

Young People's Education and Skills Operational Sub-Group

Consultation on the Raising the Participation Age (RPA) regulations

Item No: 4

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Summary

From summer 2013 all young people will be required to participate in education or training until the end of the academic year in which they turn 17, and from summer 2015 onwards until their 18th birthday. The Department for Education (DfE) is seeking views on elements of how RPA will work in practice by consulting on the policies that will form the secondary legislation. It covers aspects such as the definition of residency; the definition of full-time education; wider ways of working that, when combined with part-time study, could be considered as participating, and the amount and use of any fines. The consultation closes on Friday 13 April 2012.

Recommendation OSG members are asked to comment on the consultation and contribute key points for the response.

1 Background

- 1.1 The Education and Skills Act 2008 (ESA 2008) sets out that from 2015, all young people (16 and 17 year-olds) will be required to participate in education or training.
- 1.2 This does not mean that young people have to stay at school. They will be able to participate through three options:
 - Full-time education - at school, college or otherwise.
 - An Apprenticeship.
 - Working full-time (for 20 hours or over per week and for at least eight weeks) and undertaking part-time study alongside (for the equivalent of a day a week),
- 1.3 The strategy to increase participation *Building Engagement, Building Futures*¹ sets out the Governments policies to support the commitment to full participation of 16 and 17 year-olds in education and training. The *Consultation on the Raising the Participation*

¹ <http://www.education.gov.uk/16to19/participation/a00200853/building-engagement-building-futures>

*Age (RPA) regulations*² seeks views on elements of how that strategy will work in practice by consulting on how to clarify some aspects of RPA delivery in regulations.

- 1.4 In the recent Education Act (2011) provision was made to delay the introduction of the enforcement process applicable against young people who do not participate and their parents (section 74). This will be under review on an annual basis after 2013.
- 1.5 Some of the more detailed aspects of RPA were not set out in the ESA 2008. The consultation is to assist in preparing the regulations that will provide that detail and seeks views on the policy approach that will be implemented via the regulations (not the draft regulations themselves).
- 1.6 The consultation sets out a series of policy propositions.

2 Summary of proposals

2.1 The areas of consultation are:

2.1.1. **Residency** - the duty to participate applies to all young people resident in England. Judgements on where a young person resides may need to be made in a very small number of cases; the proposal is not to regulate here and leave this to the discretion of local areas.

2.1.2. **Full-time education** - for those young people participating through full-time education (if not at a school), how can the Department best define what is meant by full-time education in all its relevant settings? Two options are set out: a blanket rate of minimum full-time hours for all education types (534 hours annually), or a more differentiated approach for the different types of education provision.

2.1.3. **Ways of working** - young people are able to participate through full-time paid employment with part-time study alongside but it is proposed that working not for reward (volunteering or an internship), holding an office and self-employment should also be considered as valid work and could qualify as participation when combined with part-time study.

2.1.4. **Financial penalties** - there are two duties on the employers of young people set out in the RPA primary legislation. In the rare cases where employers breach these duties local authorities have the power to bring fines against them. It is proposed that the amount of those fines should be in line with fines that may apply to employers for breaching similar duties in relation to adult training.

2.1.5. **Local authority use of fines** - in the rare event that fines are brought, it is proposed that a local authority can only use the money raised to cover the costs of the enforcement of RPA and monitoring young people's participation.

2.2 With regard to **residency** the proposal is *not* to regulate to allow for maximum local flexibility. The consultation suggests that existing guidance (e.g. 16-19 funding guidance, the NHS Ordinary Residence test, the income benefit Habitual Residence Test) could help local authorities to form a residency judgement where needed.

² <http://www.education.gov.uk/consultations/index.cfm?action=consultationDetails&consultationId=1694&external=no&menu=1>

With regard to **full-time education**, the following are proposed as valid types of full-time education:

- School sixth form
- College (sixth form, Further Education, independent or religious training provider)
- Independent Specialist Providers (colleges that provide education to those with significant disabilities and learning difficulties)
- Home education
- Re-engagement provision – programmes designed to support the most disadvantaged and disaffected young people back into learning. Provision that is funded through means other than the Young People's Learning Agency (YPLA) may require further definition

2.3 Two proposals are put forward:

2.3.1. **Option 1** – set a single number of minimum hours across all providers, suggested at 534 hours per year (around 18 hours per week).

