

Academy Intervention Powers

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Under the current, somewhat clunky, framework, the main intervention rights in favour of the Secretary of State (or, in practice, the Regional Directors) exist through the terms of funding agreements. The precise content of these terms varies from academy to academy and ultimately only permits the contractual enforcement option of terminating the individual academy’s funding agreement. If all state schools are to be led by academy trusts in accordance with its vision, the Government wishes to be confident that it can take efficient and robust action to intervene at trust level.

The new measures, which will override any existing terms in funding agreements, can be summarised as follows:

- **Notice to Improve (Ntl)** – trusts may recognise this language from the current Academy Trust Handbook and there are some similarities to be drawn. Under the proposed legislation, an Ntl will be issued where the relevant Regional Director (RD) believes there are significant weaknesses in management or governance, or where there has been a failure to comply with statutory legal obligations, or those under the funding agreement. The Ntl is expected to be the main mechanism for enforcing the new Academy Trust Standards. The trust will have the opportunity to make representations before an Ntl takes effect. Once issued, the Ntl will include a timeframe for improvement. Unlike a Compliance Direction (see below), an Ntl will not detail the specific improvement steps required. Whilst the Ntl is “live”, the RD will impose financial restrictions on the trust, presumably similar to the limited delegations provisions in the current Academy Trust Handbook. The Ntl will no longer have effect if the RD is satisfied the relevant issue is resolved. However if it is not satisfied with the level of improvement within the prescribed timeframe, the RD is able to take further intervention steps, including appointing an Interim Trustee Board (ITB – see further below), requiring the appointment of additional trustees or issuing a Termination Notice of the funding agreement.
- **Compliance Direction (CD)** – a CD could be issued where an academy trust has breached or is likely to breach certain legislation, its master funding agreement or any of its supplemental funding agreements. More broadly, it could be issued if the RD considers that the academy trust “has acted or is proposing to act unreasonably” in respect of any such duty. A CD will take the form of a written direction which specifies the duty in question and the action that the trust is required to take or refrain from taking. If the compliance issue is then resolved, no further action will be taken. However, where there is failure to comply with a CD, the RD would have the power to issue a Termination Notice, potentially giving notice to terminate not just an individual academy’s supplemental funding agreement, but all funding agreements across the trust.
- **Appointment of an Interim Trustee Board (ITB) or additional trustees** - there are also new intervention steps levelled directly at governance. The RD will have powers to appointment additional directors to the trust board or indeed replace the board with an ITB in certain circumstances. As well as where an Ntl has not been satisfied, the RD could use these powers where they consider that there has been a serious breakdown in the way the trust’s academies are managed or governed, or where it considers that the safety of pupils or staff at any of the academies is threatened. These grounds reflect the statutory warning notice grounds that currently apply to maintained schools and are also a contractual basis for the termination process in most existing funding agreements. There is further detail around the ITB process in the Bill, including that the RD must keep the need for the ITB under review once appointed and that the default appointment period will be one year.

- **Statutory termination powers** – the Bill transfers many of the termination rights now found in the funding agreement into statute. It also enables all of a trust’s funding agreements to be terminated where there is a concern about pupil or staff safety at any academy, or where the RD believes there has been a serious breakdown in the governance procedures or management of the academies. We expect that termination provisions will therefore largely be removed from the funding agreement itself once the Bill is in force.

The Government clearly recognises that intervention to drive improvement requires what it describes as a “menu of powers” that can be used “flexibly”. Whilst termination provisions (which, in almost all cases, means re-brokerage to another trust) remains an option under the new legislation, they will hopefully be used as a genuine last resort that can be avoided in most instances through the use of other more proportionate measures.

The new powers expand the grounds upon and, particularly, the manner in which the DfE can step in at trust level. There is a stated aim of ensuring consistency in how performance issues within trusts are dealt with, and the new Academy Trust Standards will be a guiding factor here. However, the new framework is littered with judgement calls for individual RDs, leaving room for discretion and discrepancies from region to region and trust to trust. We believe the sector would welcome further guidance on how the Government will in fact enshrine consistency and fairness when using these new powers.

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