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For action

The LSC Statutory Intervention Policy Consultation Document

Of interest to FE colleges, FE Governing Bodies, and other LSC-funded providers within the FE system.

This document sets out the LSC's approach in using its powers of intervention, including where it is required and how that intervention will operate in principle. The specific legislative powers of intervention may only be exercised in relation to further education institutions, as defined by the Further and Higher Education Act 1992, as amended by the Further Education and Training Act 2007.

January 2007

Of interest to everyone involved in delivering LSC-funded provision

[INSIDE FRONT COVER]

Further information

For further information, please contact the appropriate Learning and Skills Council office. Contact details for each office can be found on the LSC website: **www.lsc.gov.uk**.

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The consultation document should be considered and responses should be forwarded to the LSC.

[A] Chair's Foreword

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[A] Introduction

1. The White Paper 'Further Education: Raising Skills, Improving Life Chances' set out an ambitious programme of reforms to the Further Education (FE) system. The Government has designed the reforms to equip learners with high quality skills for productive, sustainable employment and personal fulfilment; and they will ensure that employers have the right skills for their business to succeed in a competitive global economy.
2. Whilst these reforms do provide new freedoms for high performing colleges, coupled with this, is the commitment, to develop more robust and speedier action to address poor performance. The Learning and Skills Council's (LSC's) aim, however, is to support the efforts of providers in continuous improvement.
3. The LSC's approach to supporting the Government commitment to eliminating underperformance was initially set out in *Identifying and Managing Underperformance* published in January 2007. This saw the introduction of minimum levels of performance and Notices to Improve. An updated version of the document was published in January 2008.
4. An FE system based on trust and autonomy requires robust intervention not only to tackle poor quality, but also to complement the activities of the sector in raising its profile and reputation. In light of these reforms, it is now not only appropriate, but also necessary, to articulate the LSC's approach to intervention.
5. This proposed intervention policy, along with *Identifying and Managing Underperformance*, sets out our approach for managing underperformance and failing providers. This policy will focus specifically on the exercise of the LSC powers of intervention set out in section 56A (s56A) of the Further and Higher Education Act 1992 (the 1992 Act) as amended by the Further Education and Training Act 2007 (the 2007 Act). It sets out when intervention may be required and how that intervention will operate in principle. These powers of intervention and the consideration of their use will be only in the most serious cases of underperformance: where a college has no capacity to improve and in those colleges where a serious risk to the delivery of education and training becomes apparent.
6. It is anticipated that the use of these powers will only occur where a college, which has not met the conditions of a Notice to Improve, and the LSC cannot agree an appropriate way forward with the governing body and they have exhausted all approaches to instigating positive change (discussed in paragraphs x to x). In exceptional circumstances, there may be cause for immediate action, where there is immediate, serious and exceptional risk to learners and to public funding, and urgent action is required (discussed in paragraphs x to x).
7. This intervention policy statement relates only to the exercise of the powers under section 56A of the Further and Higher Education Act 1992, and

only applies to an institution in England within the FE system as defined by the 1992 Act. It does not apply to any other LSC-funded provider. An overview of our actions in relation to other types of providers is available at Annex E.

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[A] Context

8. The FE system faces a significant, but achievable, set of challenges, which ultimately will lead to a truly demand-led, responsive system that delivers the drivers for economic growth and social mobility. These challenges have been clearly set out in the following:

- The Skills Strategy (2003, 2005);
- 14-19 Education and Skills White Paper (2005);
- Realising the Potential: A review of the future role of further education colleges (2005);
- Leitch Review of Skills: Prosperity for all in the Global Economy: World class skills (2006);
- FE Reform White Paper, Further Education: Raising Skills, Improving Life Chances' (2006);
- Pursuing Excellence: the National Improvement Strategy for the Further Education System (2007);
- The Framework for Excellence: How the Framework Will Work (2007).

9. To support all these changes the Government has introduced the 2007 Act, which will facilitate the appropriate, and necessary, structural changes for reform.

10. Alongside these agendas, the sector must meet the challenge of the agenda of self-regulation to take collective responsibility for its own future destiny and reputation, and thus forge a new relationship with the LSC. Self-regulation is, however, in its initial stages. Therefore, until a system of self-regulation is in place, the LSC may still need to intervene formally in a minority of cases. Even when self-regulation is in place, in some extreme cases, formal intervention may still be required.

11. The FE Sector Self Regulation Implementation Group has recently made its proposition to the Secretary of State for Innovation, Universities and Skills, regarding the further development of the self-regulatory system. The LSC intervention policy requires further consideration in light of the move towards self-regulation. As such, the LSC has written to Sir George Sweeney, as Chair of the Group, asking that its future work incorporate the consideration of a self-regulating sector in intervention. The LSC will also engage with the Association of Colleges, the Sixth Form Colleges Forum the 157 Group and the Single Voice to determine their role in supporting their members, to prevent escalation to LSC intervention.

