



To: Directors of Children's Services in
Local Authorities in England,
Chairs of Schools Forums and the organisations
listed in the Annex to this letter

Email: Margaret.judd@dcsf.gsi.gov.uk

5 June 2009

Dear Colleagues,

**CONSULTATION ON THE SCHOOLS FORUMS (ENGLAND)
REGULATIONS 2009**

The Department is today launching a consultation on the new Schools Forums (England) Regulations 2009.

The main purpose of the draft regulations is to give effect to the government's recent legislation and policy developments. As such, one of the proposed changes is to bring academies into membership of the forum. These draft regulations replace the Schools Forums Regulations 2002 as already amended by the Schools Forums (Amendment) Regulations 2004, 2005, and 2008, and have been re-written for clarity.

We would also like to consult on making the representation of early years PVI providers more effective, and on giving local authorities the option of changing the composition of their schools members of Schools Forums to reflect locality working, from 2011. Additional questions seeking views on these subjects have been added to the accompanying notes.

The draft regulations and accompanying notes for consultation are available at www.teachernet.gov.uk/schoolfundingframework/. The notes ask for consultation responses to be sent to Schools.Forums@dcsf.gsi.gov.uk by Friday 28 August 2009. Please also send any queries on the draft regulations or the additional consultation questions to the same mailbox.

Yours sincerely

Margaret Judd
School Funding Policy Adviser

Consultation on draft Schools Forums (England) Regulations 2009

Organisations invited to respond

Association of the Directors of Children's Services
Local Government Association
London Councils
Association of School and College Leaders
Association of Teachers and Lecturers
NASUWT
National Association of Head Teachers
National Union of Teachers
Professional Association of Teachers
GMB
TGWU
Unison
Independent Academies Association
Academies Finance Directors Forum
National Association of School Business Management
National Governors Association
Foundation and Aided Schools National Association
National Association of Special Schools
SEN Consortium
National Childminding Association
National Day Nurseries Association
Pre-School Learning Alliance
14-19 Partnerships
Audit Commission
Chartered Institute of Public Finance and Accountancy
General Teaching Council for England
Health and Safety Executive
Learning and Skills Council
National College of School Leadership
Ofsted
Training and Development Agency for schools
Communities and Local Government
Welsh Assembly
Association of Muslim Schools UK
Board of Deputies of British Jews
Catholic Education Service
Church of England
Churches Together in England
Free Churches
Greek Orthodox Archdiocese of Thyateira & Great Britain
Hindu Council UK
Hindu Forum of Britain
I-Foundation

Jewish Community Schools Advisory Board
Leo Baeck College
Methodist Church
Movement for Reform Judaism
Muslim Council of Britain
Network of Sikh Organisations
Quakers
Seventh Day Adventist Church
UK Islamic Education WAQF / Muslim Education Forum
Union of Orthodox Hebrew Congregations
United Synagogues Agency of Jewish Education

CONSULTATION DRAFT

STATUTORY INSTRUMENTS

2009 No. xxxx

EDUCATION, ENGLAND AND WALES

The Schools Forums (England) Regulations 2009

Made - - - - *xxxx 2009*

Laid before Parliament *xxxx 2009*

Coming into force - - *xxxx 2009*

In exercise of the powers conferred by sections 47(1) and 47A of the School Standards and Framework Act 1998(a) the Secretary of State for Children, Schools and Families makes the following Regulations:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Schools Forums (England) Regulations 2009 and come into force on [... 2009].

(2) These Regulations apply only in relation to England.

(3) In these Regulations—

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

“Academy” means an independent school funded by the Secretary of State under section 482 of the Education Act 1996(b);

“Academies member” means a member who represents the governing bodies or head teachers of the Academies situated in the authority’s area;

“authority” means the local education authority;

“early years providers” means—

(a) persons who are registered as early years childminders or other early years providers under Chapter 2 of Part 3 of the Childcare Act 2006(c) (which provides for the compulsory registration of persons providing early years provision);

(b) independent schools; and

(c) non-maintained special schools,

who provide early years provision;

“early years provision” has the meaning assigned to it in section 20 of the Childcare Act 2006;

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

(a) 1998 c.31. Section 47A was inserted by section 43 of the Education Act 2002 (c.32), and has been amended by section 101 of, and paragraph 7 of Schedule 16 to, the Education Act 2005 (c.18); sections 57 and 184 of, and paragraphs 2(1), (3) and (4) of Schedule 5 to and Part 6 of Schedule 18 to, the Education and Inspections Act 2006 (c.40) and by sections 165 and 169 of and Schedule 2 to the Education and Skills Act 2008 (c.25).

