

REGULATORY AND OTHER COMMITTEE REPORT

NAME OF COMMITTEE:	Schools' Forum
DATE OF MEETING:	10 October 2012
SUBJECT:	Schools Forum (England) regulations 2012
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IS REPORT EXEMPT?	No
IS THE REPORT CONFIDENTIAL	No

SUMMARY

The purpose of this report is to highlight recent changes to the DfE's Schools' Forum regulations. It is important that the regulations are clearly understood by all members of the Forum, including those that have recently been elected.

DISCUSSION

The Schools Forums Regulations, Guidance and Explanatory Memorandum are attached at Appendix 1.

The Schools Forums (England) Regulations 2012 (the 2012 Regulations) were laid before Parliament on 07 September 2012. The Regulations are made under the provisions of sections 47A and 138(7) of the School Standards and Framework Act 1998 (SSFA 1998) (financing of maintained schools). The 2012 Regulations revoke the Schools Forums

(England) Regulations 2010 and the regulations come into force on 1 October 2012 (Schools Forums should have been reconstituted by this date). The instrument is being made to reflect the latest policy developments in school funding.

The Schools Forums Regulations 2012, set out how the membership of schools forums should be constituted, requirements relating to meetings of forums and their proceedings and financial issues on which forums must be consulted. The main changes to these regulations relate to the membership and proceedings of Schools Forums.

Schools Forum Best Practice guidance is expected to be issued shortly.

The website link to the published material is available at: schools-forums-england-regs-2012

RECOMMENDATIONS

The Schools Forum is asked to note the contents of the report.

APPENDICES - these are listed below and attached at the back of the report.
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Appendix A - Schools Forums Regulations, Guidance and Explanatory Memorandum
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SCHOOLS FORUM REGULATIONS

1. The main changes to these regulations relate to the membership and proceedings of Schools Forums. The regulations will come into force on 1 October 2012, and Schools Forums will need to be reconstituted for this date.

Membership

2. The requirement that schools and Academies should have broadly proportionate representation according to pupil numbers in each category is maintained (**regulation 4(6)**). There is concern that the composition of Schools Forums has not changed quickly enough to reflect the pace of academy conversions. Local authorities are required to ensure their Schools Forum is compliant with this requirement based on the pupil numbers in each category as of September 2012 and that this is updated as more conversions take place.
3. There is no longer a requirement to have a minimum of 15 people on Schools Forum. Smaller authorities in particular may therefore wish to review the total size of their Schools Forum.
4. Where there is at least one maintained secondary school in an authority, at least one schools member must be a representative of a secondary school (**regulation 4(7)**). This is consistent with the arrangements for Academies, maintained nursery schools, maintained special schools and maintained Pupil Referral Units. Many authorities now have very few maintained secondary schools, so this will provide minimum representation as with other minority types of school.
5. In order to reflect their status of having a delegated budget from April 2013, where the authority maintains one or more Pupil Referral Units (PRUs) they are required to have a representative on the Schools Forum, who counts as a schools member (**regulations 4(10) and 5(2)(e)**).
6. Among the members representing maintained schools, at least one must be a representative of governing bodies and at least one must be a representative of headteachers (**regulation 4(5)**). This is a requirement of the primary legislation but has not previously been made explicit in the regulations.

Proceedings

7. There will be a restriction on local authority members and officers who are not members of the Schools Forum taking part in its meetings (**regulation 8(4)**). Participation will be limited to a Lead Member for education, children's services or resources, Director of Children's Services (or their representative), Chief Finance Officer (or their representative) or officers who are providing specific financial or technical advice to Schools Forum. Other officers will be able to participate where they are presenting a report, but their participation must be limited to their specific agenda item.
8. The Education Funding Agency (EFA) has been granted observer status at Schools Forum meetings (**regulation 8(4)(f)**). This will provide support to the local process and provide a national perspective if members think it helpful.

9. With regards to voting, the key change is with regard to the funding formulae. Only schools members (which includes mainstream schools, Academies, special schools and PRUs) and representatives of the Private, Voluntary and Independent (PVI) sector will be able to vote on the funding formulae (**regulation 8(10)**).
10. Additional requirements for the transparency of Schools Forum include holding all Schools Forum meetings in public and publishing Schools Forum papers, minutes and decisions in public areas of the local authority website (**regulations 8(2) and 8(13)**).
11. In order to reflect the complete delegation of funding for some services, the requirement to consult Schools Forums annually about arrangements for free school meals and insurance has been removed.

For further information on these regulations, please contact the Funding Reform Team at reformteam.funding@education.gsi.gov.uk .

