



Department
for Education

Raising the Participation Age (RPA) Regulations

**Government response to consultation
and plans for implementation**

July 2012

1. Introduction

The Education and Skills Act 2008 set out that from 2015 all 16 and 17 year-olds will be required to participate in education or training. This change is happening in two phases: 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. From summer 2015, this will rise to their 18th birthday. In December 2011 we set out, in *Building Engagement, Building Futures*¹, our plans to implement this change, together with additional funding through the Youth Contract to support the most disengaged 16 and 17 year-olds back into learning.

Underpinning the overarching duties, there needs to be some very limited regulation so that people are clear about how the law should be applied in practice. This 12 week consultation covered: the definition of residency, the definition of full-time education, ways of working, and the size of possible fines against employers. We are using the findings to inform the development of concise statutory guidance for local authorities (to be published in Autumn 2012) and focused secondary legislation (to be laid before Parliament by early 2013).

Most of the findings were clear, including:

- The great majority of respondents agreed that we **should not regulate to define residency** in relation to Raising the Participation Age (RPA).
- The great majority also agreed that **self-employment, volunteering and holding an office could combine with part-time study** to meet the duty to participate.

However, the consultation covered a wide range of areas and responses were finely balanced in a few of those. Where needed, we have had further discussions with relevant organisations to clarify the position and discuss options. We are keen to continue to engage key partners as we develop the statutory guidance and draft regulations. In particular, we will explore further with the Department for Work and Pensions how the requirements for education and volunteering align with benefits conditionality. We will work with a group of voluntary and community sector organisations to develop a set of principles for 're-engagement' provision and we will involve local authorities as we prepare the statutory guidance that will support RPA implementation.

On the definition of full-time education, whilst the majority of respondents supported the option of having a **separate definition for 're-engagement' provision**, opinion was divided on the minimum number of hours for funded provision to be classified as 'full-time'. The majority of concerns were regarding the difference between 534 hours

¹ <http://media.education.gov.uk/assets/files/pdf/building%20engagement%20building%20futures.pdf>

(as suggested in the consultation document) and 450 hours (the existing funded minimum). We have now set out in the response to our consultation on the 16-19 funding formula that we will move to fund a programme of study for around 600 guided learning hours for all students². This addresses the concerns raised and we will simplify by rounding the total, setting **540 hours as the minimum definition** under RPA.

The most significant debate was focused on the questions concerning the fining of employers, with a significant number of responses suggesting that we should look again at the principle as well as the level of fines. The primary legislation for RPA was put in place during very different economic circumstances. Our principal focus now must be on increasing growth and one aspect of that is by reducing burdens on employers. The Government is very concerned about any regulation or bureaucracy whose burden, or perceived burden, might discourage employers from taking on young people. This would clearly be against the spirit of RPA, which aims to increase the opportunities available for young people. The responses to the consultation suggested that potential fines might act as a perverse incentive, discouraging businesses from hiring 16 and 17 year-olds.

We have therefore decided that **the duties on employers within the RPA legislation will not be commenced in 2013**. This will mean that employers will not be discouraged from hiring 16 and 17 year-olds by concerns about additional burdens or the possibility of fines. Those 16 and 17 year-olds who do work full-time will still be under a duty to participate in education or training part-time alongside. We know that employers recognise the benefits for the individual and their business of young people undertaking training and will want to support this, without the need to place additional duties on employers. We will work further with employers' organisations and local authorities to make sure that this is clearly communicated and that employers have the information they need to understand the benefits of training for their young staff without the need for regulation. These duties will remain on the statute book and we will keep this under review, with the option to introduce the employers' duties and enforcement in future if these are needed.

In their responses on the fining questions, some respondents raised wider concerns regarding how RPA would be funded. It is important to note that the money raised from the possible fines for employers was only ever intended to cover any costs involved in the enforcement and administration of those fines. The Government has already made clear that the costs of provision for young people will be met and we are spending a record £7.5 billion to provide education and training places for young people in 2012-13. Local authorities receive funding through the Early Intervention Grant, which will be worth £2.3 billion in 2012-13, and which can be used to fulfil their duties to support young people's participation.

² DfE: 16-19 Funding formula review: Funding full participation and study programmes for young people (June 2012)

2. Overview of Respondents

This report has been based on 176 responses to the consultation document.