(b) Section 482 of the Education Act 1996 was substituted by section 65 of the Education Act 2002.

(c) 2006 c.21 .

“head teacher’s representative” means a senior member of staff representing a head teacher;
“local authority 14-19 partnership” means an arrangement made by a local education authority to promote co-operation between itself, the Learning and Skills Council for England^(a) and any other relevant person in the area who exercises functions in relation to, or is engaged in activities relevant to, the provision of education and training for 14-19 year olds;

“primary school” means a primary school maintained by the [relevant] authority;

“relevant officer” means—

- (d) the director of children’s services of the authority; or
- (e) any officer employed or engaged to work under the management of the director of children’s services, other than—
 - (i) one who directly provides education to children or who manages such a person; or
 - (ii) a school improvement partner;

“representative” means either a head teacher or head teacher’s representative or a governor of a school maintained by the [relevant] authority;

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

- (f) community schools,
- (g) foundation schools,
- (h) voluntary aided schools,
- (i) voluntary controlled schools,

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

“school improvement partner” means a person appointed by the authority under section 5 of the Education and Inspections Act 2006^(b);

“secondary school” means a secondary school maintained by the [relevant] 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.

(4) 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.

Revocations and saving

2. The following Regulations are revoked—

- (a) the Schools Forums (England) Regulations 2002^(c);
- (b) the Schools Forums (England) (Amendment) Regulations 2004^(d);
- (c) the Schools Forums (England) (Amendment) Regulations 2005^(e); and
- (d) the Schools Forums (England) (Amendment) Regulations 2008^(f).

(a) The Learning and Skills Council for England is a body corporate established by section 1 of the Learning and Skills Council Act 2000 (c.21).

(b) 2006 c.40.

(c) S.I. 2002/2114.

(d) S.I. 2004/447.

(e) S.I. 2005/3209.

(f) S.I. 2008/47.

Constitution of schools forum

3. Every authority must ensure that the schools forum for their area is constituted in accordance with regulations 4 to 7 by [1st January 2010].

Membership: general

4.—(1) 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.

(2) A forum must consist of at least 15 members, comprising schools members elected in accordance with regulation 5, Academies members (if any) elected or selected in accordance with regulation 6 and non-schools members appointed in accordance with regulation 7.

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

(4) Subject to paragraphs (5) to (8), primary schools, secondary schools and Academies must be proportionately represented on the forum, having regard to the total number of pupils registered at them.

(5) Where the [relevant] authority maintain one or more special schools, at least one schools member must be a representative of a special school.

(6) Where the [relevant] authority maintain one or more nursery schools, at least one schools member must be a representative of a nursery school.

(7) Where there are one or more Academies situated in the [relevant] authority's area, there must be at least one Academies member.

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

(9) A forum member shall remain in office until—

- (a) the member's term of office expires;
- (b) the member ceases to hold the office by virtue of which the member became eligible for election or appointment to the forum;
- (c) the member resigns from the forum by giving notice in writing to the [relevant] authority; or
- (d) 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.

(10) The [relevant] authority must maintain a written record of the composition of their forum, to include—

- (a) the numbers of schools members and by which group or sub-group they were elected;
- (b) the number of Academies members and whether they were elected under regulation 6(1) or selected under regulation 6(2); and
- (c) the number of non-schools members, their terms of office, how they were chosen and whom they represent.

Schools members: election and eligibility

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

(2) The groups are—

- (a) representatives of maintained nursery schools, where the authority maintains any such school;

- (b) representatives of maintained primary schools other than maintained nursery schools;
 - (c) representatives of maintained secondary schools; and
 - (d) representatives of special schools, where the authority maintains any such school.
- (3) Each group referred to in paragraph (2) may consist of one or more of the following sub-groups—
- (a) where the authority exercises its discretion under paragraph (4)(a), representatives of head teachers of schools in each group;
 - (b) where the authority exercises its discretion under paragraph (4)(b), representatives of governors of schools in each group;
 - (c) where the authority exercises its discretion under paragraph 4(c), representatives of head teachers and governors of schools in each group;
 - (d) where the authority exercises its discretion under regulation 4(8), representatives of the particular school category.
- (4) The authority may determine that a certain number of representatives of each group must be—
- (a) head teachers or head teachers’ representatives;
 - (b) governors; or
 - (c) head teachers or head teachers’ representatives and governors.

