contract or other arrangement made by the authority with the third party contains certain specified terms and conditions.

Section 18: Power to Appoint Additional Governors

22. Section 18 gives the Secretary of State the power to appoint additional governors to a failing school, and to appoint one of his nominees as the chair of the school's governing body.

23. Where the Secretary of State has appointed additional governors, the LEA may not use its powers to suspend the governing body's right to a delegated budget.

¹⁸ In Wales, Education Development Plans (EDPs) are known as Education Strategic Plans (ESPs).

Section 19: Power to Direct Closure of a School

24. Section 19 gives the Secretary of State the power to direct an LEA to close a failing maintained school, as from a date specified in the direction.

Section 34 and Schedule 7: Rationalisation of School Places

25. Section 34 and Schedule 7 give the Secretary of State power to direct LEAs and school governing bodies to bring forward proposals for rationalising school places, and to make such proposals himself. These powers apply where the Secretary of State concludes that the supply of school places in a particular area is either excessive or insufficient.

Sections 45 - 48 and Schedule 14: School Budgets

26. Sections 45 to 47 empower the Secretary of State to make regulations setting the budgetary framework for schools. The regulations may in particular define the expenditure which should be included in the "general schools budget" (GSB); specify the types of expenditure which LEAs may deduct from the GSB before calculating the budgets delegated to individual schools; and lay down requirements regarding the determination of budgets.

27. Section 48 requires each LEA to prepare a "scheme" covering such issues relating to the financing of its schools as are specified in the Act itself or in regulations. When drawing up their schemes, LEAs are required to have regard to any guidance given by the Secretary of State, and the schemes must be submitted for the Secretary of State's approval.

28. If an LEA fails to submit a scheme, or the scheme submitted cannot be made acceptable by modifications, the Secretary of State may impose a scheme. Schemes must be published when they come into force and on any subsequent prescribed occasions.

Sections 52 and 53: Financial Information

29. Section 52 empowers the Secretary of State to make regulations requiring the preparation and publication by LEAs of budget and outturn financial statements in respect of their expenditure on education.

Section 53 allows the Secretary of State to direct LEAs generally, groups of LEAs, or individual LEAs, to get their financial statements, or any part of the statements, certified by the Audit Commission.

ANNEX C: SCHOOLS REQUIRING SPECIAL MEASURES

[Education Act 1993 Section 2 of (2)]

1. Consideration of whether a school needs special measures or is likely to require them, to give its pupils an acceptable standard of education should be based on the extent to which some or all of the following characteristics relating to the different sections of the Schedule are evident in the school.

Educational standards achieved

- low achievement and poor progress in the subjects of the curriculum by the majority of pupils or consistently among particular groups of pupils. This will be evident in poor examination, National Curriculum assessment and other accredited results.

Ethos of the school

- regular disruptive behaviour, breakdown of discipline or high levels of exclusions;
- significant levels of racial tension or harassment;
- poor attendance by a substantial proportion of pupils or by particular groups of pupils' or high levels of truancy.

Quality of education provided

- a high proportion of unsatisfactory teaching, including low expectations of pupils;
- failure to implement the National Curriculum;
- very poor provision for pupils' spiritual, moral social and cultural development;
- pupils at physical or emotional risk from other pupils or adults in the school;
- abrasive and confrontational relationships between staff and pupils.

The management and efficiency of the school

- ineffectiveness of the headteacher, senior management or governors;
- significant loss of confidence in the headteachers by the staff, parents or governors;
- demoralisation and disenchantment amongst staff or high levels of staff turnover or absence;
- poor management and inefficient use made of the resources, including finance, available to the school;
- poor value for money provided by the school.

2. A decision that a school requires special measures will depend on the combined weight of features. It is unlikely that one feature alone will result in such a decision, but where there is widespread and significantly poor achievement and progress, risk to pupils or the likelihood of a breakdown of discipline, the school will normally be judged to require special measures. In all such cases the headteacher and the governing body should be informed of the registered inspector's concern.

3. Where a judgement is made that the school requires special measures or is likely to need them to give its pupils an acceptable standard of education, the registered inspector has a duty to inform OHMCI and express the opinion in the report stating whether or not OHMCI agrees. Further guidance on the procedures to be followed are included in Part 2 of the Handbook.

ANNEX D

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