2012 No. 2261

EDUCATION, ENGLAND

The Schools Forums (England) Regulations 2012

<i>Made</i> - - - -	<i>3rd September 2012</i>
<i>Laid before Parliament</i>	<i>7th September 2012</i>
<i>Coming into force</i> - -	<i>1st October 2012</i>

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The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 47A and 138(7) of the School Standards and Framework Act 1998⁽¹⁾:

Citation, commencement, application and interpretation

—(1) These Regulations may be cited as the Schools Forums (England) Regulations 2012 and come into force on 1st October 2012.

These Regulations apply only in relation to England.

In these Regulations—

⁽¹⁾ 1998 c.31. Section 47A was inserted by section 43 of the Education Act 2002 (c.32) and has been amended by paragraph 7 of Schedule 16 to the Education Act 2005 (c.18); paragraphs 2(1), (3) and (4) of Schedule 5 and Part 6 of Schedule 18 to the Education and Inspections Act 2006 (c.40); section 165 of and Schedule 2 to the Education and Skills Act 2008 (c.25), section 194 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) and S.I. 2010/1158. For the meaning of “prescribed” and “regulations” see section 142(1) of the School Standards and Framework Act 1998.

“the Act” means the School Standards and Framework Act 1998;

“Academies member” means a member who represents the proprietors of the Academies situated in the authority’s area;

“authority” means the local authority in whose area the schools forum is established;

“early years providers” means—

persons who are registered as early years childminders or other early years providers under Chapter 2 of Part 3 of the Childcare Act 2006⁽²⁾ (which provides for the compulsory registration of persons providing early years provision) or are exempt from compulsory registration by order of the Secretary of State under section 33(2) or 34(3) of that Act,

independent schools, and

non-maintained special schools,

who provide early years provision;

“early years provision” has the meaning given by section 20 of the Childcare Act 2006;

“executive member” means any elected member of the authority appointed to the executive of that authority;

“governor” includes any interim executive member of an interim executive board constituted in accordance with paragraph 2 of Schedule 6 to the Education and Inspections Act 2006⁽³⁾;

“nursery school” means a nursery school maintained by the authority;

“primary school” means a primary school maintained by the authority;

“representative” means either a head teacher or a senior member of staff representing a head teacher or a governor of a school maintained by the authority, save for in regulation 8 where it means a representative of the positions mentioned in that regulation;

“school” means a school maintained by the authority;

“school category” means one of the following categories of school—

community schools,

foundation schools,

voluntary aided schools,

voluntary controlled schools,

as described in Chapter 1 of Part 2 of the Act;

“secondary school” means a secondary school maintained by the authority;

“senior member of staff” means a principal, deputy head teacher, bursar or other person responsible for the financial management of the school;

“special school” means a community special school or a foundation special school.

In these Regulations, a reference to a governing body does not include a reference to the temporary governing body of a new school and a reference to a governor does not include a reference to a member of the temporary governing body of a new school, where “new school” has the meaning given by section 72(3) of the Act⁽⁴⁾.

Revocation

The Schools Forums (England) Regulations 2010⁽⁵⁾ are revoked.

⁽²⁾ 2006 c.21.

⁽³⁾ 2006 c.40.

⁽⁴⁾ Section 72(3) was amended by section 215(1) of, and paragraph 106 of Schedule 21 to, the Education Act 2002.

⁽⁵⁾ S.I. 2010/344, amended by S.I. 2010/1172.

Constitution of schools forum

Every authority must ensure that the schools forum for their area is constituted in accordance with regulations 4 to 7 by 1st October 2012.

Membership: general

—(2) Subject to the following paragraphs of this regulation, an authority may determine the size and composition of their schools forum and the forum members' terms of office.

A forum must comprise—

schools members elected in accordance with regulation 5;

if there are any Academies in the authority's area, at least one Academies member elected or selected in accordance with regulation 6; and

non-schools members appointed in accordance with regulation 7.

If, for any reason, an election for a schools member under regulation 5(1) or an Academies member under regulation 6(1) does not take place by any date set by the authority or any such election results in a tie between two or more candidates, the authority must appoint the schools member or Academies member to their schools forum instead.

Schools members and Academies members must together comprise at least two thirds of the membership of the forum.

At least one member must be a representative of the governing bodies of maintained schools and at least one member must be a representative of the head teachers of such schools.

Subject to paragraphs (7) to (10), primary schools, secondary schools and Academies must be broadly proportionately represented on the forum, having regard to the total number of pupils registered at them.