Academies members: election

6.—(1) Academies members may be elected to the schools forum by the governing bodies of the Academies in the authority’s area.

(2) Alternatively, the governing body of each Academy may take turns in selecting a member for one year at a time, in the order in which each Academy was opened and, where two or more Academies open on the same day, selection must be in alphabetical order of the name of the Academy.

Non-schools members: appointment and eligibility

7.—(1) The [relevant] authority must appoint non-schools members to their schools forum comprising—

- (a) one or more persons to represent the local authority 14-19 partnership; and
- (b) one or more persons to represent early years providers.

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

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

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

(4) The authority may not appoint any of the following to their forum as non-schools members—

- (a) any executive member or relevant officer of the authority;

- (b) any representative of the Learning and Skills Council for England or the regional learning and skills council^(a).

(5) Within one month of the appointment of any non-schools member, the [relevant] 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.

Meetings and proceedings of schools forum

8.—(1) The schools forum must meet at least four times per academic year and shall be quorate if at least forty per cent of the total membership is present at a meeting.

(2) The regional learning and skills council may nominate an observer who may attend all meetings of the forum.

(3) Any elected member or officer of the authority who is not a member of the forum may attend and speak at meetings of the forum.

(4) Subject to paragraph (5), the members of the forum must elect a person as chair from among their number and determine the chair's term of office.

(5) 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.

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

(7) The proceedings of the forum shall not be invalidated by—

- (a) any vacancy among their number;
- (b) any defect in the election or appointment of any member; or
- (c) any defect in the election of the chair.

(8) The [relevant] authority must make arrangements for 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.

Consultation on contracts

9. The [relevant] 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 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^(b)) at least one month prior to the issue of invitations to tender.

Consultation on financial issues

10.—(1) The [relevant] authority must consult the schools forum annually in respect of the authority's functions relating to the schools budget, in connection with the following—

- (a) arrangements for the education of pupils with special educational needs;
- (b) arrangements for the use of pupil referral units and the education of children otherwise than at school;
- (c) arrangements for early years provision;
- (d) arrangements for insurance;
- (e) administrative arrangements for the allocation of central government grants paid to schools via the authority;

(a) The regional learning and skills councils are committees established by the Learning and Skills Council for England under section 18A of the Learning and Skills Act 2000, as inserted by section 2 of the Further Education and Training Act 2007 (c.25).

(b) S.I. 2006/5.

(f) arrangements for free school meals.

(2) The [relevant] authority may consult the forum on such other matters concerning the funding of schools as they see fit.

Information about consultations

11. The schools forum must inform the governing bodies of schools maintained by the [relevant] 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

12. The [relevant] authority must pay the expenses of the schools forum and charge those expenses to the schools budget.

Members' expenses

13. The [relevant] authority must reimburse all reasonable expenses of members in connection with their attendance at meetings of the forum.

xxx 2009

Minister of State
Department for Children, Schools and Families

EXPLANATORY NOTE

(This note is not part of the Regulations)

[Details to be inserted.]

Accompanying Note on Consultations on Schools Forums (England) Regulations 2009

Introduction

These regulations will replace the School Forums Regulations 2002 as already amended by the Schools Forums (Amendment) Regulations 2004, 2005, and 2008.

Part 1

The changes to the regulations are as follows:

- The regulations have been re-written for clarity.
- Regulation 4 (2) states that local authorities must have members from academies in their area on their Schools Forum. Previously, academies had observer status. More detail for the reasons behind this change are given below.
- Regulation 4 (3) and 4 (4) also relate to academies, whereas previously they would only have related to schools.
- Regulation 6 states how academies members must be elected.
- Regulation 4 (2) states that local authorities must have non-school members on their Schools Forum. Previously, local authorities had the choice of whether or not to include non-schools members.
- Regulations 7 (1) (a) and 7 (1) (b) state that representatives from the 14-19 partnership and from PVI providers must be among non-school members on Schools Forums. Previously, 14-19 and PVI representatives only had to be members if the authority chose to have non-schools members on its Schools Forum.