12. Alongside work to develop self-regulation proposals, the Framework for Excellence is being developed as a single, unified framework that will assess the performance of providers, including the way in which they meet the needs of all users. For each provider, it will measure performance against the Framework and underpin the LSC's future role in identifying where intervention is necessary.

13. The LSC will review its intervention policy on a regular basis. It is anticipated that the first review will occur in 2009/10, following the publication of the second version of the Framework for Excellence. Initial work is under way to scope how the Framework will be used to inform interventions such as Notices to Improve and other serious actions relating to identifying and managing underperformance. These changes will be implemented in 2010 and will not require further consultation.

14. Thereafter, it is intended that the policy will be reviewed every four years. Until this revision occurs, intervention will continue to be triggered by the definitions outlined in section 56A of the 1992 Act and LSC actions informed by the principles outlined in paragraph 5.

16. As part of the LSC's Annual Report, the LSC will publish a statement of how it has used its powers of intervention as conferred under both the Learning and Skills Act 2000 (the 2000 Act) and the 1992 Act. The 2008/09, Annual Report will name the institutions concerned. To provide context, the statement will also detail the number of Notices to Improve issued in that year and any that remain active. The LSC will not name recipients of Notices in the Annual Report.

[A] Intervention Policy Purpose and Principles

15. The purpose of the intervention policy is to provide a public and transparent accountability framework in which the LSC will operate and to meet the requirements of section 56B (s56B) of the 1992 Act. In devising and operating its intervention policy LSC action will be underpinned by the following principles:

- intervention will occur only where necessary and the LSC would only exercise any new powers as a last resort;
- the level of intervention will be proportionate to the risk to learners and public funding;
- actions will be agreed, as far as possible, between the governing body, the Principal, the LSC, and any other appropriate bodies.

16. Intervention is just one element of wider arrangements aimed at supporting providers to address unsatisfactory provision. The actions taken to prior to formal intervention are outlined in stages 1 to 3 of this policy.

17. The LSC has developed the intervention policy as a process framework, rather than as a series of procedures. This is because it is necessary to retain an element of discretion in managing intervention because the LSC will consider each circumstance on a case-by-case basis, and so out of necessity the response to those particular circumstances will vary.

[A] The Route to Intervention

18. As outlined in *Realising the Potential* (2005: vii), Sir Andrew Foster's review of the future role of FE colleges, a staged approach to intervention is necessary. This underpins LSC activity. It is, therefore, important to have a clear understanding how decisions to intervene are arrived at. Intervention may occur at the end of a lengthy process of support and dialogue. As such, there are a series of stages leading to intervention. These are:

- the annual commissioning dialogue;
- identification of underperformance;
- support and challenge, and, as a last resort;
- intervention.

19. An overview of this process is set out in the diagram at Annex A and is explained in paragraphs x to x and Annex C. Annex B provides a more detailed description of the process as it relates specifically to invoking the use of the intervention powers. On each diagram, there are numbered boxes for ease of reference. They do not demonstrate an order of occurrence.

[B] Stage 1: Annual commissioning dialogue

20. A college corporation is, through its senior post-holders, responsible for the quality of service it offers to learners and employers. This is realised through rigorous self-assessment and quality assurance, which in turn leads to continuous improvement. These factors are fundamental aspects of the ongoing dialogue between providers and the LSC. This annual commissioning dialogue allows the LSC to discuss any concerns with the college. It also allows the college to evidence improvement and to demonstrate that it is actively managing any issues and bringing them under control.

[B] Stage 2: Identification of underperformance

22. In *Identifying and Managing Underperformance*, the LSC published its criteria taking action where underperformance is evident, the action that should follow and the support given to colleges and providers to address that underperformance. Whole college underperformance is identified by:

- Ofsted, through an inspection judgement of overall inadequate for 'Effectiveness of provision';
- the LSC, where 25% or more of a college's long and short course provision is failing to meet the published minimum levels of performance;
- the LSC, in relation to financial health and control.

21. Where underperformance is identified through one or more of the above factors, the LSC will expect the leaders of the colleges in question to act to address the situation. Underperformance in these circumstances will normally trigger the issue of a Notice to Improve to the college. This sets out the conditions that the institution is required to fulfil within a set timescale, usually within 12 months.

22. The LSC, through its regional Health and Safety Teams, will also assure itself that the provision it purchases takes place in a safe, healthy and supportive environment. If there is a risk that this cannot be guaranteed and there is a breach of the funding conditions associated with health and safety, the LSC will take the necessary steps to ensure compliance. It is anticipated that in the majority of circumstances this will apply only to some delivery areas of the college.