Where the authority maintain one or more secondary schools, at least one schools member must be a representative of a secondary school.

Where the authority maintain one or more special schools, at least one schools member must be a representative of a special school.

Where the authority maintain one or more nursery schools, at least one schools member must be a representative of a nursery school.

Where the authority maintain one or more pupil referral units, at least one schools member must be a representative of a pupil referral unit⁽⁶⁾.

An authority may determine that the number of members representing schools in a particular school category must be broadly proportionate to the total number of schools in that category when compared with the total number of schools.

A forum member remains in office until—

the member's term of office expires;

the member ceases to hold the office by virtue of which the member became eligible for election, selection or appointment to the forum;

the member resigns from the forum by giving notice in writing to the authority; or

in the case of a non-schools member, the member is replaced by the authority, at the request of the body which the member represents, by another person nominated by that body

whichever comes first.

The authority must maintain a written record of the composition of their forum, to include—

the number of schools members and by which group or sub-group they were elected;

the number of Academies members; and

the number of non-schools members, their terms of office, how they were chosen and whom they represent.

⁽⁶⁾ "Pupil referral units" has the meaning given in section 19(2B) of the Education Act 1996.

Schools members

—(3) Schools members must be elected to the schools forum by the members of the relevant group, or sub-group, in the authority's area.

The groups are—

- representatives of nursery schools, where there are any such schools in the authority's area;
- representatives of primary schools other than nursery schools;
- representatives of secondary schools;
- representatives of special schools, where there are any such schools in the authority's area; and
- representatives of pupil referral units, where there are any such schools in the authority's area.

Each group referred to in paragraph (2) may consist of one or more of the following sub-groups—

- where the authority exercises its discretion under paragraph (4)(a), representatives of head teachers of schools in each group;
- where the authority exercises its discretion under paragraph (4)(b), representatives of governors of schools in each group;
- where the authority exercises its discretion under paragraph (4)(c), representatives of head teachers and governors of schools in each group.

The authority may determine that a certain number of representatives of each group must be—

- head teachers or head teachers' representatives;
- governors; or
- head teachers or head teachers' representatives and governors.

Academies members

—(4) Academies members must be elected to the schools forum by the proprietors of the Academies in the authority's area.

Where there is only one Academy in the authority's area, the proprietor of the Academy must select the person who will represent them on the schools forum.

Non-schools members

—(5) The authority must appoint non-schools members to their schools forum comprising—
one or more persons to represent the local authority 14-19 partnership⁽⁷⁾; and
one or more persons to represent early years providers.

Subject to paragraph (3) and regulation 4(4), the authority may appoint additional non-schools members to their forum to represent the interests of other bodies.

Prior to making any appointment under paragraph (2), the authority must consider whether the following bodies should be represented on their forum—

- the Diocesan Board of Education for any diocese any part of which is situated in the authority's area;
- the Bishop of any Roman Catholic Diocese any part of which is situated in the authority's area;
- where there are any schools or Academies within the authority's area that are designated under section 69(3) of the Act⁽⁸⁾ as having a religious character (other than Church of England or Roman Catholic schools), the appropriate faith group in respect of any such school or Academy.

⁽⁷⁾ Section 85(2) and (3) of the Education and Skills Act 2008 (c.25) requires local authorities to include arrangements in respect of 14-19 education and training, in their local collaboration arrangements under section 10 of the Children Act 2004 (c.31).

⁽⁸⁾ Section 69(3) also applies to independent schools (which includes Academies) by virtue of section 124B, which was inserted by regulations 2 and 3 of S.I. 2003/2037.

The authority may not appoint any executive member or relevant officer of the authority to their forum as a non-schools member.

Within one month of the appointment of any non-schools member, the authority must inform the governing bodies of schools maintained by them and of Academies within their area of the name of the member and the name of the body that member represents.

In this Regulation “relevant officer” means—

- the director of children’s services of the authority,
- any officer employed or engaged to work under the management of the director of children’s services, other than one who directly provides education to children or who manages such a person, or
- any officer whose work involves management of, or advice on, school funding.

Meetings and proceedings of schools forum

—(6) The schools forum must meet at least four times a year.

All meetings of the schools forum must be public meetings.

The meetings are quorate if at least two fifths of the total membership is present at the meeting.

