

LSC Statutory Intervention Policy

Policy Statement and Consultation Document

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Background and introduction

- 1 The Further Education and Training Act 2007 adds an additional clause to the Further and Higher Education Act 1992 to give the LSC powers of intervention in respect of further education corporations.
- 2 The Act further requires the LSC to prepare and publish a statement of its intervention policy with respect to the exercise of these powers and keep it under review. There will also be a requirement on the LSC to consult and to take account of representations when preparing that policy.
- 3 In June 2007, National Council discussed and approved a draft consultation and policy document. Following the approval of the document by Council, the Further Education and Training Bill was rejected by the House of Lords. To support the passage of the Bill, the Government agreed a series of commitments and further amendments. The document has been since been revised to meet these changes.
- 4 LSC National Council delegated responsibility for approval of any minor changes to Rob Wye, National Director of Strategy and Communications. Although substantial changes have not been made, the revised document reflects the commitments which are on the public record, as far as they apply to the LSC's role and how it will be discharged. Given the public nature of these commitments, it would be appropriate to present the revised document to Council for approval.

Purpose

- 5 The purpose of this paper is to seek approval by the Council, of the revised draft statutory intervention policy and consultation document.

Recommendation

- 6 The LSC Management Group has discussed the document and agreed the proposed approach. It is, therefore, recommended that:
- the Council consider, discuss and approve the intervention policy and consultation document
 - Council delegate authority to Rob Wye, National Director of Strategy and Communications to approve any further minor changes to the document that may be required prior to publication.

Key points/issues

- 7 The main commitments made by the Government to support the passage of the Bill was that the:
- Secretary of State must be notified beforehand by the LSC of any intended statutory intervention
 - LSC include in its annual report a statement summarising how it has used its statutory intervention powers.
- 8 There is little substantive change to the document, and the principles of the policy remain unaltered. Further amendments to the process of identifying and managing underperformance will be required when the Framework for Excellence is introduced. These changes will be made for the academic year 2010. They will, however, not require consultation as they will not alter the process associated with the use of the powers.
- 9 Additional changes have been made by the Council Solicitor for legal clarity and minor amendments have been made to reflect the text of wider LSC documentation.

Next Steps

- 10 The policy is also currently being considered by Ministers. As such, the policy and consultation document may require minor changes as result of editing for publication, and due to additional input from DIUS and DCSF following comment from the appropriate Ministers and Secretaries of State.
- 11 Once approved by the Secretary of State, the proposed policy will be published and a full public consultation on the policy will take place. This is expected to be in the week commencing 28 January.
- 12 Following the consultation, the LSC will consider the responses, and, as appropriate, update the proposed intervention policy. The final intervention policy will be presented to the Council, and the Secretary of State, in early 2008, for approval. Once the policy has been approved it will be laid before Parliament concurrently with wider publication.

Clearance

- 13 This paper has been cleared by Rob Wye, National Director of Strategy and Communications.

Legal implications

- 14 As is the case with all functions of the LSC, the powers of intervention will be vested in the Council. Taking into account the fact that this power will only to be exercised as a last resort when all other actions to remedy failures have failed or in cases where there is immediate, serious and exceptional risk to learners and to public funding, the decision to intervene should be taken by the Council and not delegated to a committee of the Council, Regional Councils, or to the Chief Executive.
- 15 As with all decisions taken by the LSC, the decision to intervene will potentially be subject to scrutiny by the court in the event of an application for judicial review by any institution in respect of which a decision to intervene is made. The process for making a decision to intervene is intended to minimise the risk of a successful legal challenge. It will, however, be vital that the published process is strictly followed and that it is fully and accurately documented.

Financial and resource implications

- 16 The LSC has not identified any financial or resource implications in relation to the intervention policy.

Equality and diversity implications

- 17 Initial examination by Quality Assurance team has not identified any equality and diversity implications in relation to the intervention policy. An equality and diversity impact assessment screening, with input and advice from the Equality and Diversity Team, is being performed.

Risk management

- 18 There are risks, which need to be managed. The key risk will be the failure to manage sector concerns regarding the transfer of powers. There will need to be clear communication that the utilisation of these powers will be a last resort measure.
- 19 A further potential criticism from the sector on the transfer of the powers to LSC is that it contradicts the medium to longer term shift to a self-regulating sector. Prior to the publication of the policy, it is intended the LSC will formally write to Sir George Sweeny, in his capacity as Chair of the FE Sector Self Regulation Implementation Group, asking that the group begin to consider how the proposal on self-regulation will minimise the risk of intervention by the LSC. This will occur once Council has approved the policy.

- 20 The LSC has begun early engagement with the Association of Colleges and other appropriate representative bodies to determine their role, in the 'management' of its members to prevent escalation to LSC intervention.

Communications

- 21 The Quality Assurance Team and the Press and Communications Team are working closely to develop a strategy to manage the internal and external communication needs of this work area.

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