23. Where Health and Safety Executive (HSE) inspectors or their representatives, identify concerns with a college and issue improvement or prohibition notices, formal cautions etc. The LSC, through its regional Health and Safety Teams and Partnership Teams, will support the HSE, or enforcing authority, to ensure learner health, safety and welfare is not compromised. In either whole or partial underperformance in Health and Safety, if learners are in imminent danger, the LSC will stop funding the learning/training with immediate effect.

[B] Stage 3: Support and challenge

24. Where the LSC issues a Notice to Improve, appropriate support is put in place to help the college to make the necessary improvements. With regard to concerns relating to learner outcomes or teaching and learning, the Quality Improvement Agency (QIA) works with the LSC and the college to identify the appropriate level of support required, which may include the allocation of a quality improvement adviser or other appropriate support package that may draw on other improvement services. The college will also be able to consider feedback from any Ofsted Monitoring Visit or inspection.

25. Where there are financial concerns, the LSC will also provide improvement support. To prevent incidents of financial failure, LSC support may also be provided where a college has emerging financial issues (showing a worsening financial position) and require them to take action to improve their financial position before they reach a point where they need exceptional financial support. This approach mirrors our actions of setting improvement indicators, where a college is underperforming in a specific area of its business. This revised approach of taking action earlier, will help prevent later more serious intervention, which is often more costly and disruptive for the LSC, the college and learners.

26. The improvement period of a Notice, offers college leaders, with the appropriate level of support, the opportunity to identify and resolve problems, within a reasonable period, without the need for the LSC to intervene, through exercising its powers or the use of strategic drivers. The college is in control of its future, and as such, the college governors retain the ultimate responsibility for managing institutional affairs, meeting statutory responsibilities and improving its performance.

27. In some cases, normally by agreement with the college, earlier action may be required. The LSC, as part of a package of additional strategic support for the college, may exercise the power, under the 2000 Act, to

appoint up to two additional members of the governing body to ensure that there is sufficient progress against a Notice to Improve. This may also occur when Ofsted has declared a college's 'Leadership and management', as inadequate, but the college has not been declared overall inadequate. The aim of this action would be to avoid escalation to Stage 4, as described below in paragraphs x to x and Annex C.

28. The LSC would expect that, at the conclusion of a Notice to Improve, the majority of colleges would have addressed the underperformance identified. There, may be, however some colleges where insufficient progress is being made and which are unable to demonstrate that they have the capacity, capability and intent to bring about improvement. Evidently, the conditions of the Notice to Improve will not have been met. This would demonstrate a significant risk to learners and public funding. In most circumstances, the LSC will simply cease to fund the provision that caused the underperformance. The LSC would then consider the impact on an area of any changes in delivery and monitor the overall volume, pattern, quality and range of provision from which learners and employers can choose in each area to ensure sufficient breadth, depth and responsiveness of provision.

29. Where funding is ceased, the LSC will normally not intervene further. It will intervene, however, if the viability of the college is compromised by the withdrawal of funding. If this arises, the LSC and the governing body will discuss the financial health and long-term role of the institution. The governing body, with support from the LSC, will then determine if strategic option/s should be adopted.

30. In the majority of cases where the college has not met the conditions of a Notice to Improve, the governing body and the LSC will agree an appropriate course of action. The outcome, for example, may include formal collaboration with another institution. The transitional period will be managed by the college through a short-term post-Notice record of actions, agreed with the LSC. This period and related actions will be led by the governing body, in partnership with the LSC.

[B] Stage 4: Intervention

31. In rare cases, however, there may be occasion where a college, which has not met the conditions of the Notice to Improve, and the LSC and the governing body, cannot agree a way forward. This could result from the governing body not providing the necessary leadership to take action. Alternatively, it could be because of non-cooperation or obstruction from the college executive and/or governing body. In these circumstances and it is considered that the all the possible alternative approaches to instigating change are exhausted, the LSC may exercise its statutory powers.

32. These colleges are also likely to demonstrate one or more of the following characteristics:

- weak teaching and learning, with little or no evidence that the governing body and/or senior management team would be able to secure improvement within a reasonable period of time;
- poor financial health and little or no evidence that the governing body and/or senior management team would be able to secure improvement within a reasonable period of time;
- failures in management which result in serious and immediate risk to learner health and safety;
- serious and systemic failures in governance in the institution resulting in flawed decision making and/or breaches of the instruments and articles of governance;
- significant failure to deliver adequate quality of provision and little or no evidence that the existing governing body and/or senior management team would be able to secure improvement within a reasonable period of time.

33. The draft processes and procedures set out in this document (and illustrated at Annexes A and B) will be subject to and may be refined in light of the outcomes of an open consultation with the FE system.