The following persons may speak at meetings of the forum, even though they are not members of the forum-

- the director of children’s services at the authority or their representative;
- the chief finance officer at the authority or their representative;
- any elected member of the authority who has primary responsibility for children’s services or education in the authority;
- any elected member of the authority who has primary responsibility for the resources of the authority;
- any person who is invited by the forum to attend in order to provide financial or technical advice to the forum;
- an observer appointed by the Secretary of State; and
- any person presenting a paper or other item to the forum that is on the meeting’s agenda, but that person’s right to speak shall be limited to matters related to the item that the person is presenting.

The members of the forum must elect a person as chair from among their number and determine the chair’s term of office.

The members of the forum may not elect as chair any member of the forum who is an elected member or officer of the authority.

The chair of the forum must decide upon an agenda for the meeting of the forum following consultation with members of the forum.

The authority must make arrangements to enable substitutes to attend and vote at meetings of the forum on behalf of schools members, Academies members and non-schools members, in consultation with members of the forum.

Apart from as provided for by paragraph (10) all members are entitled to vote on all matters put to a vote.

Non-schools members, other than those who represent early years providers, must not vote on matters relating to the formulae to be used by the local authority to determine the amounts to be allocated to schools and early years providers in accordance with regulations made under sections 47 and 47ZA of the Act.

Subject to paragraphs (8) to (10), the members of the forum may determine their own voting procedures.

The proceedings of the forum are not invalidated by—

- any vacancy among their number;
- any defect in the election or appointment of any member; or
- any defect in the election of the chair.

The authority must promptly publish all papers considered by the forum and the minutes of their meetings on their website.

Consultation on contracts

The authority must consult the schools forum on the terms of any proposed contract for supplies or services (being a contract paid or to be paid out of the authority's schools budget⁽⁹⁾) where the estimated value of the proposed contract is not less than the threshold which applies to the authority for that proposed contract pursuant to regulation 8 of the Public Contracts Regulations 2006⁽¹⁰⁾ at least one month prior to the issue of invitations to tender.

Consultation on financial issues

—(7) The authority must consult the schools forum annually in respect of the authority's functions relating to the schools budget, in connection with the following—

- arrangements for the education of pupils with special educational needs;
- arrangements for the use of pupil referral units and the education of children otherwise than at school;
- arrangements for early years provision;
- administrative arrangements for the allocation of central government grants paid to schools via the authority.

The authority may consult the forum on such other matters concerning the funding of schools as they see fit.

Information about consultations

The schools forum must inform the governing bodies of schools maintained by the authority of any consultation carried out by the authority under regulation 9 or 10, as soon as it reasonably can.

Charging of schools forum's expenses

The authority must pay the expenses of the schools forum and charge those expenses to the schools budget.

Members' expenses

The authority must reimburse all reasonable expenses of members in connection with their attendance at meetings of the forum and charge those expenses to the schools budget.

3rd September 2012

Jonathan Hill
Parliamentary Under Secretary of State
Department for Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Schools Forums (England) Regulations 2010.

⁽⁹⁾ "Schools budget" has the meaning given in section 45A(2) of the Schools Standards and Framework Act 1998.

⁽¹⁰⁾ S.I. 2006/5.

Regulations 3 to 8 provide for the constitution of a schools forum in every local authority in England, including the election of schools members, the election or selection of Academies members and the appointment of non-schools members to the schools forum, their meetings and proceedings. The restriction on non-schools members voting, and the Secretary of State observer status, are new.

Regulations 9 to 11 require the authority to consult their schools forum before entering into certain types of contract and annually in relation to a range of financial issues and the governing bodies of schools maintained by them to be informed of any such consultation.

Regulations 12 and 13 require the authority to pay the expenses of their schools forum out of the schools budget and the reasonable expenses of its members.

An impact assessment has not been produced for this instrument as no impact on the private sector or civil society organisations is foreseen. The impact on the public sector is minimal.

EXPLANATORY MEMORANDUM TO
THE SCHOOLS FORUMS (ENGLAND) REGULATIONS 2012
2012 No. 2261

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Schools Forums (England) Regulations 2012 (the 2012 Regulations) set out how the membership of schools forums should be constituted, requirements relating to meetings of forums and their proceedings and financial issues on which forums must be consulted.

2.2 The 2012 Regulations revoke the Schools Forums (England) Regulations 2010.

2.3 To a degree, the 2012 Regulations re-enact provisions in the Schools Forums (England) Regulations 2010 (the 2010 Regulations) but there are some substantive changes relating to the proceedings of the forum.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 These Regulations are made under the provisions of sections 47A and 138(7) of the School Standards and Framework Act 1998 (SSFA 1998) (financing of maintained schools). The instrument is being made to reflect the latest policy developments in school funding.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Following two previous consultations, Ministers announced on 26 March 2012 that there would be reforms to the school funding system from the 2013-14 financial year and that these would include changes to the schools forums regulations.