These amendments are as a result of recent legislation and policy developments. **Do the re-written regulations achieve their stated purpose?**

The policy change to add academies as full members to the Schools Forum comes about for three reasons.

- Because the funding for academies is linked to the local funding formula, although there is a time lag – therefore decisions made in consultation with the Schools Forum do affect academy funding in due course.
- Because some local authorities have a significant proportion of their secondary age pupils in academies, meaning that these pupils' needs are not represented as fully as pupils in maintained schools.
- Finally, because DCSF recognises the need to change future academy funding agreements to bring them into line with maintained sector requirements on clawback of funding in the case of permanent exclusion. Any locally determined clawback amounts are also likely to be subject to Schools Forum consultation and academies would need to be involved in that consultation. This change will not always be enforceable for existing academies, but the DCSF is working to amend existing funding agreements and can in extremis withhold standards funds where academies have permanently excluded pupils. This would also be affected by the outcome of consultation with the Forum on local exclusions policy.

Part 2

Concern has been expressed about the strength of early years representation on schools forums and the consequences of this for the early years single formula which is to be introduced from 2010-11.

Schools forums are consulted about the distribution of the Schools Budget between all providers. Most of this funding goes to schools, who make up the majority of representation on schools forums. However, the PVI sector in some local authorities is significant for provision of the free entitlement for three and four year olds, but will inevitably have a minority voice on the forum. To increase membership of PVI providers would be disproportionate to the amount of funding provided to them, but there is evidence to suggest that their views are sometimes not heard sufficiently.

One solution could be to place a requirement on schools forums, when they are consulted on arrangements for the single formula for early years provision, to have regard to the LA's duties to secure sufficiency of places and improve outcomes. How this would be phrased has yet to be considered, but we are consulting now on your views as to the principle of this change and whether it would help to ensure that full consideration was given to the needs of PVI providers in the new single formula. We are keen to ensure that PVI providers are not constrained by inappropriate funding to the extent that the LA is unable to meet its duties of securing sufficiency and improving outcomes.

Part 3

We would also like to consult on the idea of giving local authorities the option of changing the composition of their schools members of Schools Forums from 2011. This is in light of suggestions put to us by some authorities.

In the present draft Regulations 2009, Regulation 4(4), schools members on Schools Forums must be proportional to the numbers of pupils in primary and secondary schools in the authority. We are looking for views on local authorities having the option to elect members to represent schools in locality teams as their schools members instead. These members would represent all children in a particular partnership area within the authority, rather than children of a particular age or phase, and would follow these children throughout their schooling in the authority. These arrangements would most likely exclude academies, to ensure they are always represented on Schools Forums.

This option could be of particular benefit to local authorities covering a large and/or diverse area, and give schools working in partnership in areas more flexibility to represent the priorities of each area alongside the priorities of the authority and Children's Trust . However one possible drawback is that it may not be possible to also keep the schools members of the Schools Forum proportional to the number of pupils in primary and secondary schools, and in academies, in the authority.

Additional consultation questions

We wish to consult on your views on having these options added to the Regulations from 2011. As such please could you respond to the following questions:

Part 2:

1. Would adding an obligation to the functions of schools forums that includes a requirement to have regard to the provision needed to support the LA's duties of securing sufficiency of places and improving outcomes for early years improve the strength of early years representation on the schools forum?
2. Do you have other suggestions that would meet the aim of ensuring that all early years' providers are appropriately funded?

Part 3:

3. If you had the option to elect schools representatives of locality teams as schools members in future, do you think you might do so?
 - a. If yes: How do you think locality team representation might benefit your Schools Forum? Would this be better than the current arrangements?

- b. If no: How do you think the current arrangements remain better for your Schools Forum?
 - c. If don't know: What further information would you need in order to consider this option?
4. It is likely that academies would be excluded from locality team forum arrangements. Do you see any difficulties in this arrangement?
5. If local authorities were to have the option of allowing the election of representatives of locality teams, how do you think this would impact on the representation of pupils from different phases? How would this affect the operation of the Schools Forum?
6. Would you like to see the **option** of having representatives of locality teams added to the Regulations for 2011?
- a. If no: Why not?

The consultation period ends on **28 August 2009**. Consultation responses for Parts 1, 2 and 3 should be sent to Schools.Forums@dcf.gov.uk.

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