34. Before exercising any of the statutory powers of intervention, under the 1992 Act, the LSC will formally write to the governing body notifying the institution of its concerns stating that it is minded to exercise its statutory powers under section 56A. The LSC's notification will set out:

- details of the action it is minded to take;
- the rationale for being minded to exercise its statutory powers under section 56A, including the reasons why any previous plans or responses by the college are not considered to be sufficient;
- relevant evidence.

If the LSC is minded to exercise its statutory powers under section 56A(10) to direct the governing body to consider dismissal procedures, it will additionally name the senior member or members of staff concerned and provide the reasons for such a direction.

35. At the beginning of this process, the LSC will also inform the Secretary of State for Innovation, Universities and Skills that it is minded to use the powers. Where the education and/or training of 16 to 19 year olds would be affected, the notification would be copied to the Secretary of State for Children, Schools and Families.

36. The letter triggers a period of up to, but not exceeding 30 working days for the governing body to make representations regarding the LSC's intention to exercise its powers. If the LSC's concerns relate to an identified post holder, the governing body, in turn, would be expected to raise the issue with the post holder, and respond to the LSC with its view within the time-period.

37. If, after considering the governing body's response, the LSC decide to proceed with intervention it will set out its reasons in writing and allow the governing body a further opportunity to respond.

38. At the end of the 30 day period, the National Council will consider whether intervention powers should be exercised. Within 10 working days of the conclusion of the period of representations, the Council will consider the recommendation of the Chief Executive and the Council Solicitor, the representations of the governing body and any relevant evidence. If the Council determine that the use of the intervention powers is appropriate, it will give notice to the Secretary of State for Innovation, Universities and Skills in accordance with s56A(4) and, if appropriate, inform the Secretary of State for Children, Schools and Families. If the Secretary of State does not raise any concerns the Council will give notice to the governing body of its decision to exercise its powers of intervention in accordance with s56A(5).

39. In the interest of protecting the interests of learners, the LSC will ensure the safeguarding of funds during this period, and during any necessary transition arrangements that may follow.

40. Where a direction to a governing body to make collaboration arrangements, within the meaning of section 166 of the Education and Inspections Act 2006 has been made, the appropriate arrangements will begin. If the direction were to consider proceedings to dismiss a post-holder, the governing body would then follow its own dismissal procedures. The LSC will not control, participate (unless as a requested witness) or interfere in that process. The governing body will be responsible for the investigation, the process and the final decision.

41. The LSC's preferred option will be not to exercise the powers, unless absolutely necessary, and where it has not been possible to resolve issues by working in partnership with the institution. However, the more serious the risk, the more robust the intervention is likely to be.

[A] Immediate Intervention

42. In exceptional circumstances, where there is immediate, serious and exceptional risk to learners and to public funding, and urgent action is required, the LSC may wish to intervene more immediately than a staged approach allows. These circumstances may include:

- evidence of serious misuse of public funds, fraud or deception;
- failures in management which result in immediate serious risk to learner health, safety and welfare or;
- evidence of a serious breakdown in employee relations within the institution, because of the misuse of authority, which threatens its ability to deliver education and training.

43. In these circumstances, there will be an urgent and direct dialogue with the governors and senior managers of the college to determine the scope and nature of any necessary action. This will be confirmed either in a formal notification of the immediate action to be taken or in a Notice to Improve, as appropriate.

44. In such circumstances, the LSC would not take action to use its powers, if the governing body is able to demonstrate that it is capable of taking action to address the concern. Where the governing body is not able to demonstrate this capability, the LSC may exercise its statutory powers of intervention following the process outlined in paragraphs x to x.

[A] The Governing Body

45. Key to preventing intervention will be authoritative and informed governing bodies that are actively involved in improving performance and raising quality. Since incorporation, the role of the governing body has been defined in the context of the stewardship of public funds allocated to the corporation for the provision of further education (and higher education) and includes responsibility for the mission, strategic direction, and quality of the corporation. There will need to be greater self-recognition, by governing bodies, of their own responsibilities where mismanagement has occurred.

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[A] Checks and Balances

46. There is a range of safeguards already in place to prevent the arbitrary use of any intervention powers by the LSC. These include the:

- Secretary of State's powers under section 56C to direct the LSC to do one or more of the actions set out in section 56A(6), where he is satisfied that the circumstances are such, that it would be appropriate for the LSC to do so; and the LSC must comply with those directions;
- Secretary of State can give LSC guidance on the intervention policy statement and consultation process under section 56B to which the LSC must have regard;
- LSC must act within its powers to give directions
- LSC will consult the sector in the development of the intervention policy to ensure that stakeholders' concerns are considered and that appropriate processes are put in place;
- use of powers will be reasonable and proportionate and would take account of the relevant circumstances in each case;
- right of the corporation to make representations having received detailed information from the LSC as to why it proposed to intervene;
- the corporation (governing body) is the employer of staff in an FE institution, and the LSC should have regard to the corporation's obligations under employment and equal opportunities legislation in the exercise of the power to give a direction to the corporation to consider the dismissal process;
- governing bodies can complain through the LSC's published complaints procedure about the LSC's administration and decisions. If complainants are not satisfied with the outcome, they have recourse to write to the Parliamentary Ombudsman or seek a Judicial Review of the decision.