7.2 Responses to the previous consultations had shown concerns that some forums were not operating sufficiently transparently and were too large to enable effective discussion. Ministers decided that regulations should be changed to improve confidence in the workings of forums.

7.3 One of the key changes announced was that forum meetings should be held in public, like Council committees, and that papers and minutes should be published promptly on local authority websites.

7.4 In response to concerns that some forum meetings were too dominated by local authority representatives, the decision was made that local authority participation in forum meetings should be restricted to the director of children's services, chief finance officer or their representatives, and to the elected members with responsibility for children's services, education or resources. It was also decided that non-schools members of the forum, with the exception of those representing early years private, voluntary and independent providers, would not be able to take part in votes on the funding formulae.

7.5 It was also announced that the requirement to have a minimum 15 members on the forum would be removed.

7.6 The final decision was that the Secretary of State would be able to appoint an observer to attend schools forum meetings. The purpose of this is to support local decision-making through providing a national perspective, particularly where forum members consider this helpful or if there were concerns about the running of the forum.

7.7 Most of the proposals in the draft regulations reflected these decisions which had previously been announced. There were, however, two new proposals. The first suggested that Pupil Referral Units (PRUs) should have separate representation on forums, as they will have delegated budgets from April 2013.

7.8 The second new proposal was that local authorities should no longer have to consult forums on arrangements for free school meals and insurance, as these budgets will have to be delegated from April 2013.

7.9 Ministers have also announced that they will consider making further changes in the future to the operation of schools forums, which may include setting a maximum cap on the number of members, significant reduction or removal of non-schools members and requiring an independent secretariat to service schools forums.

8. Consultation outcome

8.1 Consultation on the Schools Forum Regulations 2011 lasted from 13 June to 11 July 2012. The consultation period was short because most of the changes to the regulations had already been announced following previous school funding consultations.

8.2 There were 49 responses - 32 from local authorities, 7 from trades unions, 8 from national bodies, 1 from a local partnership and 1 from the public.

8.3 Within the 49 responses, there were 104 comments. 36 of these related to the decisions already announced in March and a further 19 to unamended provisions carried over from the 2010 regulations. No action is proposed in relation to these as they relate to decisions already made or will be considered as part of a future review of forums.

8.4 There were four comments relating to the representation of Pupil Referral Units. One was supportive, one disagreed with the proposal while the others had concerns over timing or identifying a representative. As PRUs will be directly affected by the funding reforms, it is proposed to go ahead with this proposal.

8.5 There were 23 comments proposing greater clarity in the regulations. Most of these were operational issues and these will be considered in the updated guidance which will be published with the regulations.

8.6 There were 11 comments relating to the specific drafting of the regulations. Most were technical drafting amendments, but there was one substantive proposal. This suggested that maintained secondary schools should be entitled to representation if there is at least one in the local authority. The large number of Academy conversions in some areas means that maintained secondaries might not be entitled to a member under a proportionate calculation. This change would be consistent with the position of Academies, and maintained special and nursery schools.

8.7 There were seven comments relating to membership, particularly the balance between phases within Academies members. These will be considered at a future review.

8.8 Four comments related to the timescale for the consultation and implementation of the new regulations.

9. Guidance

9.1 An updated guidance note is to be sent to all local authorities outlining the changes, together with the Regulations, and these will be published on the Department for Education website www.education.gov.uk.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is that local authorities must comply with these Regulations when operating their schools forums and that they will, in particular, need to ensure that meetings of schools forums are held in public and that papers and minutes are published on their website. The evidence, however, from discussions with local authorities is that most already do so.

10.3 An Impact Assessment has not been prepared for this instrument, but an Equality Impact Assessment was produced alongside the consultation documents published on 26 March 2012 and 28 June 2012. The Impact Assessment can be accessed here:

<http://media.education.gov.uk/assets/files/pdf/s/school%20funding%20equia.pdf>

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The regulatory framework will be considered as part of the continuing review of school funding and potential movement towards a future national funding formula.

12.2 The changes will be monitored through the usual contact which the Funding Reform Team within the Department for Education has with schools and local authorities. It will log and review any correspondence from schools and local authorities relating to the instrument.

12.3 The Secretary of State has the power to appoint observers to schools forums and they will also be able to monitor the implementation of the instrument.

13. Contact

Keith Howkins at the Department for Education Tel: 020 7227 5163 or email: keith.howkins@education.gsi.gov.uk can answer any queries regarding the instrument.