As some questions invited multiple responses, total percentages listed under any one question may exceed 100%. Throughout the report, percentages are expressed as a measure of those answering each question, not as a measure of all respondents.

The organisational breakdown of respondents was as follows:

Local Authority	71
Voluntary/Community Sector	25
College	17
Other*	15
Parent	14
Representative Body	12
School	7
Union	5
Education/Training Provider	5
Awarding Body	4
Employer	1

**Those which fell into the 'other' category included those who did not select a respondent type, a work based learning provider and an employer forum.*

A list of the main organisations that provided responses is set out in the Annex.

3. Responses to the Consultation Questions

Section 1 – Residency

Q1) *Do you consider it appropriate that the Government not regulate on residency in relation to the duty to participate in order to allow for maximum local discretion?*

There were 157 responses to this question.

Yes: 114 (73%) No: 18 (11%) Not Sure: 25 (16%)

Summary of comments

The majority of respondents agreed that local discretion was the most appropriate method of dealing with this issue as the number of young people who would fall into this category would be small and each situation would need to be treated on an individual basis. Those respondents who disagreed or were unsure thought that too much local discretion could lead to inconsistency and would prefer to have published guidance on residency to establish consistency between local authorities.

Response and next steps

A decision on residency will only be needed in a very small number of cases and the circumstances of those individuals will vary widely. We will therefore not regulate here. We will discuss with local authorities what resources would be most useful and appropriate to reference in guidance to help them make any necessary decisions.

Section 2 – Defining ‘Full-Time’ Education

Q2a) *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)?*

There were 171 responses to this question.

Option 1: 41 (24%) preferred option 1 and welcomed a clear definition that would set out the minimum number of hours required in order to plan provision and meet the requirements of RPA.

Option 2: 93 (54%) respondents were of the opinion that a tailored approach would be more appropriate to motivate and support the most vulnerable young people who do not currently participate. They believed the flexibility in option 2 was preferable to imposing an annual minimum number of hours of full-time study for all learning settings, which would be unresponsive to the educational requirements of particular groups of learners.

Neither: 37 (22%) did not specify a preference for either of the two options.

Summary of comments

85 (50%) thought it would be important to allow flexibility in whichever option was decided on, so that providers could respond to a young person’s individual learning needs and be adaptable in how the minimum participation hours were achieved over the period.

80 (47%) felt that option 1 would mean a significant amount of existing high-quality re-engagement provision would have to be changed and that this option would risk further disengagement of the hardest to reach young people who are not in education, employment and training (NEET).

25 (15%) believed that option 1 would be easier to implement and monitor and avoided the possibility that a tailored approach could be perceived as bureaucratic because of the audit requirements that would be needed.

22 (13%) said that whatever option was agreed, it should align with the current funding arrangements determined by the Education Funding Agency (EFA).

19 (11%) thought that developing learning provision to meet young people’s needs was essential to promote world class education. They felt that work experience and enterprise activities were integral to this. Respondents mentioned the need to ensure that there were sufficient courses designed for young people of lower academic ability.

Q2b) *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?*

There were 134 responses to this question.

Yes: 48 (36%)

No: 48 (36%)

Not Sure: 38 (28%)

Summary of comments

There were mixed views and very diverse comments on the potential for a hybrid option.

Generally, those who agreed said that a hybrid approach could address the differences between certain types of provision or activity, providing flexibility to allow providers to help the most disadvantaged young people, where engagement on a regular full-time basis was not always practical. Those respondents who disagreed were of the opinion that a hybrid approach was too broad and would risk further complication.

26 (19%) expressed concern about home education being accepted as ‘full-time education’ and said that local authorities had limited powers of intervention.

18 (13%) respondents stated that Independent Specialist Providers (ISPs) should not be exempt, and should still be covered by RPA legislation to ensure that all young people, including those with learning difficulties and/or disabilities are given the best opportunities to participate in learning.

15 (11%) said that ISPs would be providing highly specialised personalised programmes of study and there could be situations where a shorter time period would be more appropriate.

Q3a) *Do you agree with our suggestion of 534 hours as the minimum requirement for full-time education under option 1?*

There were 154 responses to this question.

Yes: 58 (38%)

No: 67 (43%)

Not Sure: 29 (19%)

Summary of comments

Some respondents did not agree with the suggestion of a 534 minimum hour requirement for full-time education under option 1, and many of these said that any proposal would need to take account of the diversity of provision available in the FE sector. Some respondents thought that this number of hours was too high to engage

Response and next steps

Most respondents were of the opinion that a tailored approach is required to the definition of full-time education (option 2 in the consultation). We agree that this is the right option and will set this out in regulation.