[A] The Consultation

47. The consultation will last sixteen weeks and conclude on 2 May 2008. Following the consultation, the LSC will consider the responses and readjust the policy as appropriate. The LSC will publish a final version of the policy approximately four weeks after the end of the consultation period. The commencement of the relevant section of the 2007 Act conferring the powers of intervention on the LSC will be 18 April 2008.

48. If in the unlikely circumstance that the LSC seeks to use its powers under s56A in the interim period between the date of commencement and publication of the final version of the policy, the LSC will follow the processes set out in this document.

49. The LSC cannot, consult on the statutory provisions in the 1992 or 2007 Acts.

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[A] Annex A - The Route to Intervention

Stage 1 – Annual Commissioning Dialogue

1. Commissioning dialogue identifies any potential concerns, which the college addresses as part of its own quality improvement programme.

Stage 2 – Identification

2. COLLEGE IS IDENTIFIED AS UNDERPERFORMING THROUGH OFSTED INSPECTION/SUCCESS RATES/FINANCIAL HEALTH AND CONTROL

3. Is there a need to intervene immediately?

7. Yes

8. No

LSC Considers

4. Does the college have the capacity to Improve?

5. Can the college improve within an acceptable timescale? (12 months approx)

6. Does the college have the capacity to improve its financial health and/or control?

9. Yes to all questions

10. No to one or more questions

11. LSC issue Notice to Improve

Stage 3 – Support & Change

13. The College has approximately 12 months to address underperformance with support and feedback from the QIA and a range of agencies