2.3.2. **Option 2** – define the requirements for each 'setting' (as set out at 2.3) to allow for the varied valid types of provision to be represented in the regulations with little need for change.

2.4 With regard to **ways of working**, primary legislation (ESA 2008) sets out three categories other than a contract of employment:

- Working not for reward (volunteering or internship).
- Holding an office
- Self-employment

2.5 The proposal is to define these categories further in regulation (but not add to them).

2.6 With regard to **financial penalties**, proposals centre on possible penalties for employers who fail to meet the duties set out in legislation (ESA 2008):

- To take reasonable steps to check that the young person has made arrangement to participate in education or training before they start work.
- To permit the young person to participate in education or training.

2.7 These duties concern employers where the young person is employed for 20 hours or more per week, for at least 8 weeks in a row, and where the employer is not providing training leading to an accredited qualification themselves.

2.8 In respect of the first duty it is proposed to keep this as straightforward as possible e.g. seeing a letter of confirmation from the education provider.

2.9 In respect of the second duty it is proposed that young people will be expected to study part-time for at least 280 hours per year – equivalent to one day a week, although young people may choose the pattern of how they study (block release, outside working hours etc.).

2.10 Should an employer breach either duty it is proposed that in the first instance a local authority should take steps to resolve the situation informally. If the situation cannot be

resolved informally, ESA 2008 gives local authorities the power to bring a fine against the employer following the issuing of a penalty notice.

- 2.11 It is further proposed that regulations set out the scale of fine in line with the scale of fines for similar legislation for adults (*Time to Train*³) – a maximum of 8 weeks pay. The level of fine would be set to zero for micro-enterprises and other ways of working not under a contract of employment.
- 2.12 With regard to local authority use of fines it is proposed that regulations will set out what can be done with any money received to ensure that funds are only used to support young people into learning.
- 2.13 It is proposed that money can be used to:
- First, cover any cost the local authority has incurred in enforcing.
 - Secondly, contribute to the cost of maintaining a tracking or monitoring system of young people's participation.
 - Finally, any remaining funds should be returned to DfE.

3 Recommendation

- 3.1 OSG members are asked to comment on the consultation and contribute key points for a London Councils response.

³ <http://www.legislation.gov.uk/uksi/2010/156/regulation/6/made>

Residency in England

- 1 Do you consider it appropriate that the Government does not regulate on residency in relation to the duty to participate in order to allow for maximum local discretion?

Defining Full-time education

- 2 a) Which of the two options set out in paragraphs 4.4 - 4.13 do you prefer i.e. option 1 (setting an overall hourly minimum level for full-time education for all provision) or option 2 (a more tailored approach)?
- 2 b) Or is there a hybrid option that you think more effective (please give details) - for example, that there is a blanket rate of hours for all full-time education but Independent Specialist Providers are exempt?
- 3 a) Do you agree with our suggestion of 534 hours as the minimum requirement for full-time education under Option 1?
- 3 b) Do you agree with our suggestion of 534 hours as the minimum requirement for full-time education for colleges under Option 2?

Ways of Working

- 4 a) Should the three options: i.e. working not for reward (paragraph 5.2), holding an office (paragraph 5.4) and self-employment (paragraph 5.5); be counted as valid means of participation when combined with part-time study?
- 4 b) Are there any additional ways of working that you would consider relevant?
- 5 a) Would requiring a volunteering organisation or business taking a volunteer or intern to have an agreement with that young person be a reasonable requirement?
- 5 b) What would be most useful to set out in guidance here?

Financial Penalties

- 6 Does the level of fines of 4 weeks and 8 weeks salary seem appropriate? If not, what could the level of fines be set at?
- 7 Should the amount of fine be set at a maximum (i.e. up to 8 weeks salary) or as a guide level (i.e. to be approximately 8 weeks salary)?
- 8 Do you agree that it is right to exempt employers of fewer than 10 people from fines?
- 9 In addition to information on how to check enrolment, and guidance to local authorities on the informal resolution of disputes, is there any other further information that could usefully be provided here?

Local Authority Use of Fines

- 10 Does setting out that a local authority can use any money raised from a fine here to cover their costs and contribute towards a tracking system - with any surplus returned to DfE - seem like a reasonable proposition?