16. Is there a risk that the college may require additional strategic support to achieve change?

12. College continues as per normal

14. Yes

15. No

17. Has the college met the conditions of the notice?

19. No

18. Yes

20. LSC provide additional support through advice or additional governance

Maximum 12 months

Stage 4 - Intervention

21. Yes

22. Has the governing body determined an appropriate course of action?

23. No

24. Can LSC & governing body agree a way

28. Yes

34. With LSC support, governing body introduces change

25. Yes

26. Is the governing body taking action?

29. No

38. Yes

27. Is the governing body cooperating?

30. No

35. LSC considers and, if appropriate, utilises legal powers

31. Yes

32. No

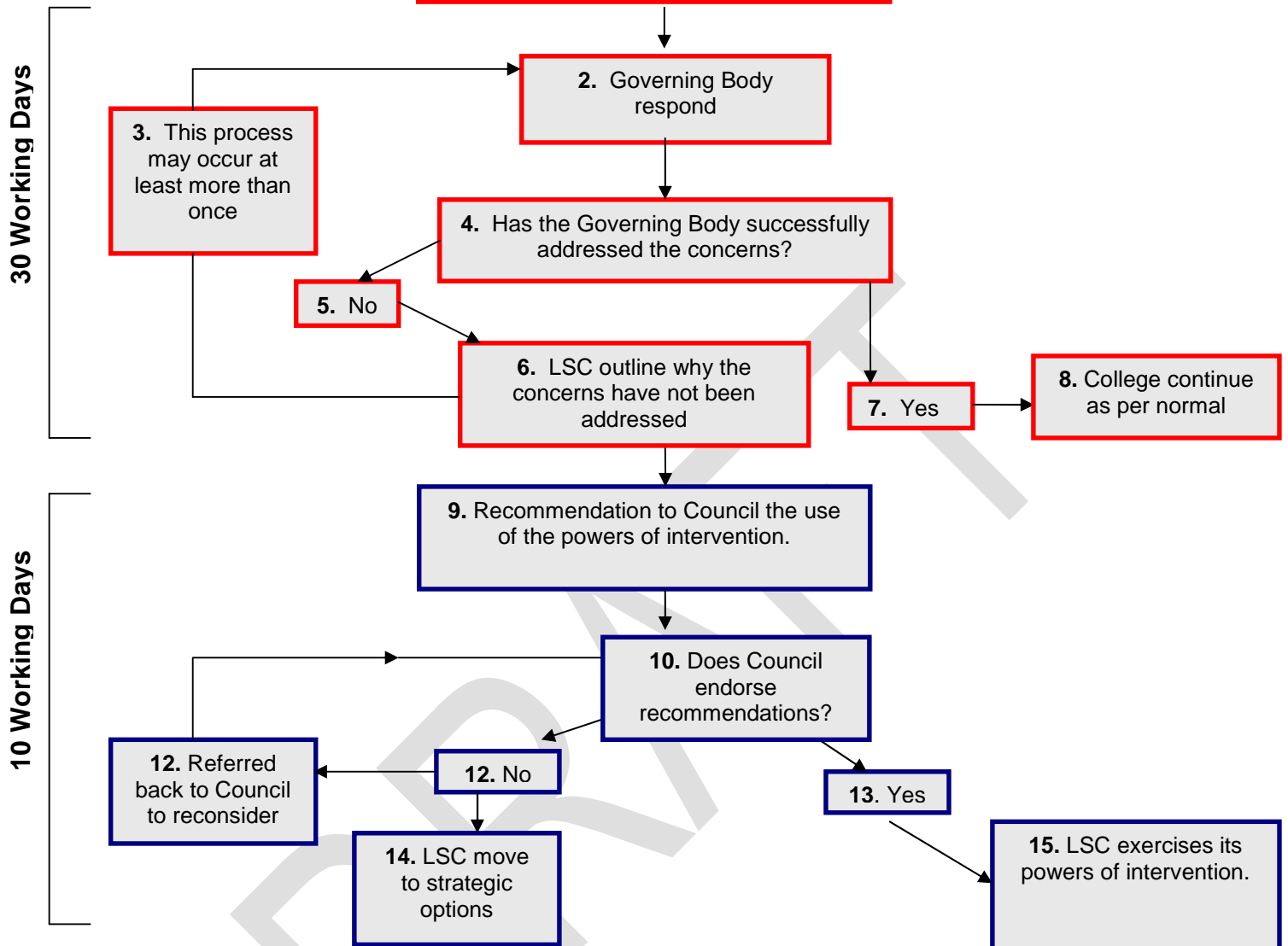
36. LSC invoke power under the 1992 Act

39. Does this lead to positive change?

40. No

33. LSC writes to governing body to inform intent to invoke power (see Annex 2)

[A] Annex B – The process for exercising powers of intervention under s 56A begins at box 33, Annex A)



[A] Annex C – The use of the powers: the decision-making process

1. The appropriate Regional Director will discuss the intention to use the powers with the Chief Executive and Council Solicitor. Upon confirmation that there is a sound legal basis for action, the Chief Executive will then write to the Secretary of State for Innovation, Universities and Skills that it is minded to use the powers of intervention under s56A of the 1992 Act.
2. If the education and training of 16 to 19 year olds is affected, the Chief Executive, at the same time, will write to inform the Secretary of State for Children, Schools and Families. DIUS and, where appropriate, DCSF officials will also be informed.
3. The Regional Director will then formally write to the governing body notifying the institution of the LSC's intent to invoke the powers, under section 56A of the 1992 Act. The letter should include the following:
 - details of the action it is minded to take;
 - the rationale for being minded to exercise its statutory powers under section 56A, including the reasons why any previous plans or responses by the college are not considered to be sufficient;
 - relevant evidence.

If the LSC is minded to direct the governing body to consider dismissal procedures, it will also name the individual or individuals concerned.

4. The date of the letter, will be that which triggers the start of the 30 working days for the period within which the institution can make representations.
5. Within five working days of receipt of the notification, the governing body must formally acknowledge receipt of the document, to the LSC, in writing. This should include confirmation of whether or not it plans to make representations to the LSC. This decision should be taken by the governing body and should not be delegated by governing body to an employee of the institution.
6. The governing body may determine that it does not intend to make representations. Where this is the case, National Council will within 20 working days of receipt of written confirmation from the governing body that it does not intend to make representations, consider whether to exercise the powers of intervention.
7. If the governing body informs the LSC that it does intend to make representations it will then have the remainder of the 30 working days to make representations supported by any relevant evidence to the LSC. The governing body should make representations as soon as possible to allow time for further clarification and dialogue. The governing body and the LSC may agree key dates in the period of representation, where evidence will be presented and considered.

8. Within 10 working days of the conclusion of the period of the National Council will consider whether to exercise the powers of intervention. The Council will consider a recommendation from the Chief Executive and the Council Solicitor and any representations made by the institution and any relevant evidence in reaching its decision.

9. If the Council determine that the use of the intervention powers is appropriate, it will give notice to the Secretary of State for Innovation, Universities and Skills. The notice must state:

- the matter or matters listed in s56A(2) as to which the Council is satisfied;
- the reasons why the Council is so satisfied;
- the actions that the Council proposes to do;
- the reasons why the Council proposes to do those actions.

10. The Council will and if appropriate, the Secretary of State for Children, Schools and Families. If the Secretary of State does not raise any concerns regarding the LSC's intended use of the powers the Council will give notice to the institution's governing body stating:

- the matter, or matters, as to which it is satisfied;
- the reasons why it is so satisfied;
- the reasons why it has decided to take the action or actions.

9. If the Secretary of State raises concerns about the LSC's use of the powers the matter will be referred back to the Council.

10. The Council may decide that to exercise the powers would be inappropriate. This decision may result from the Council's desire to receive more information, or because it is their opinion that the information presented does not support justify the use of the powers. If this occurs, the appropriate Regional Director will duly inform the governing body, within three working days of that decision. The notification of the decision taken by National Council will include the information outlined in the previous paragraph.

11. If the Council determine that to exercise, the powers would be inappropriate. The LSC will then move to alternative strategic options, as outlined in *Identifying and Managing Underperformance*.

[A] Annex D – Intervention powers of the LSC

[B] Section 11: Learning and Skills Act

1. The LSC may appoint a person to be a member of the governing body of an institution within the further education sector as defined by section 91(3) of the Further and Higher Education Act 1992 and which mainly serves the population of England.
2. No more than two members of the governing body of a given institution may at any given time have been appointed under this section.

[B] Section 56A: Further and Higher Education Act 1992 – Powers of intervention

3. This section applies if the LSC is satisfied as to one of the following matters in the case of an institution in England within the further education sector:
 - that the institution's affairs have been or are being mismanaged by the institution's governing body;
 - that the institution's governing body have failed to discharge any duty imposed on them by or for the purposes of any Act;
 - that the institution's governing body have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any Act.
 - that the institution is performing significantly less well than it might in all the circumstances reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training.
4. If the section applies the LSC may do one of the following things:
 - remove all or any of the members of the institution's governing body;
 - appoint new members of the governing body if there are vacancies however arising;
 - give to that body such directions as it thinks expedient as to the exercise of their powers and performance of their duties.
5. The directions that may be given under the section include a direction requiring a governing body to make collaboration arrangements (within the meaning of section 166 of the Education and Inspections Act 2006) with such bodies and on such terms as may be specified in the direction.
6. The LSC may not direct a governing body to dismiss a member of staff. However, where the LSC considers that it may be appropriate to dismiss a member of staff whom the governing body have power to dismiss, it may give the governing body such directions as are necessary to secure that the procedures applicable to the consideration of the case for dismissal, of that member of staff, are given effect to in relation to that member of staff.

7. Directions may be given to a governing body under this section despite any enactment making the exercise of a power or performance of a duty contingent of the body's opinion.

8. Before it takes one of the actions set out above, the LSC must give the Secretary of State a notice stating:

- the matter or matters listed in s56A(2) as to which the Council is satisfied;
- the reasons why the Council is so satisfied;
- the actions that the Council proposes to do;
- the reasons why the Council proposes to do those actions.

9. If the LSC takes one of the actions it must at the same time give the institution's governing body a notice stating:

- the matter or matters as to which it is satisfied;
- the reasons why it is so satisfied;
- the reasons why it has decided to take the action or actions.

10. A governing body must comply with any directions given to them under this section.

11. An appointment of a member of a governing body under this section shall have effect as if made in accordance with the instrument and articles of government of the institution concerned.

[B] Section 56B Intervention Policy

12. The LSC must prepare a statement of its policy with respect to the exercise of its powers under s56A. It must keep it under review and if it considers it appropriate in consequence of a review prepare a revised statement of its policy.

13. When preparing the statement or revised statement of its policy the LSC must undertake any consultation as it thinks appropriate and consider any representations made to it about the policy.

14. The Secretary of State may give the LSC guidance in relation to the preparation of and consultation on the statement of its policy and in particular in relation to the form and content of the policy. It is the duty of the LSC to have regard to any guidance given by the Secretary of State.

15. The LSC must send a copy of the statement or the revised statement prepared by it to the Secretary of State and if the Secretary of State approves it, he shall lay a copy before each House of Parliament.

16. The LSC must publish the statement or revised statement of its policy approved by the Secretary of State.

17. The LSC must have regard to the statement most recently published in exercising or deciding whether to exercise any of its powers under s56A.

[B] Section 56C - Directions

18. This section applies if the Secretary of State is satisfied as to one, or more, of the matters set out in paragraph 3 (in the case of an institution in England within the further education sector) and that the circumstances are such that it would be appropriate for the LSC to do one, or more, of the actions set out in paragraph 4.

19. In such a case, the Secretary of State may give the LSC such directions as he thinks fit as to the exercise of the LSC's powers under s56A. Where the Secretary of State gives the LSC a direction under this section he must at the same time give the LSC a notice stating the matter or matters as to which he is satisfied.

20. The LSC must comply with any direction given to it under this section and where it takes an action in compliance with the direction, it must give the institution a notice as set out in paragraph 9.

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[A] Annex E – Action by the LSC in relation to other independent providers

1. Although the statutory powers of intervention only relate to further education institutions, as defined by the Further and Higher Education Act 1992, the LSC will take action to address poor performance by all providers in receipt of LSC funds.
2. The Council will exercise its power to secure the provision of financial resources to providers of post-16 education and training and its power to impose condition in relation to that funding, to ensure that provision funded by the Council is of a high quality.
3. The LSC funds a number of providers under a contract for services, which sets out the conditions of funding. These include:
 - independent schools;
 - specialist providers for learners with learning difficulties and/or disabilities;
 - FE providers that are not colleges. These may include adult learning providers (including local authorities, former external institutions, specialist designated institutions, and third sector or voluntary and community providers);
 - any provider delivered provision funded through European Social Funding;
 - Work Based Learning providers
4. Stages 1 and 2 of the process are applicable to all LSC-funded providers, in which it has a direct relationship. At stage 3, where the LSC would normally issue a Notice to Improve to a college, the LSC, can and frequently, will consider whether to continue to contract with that provider.
5. The contract provides details about how breaches of contract should be addressed (this will depend on whether the breach is categorised as a minor or a serious breach). The contract also has clearly stated expectations relating to quality, finance and health and safety. In addition, the contract provides for either party to give three months notice to terminate the contract. The LSC can also decide not to renew a contract once an existing contract has terminated.
6. If the LSC decide to renew a contract where there are concerns about the quality of provision (normally this occurs where the provider has successfully won the provision through open and competitive tendering), improvement indicators will be set. These improvement indicators will be extremely stringent, and mirror the performance conditions that will be set under a Notice to Improve issued to a college. The one exception in place is with regard to specialist providers for learners with learning difficulties and/or disabilities. If after an Ofsted inspection judgement of inadequate, the LSC does not seek to give immediate three-month notice to terminate the contract, a Notice to Improve will be issued. This Notice mirrors those issued to FE

colleges where there is an Ofsted inspection judgement of inadequate. It is issued due to the vulnerable nature of the cohort this part of the sector serves.

7. With regard to financial intervention of contracted providers, the LSC has very limited statutory powers to offer financial support. The Secretary of State would be unlikely to consent to the LSC making a loan to a private provider to prevent it becoming insolvent. It is also not permitted to re-profile payments to private providers to give advances of funding.

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[A] Annex F – Consultation Response Form

This form is not interactive. If you wish to respond electronically, please download the form in Word format from www.lsc.gov.uk.

The information you provide in your response will be subject to the Freedom of Information Act 2000 and Environmental Information Regulations, which allow public access to information held by the LSC. This does not necessarily mean that your response can be made available to the public, as there are exemptions relating to information provided in confidence and information to which the Data Protection Act 1998 applies. You may request confidentiality by ticking the box provided, but you should note that neither this will not necessarily exclude the public right of access.

Please insert 'X' if you want us to keep your response confidential

All UK national public consultations are required to conform to the following standards:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Further information on the Code of Practice can be accessed through the Cabinet Office website:

www.cabinetoffice.gov.uk/regulation/documents/consultation/pdf/code.pdf

Name

Organisation (if applicable)

Address

If you have a query relating to this consultation, please forward your query to

Please insert 'X' in **one** of the following boxes that best describes you as a respondent.

- | | |
|--|--|
| <input type="checkbox"/> Further Education College Executive | <input type="checkbox"/> FE College Governing Body |
| <input type="checkbox"/> FE College Governing Body and Executive | <input type="checkbox"/> Further Education Institution |
| <input type="checkbox"/> Non-Governmental Body | <input type="checkbox"/> Adult Learning Provider |
| <input type="checkbox"/> School | <input type="checkbox"/> Work Based Learning Provider |
| <input type="checkbox"/> Local Authority | <input type="checkbox"/> Higher Education Institution |
| <input type="checkbox"/> Employer | <input type="checkbox"/> Representative Body |
| <input type="checkbox"/> Sectoral Body | <input type="checkbox"/> National Organisation |
| <input type="checkbox"/> Regional Body | <input type="checkbox"/> Special School/Specialist College |
| <input type="checkbox"/> Voluntary Organisation | <input type="checkbox"/> Individual |
| <input type="checkbox"/> Other (Please specify) | |

Please provide any comments on the intervention policy, its approach and principles.

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Please let us have your views on responding to this consultation (e.g. the number and type of questions; was it easy to find, understand and complete? etc.)

Thank you for taking time to respond to this consultation. Please, note we do not intend to acknowledge individual responses.

Completed questionnaires and other responses should be sent to the address shown below by 2 May **[date to be confirmed]** 2008.

Send by post to:

LSC Intervention Policy Consultation
Quality Assurance Team
LSC National Office
Cheylesmore House
Quinton Road
Coventry
CV1 2WR

Send by e-mail to: qualityassurance@lsc.gov.uk

Notes

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[BACK COVER]

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If you require this publication in an alternative format or language, please contact the LSC Help Desk: 0870 900 6800.

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