In relation to the number of hours required in funded provision, a significant number of respondents were concerned that an expectation of 534 hours is higher than the current funded minimum (450 hours per year). It is right that we continue to have high aspirations for young people, helping them to gain rigorous qualifications that will set them in good stead for their careers, which is why we proposed a figure higher than 450 hours per year.

Following publication of the RPA consultation, we have announced changes to the funding system, setting out in the response to our consultation on the 16-19 funding formula that we will move to fund a programme of study for around 600 hours for all students³.

This funded rate allows leeway either side for individual students, and so it is appropriate that the RPA legal minimum is lower than this to accommodate students whose actual programmes are slightly less than 600 hours. We will also ensure that the other activities that could form part of a study programme (for example, work experience or non-qualification bearing study) can be counted towards that overall number of hours for RPA requirements.

In recognition of the responses to the consultation and this position on funding, we will therefore set the minimum at 540 hours per year⁴, rounded from the proposed figure for simplicity.

For Independent Specialist Providers (ISPs) – we have consulted further with key partners, who have confirmed that ISPs already provide a similar number of hours of education or training as other providers. We will therefore expect provision in ISPs to meet the same requirement as other providers.

For ‘re-engagement’ provision – this has a key role in helping the most disengaged young people to move into education or training. Where provision is put in place specifically to help a young person make a transition into full-time education, no hourly rate will be set. This is to ensure that no unnecessary changes need to be made to valid and valuable provision for the most disengaged young people. Responses confirmed that it would be beneficial for us to work with the sector to define a set of principles that ‘re-engagement’ provision could meet.

³ DfE: 16-19 Funding formula review: Funding full participation and study programmes for young people (June 2012).

⁴ This is based on the standard EFA definition of a 30 week academic year and approximately 18 hours of study per week.

For home education – no hourly rate will apply as parents have discretion over what is provided. Just as it is pre-16, properly provided home education is a valid route for young people. However, a significant number of respondents raised a concern that young people who wished to avoid the duty to participate could claim they were home educated when they were not. In order to go some way to prevent this and to provide parity with the pre-16 system, we will suggest in guidance that local authorities could confirm with the parent that home education is being provided.

Section 3 – Ways of Working

Q4a) *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?*

There were 167 responses to this question.

Working not for a reward:	160	96%
Holding an Office:	150	90%
Self-employment:	152	91%
None:	4	2%

Summary of comments

146 (87%) respondents said that all three options should be counted as valid means of participation when combined with part-time study. Respondents noted that these three routes were essential to meet the needs of the small number of young people who would not fit the full-time education or Apprenticeship routes.

4 b) *Are there any additional ways of working that you would consider relevant?*

There were 67 responses to this question.

Summary of comments

38 (57%) respondents suggested that special consideration should be given to young people who have caring responsibilities.

24 (36%) wanted young parents to be considered. It was suggested that maternity leave should be reflected in the new regulations and noted that RPA should be used as an opportunity to improve the education options and participation levels for young parents rather than limit them further.

Response and next steps

In line with the vast majority of views from the consultation, we will allow working not for reward (e.g. volunteering), holding an office and self-employment to count when combined with part-time study. These are all suitable and valid options for young people.

A large number of respondents suggested that caring should be considered as a way of working. Our regulations will state 'working not for reward', which will allow local flexibility on this point. We will explore with partners suggesting in statutory guidance that local authorities may want to consider that being a full-time carer could fall into this category – with the requirement for part-time study or training alongside. However, we would consider this only suitable for those who are in receipt of carers allowance or are on a local authority's register of carers.

For young parents, local authorities will make decisions about a reasonable parental leave period on a case-by-case basis, based on individual circumstances and the provision on offer locally.

Q5a) *Would requiring a volunteering organisation or business taking a volunteer or intern to have an agreement with that young person be a reasonable requirement?*

There were 168 responses to this question.

Yes: 144 (86%)

No: 8 (5%)

Not Sure: 16 (9%)

Summary of comments

The majority said that there should be some form of agreement to ensure that both the young person and the organisation were clear about their respective roles and responsibilities. Those respondents who disagreed or were unsure thought this may create a barrier to engaging with young people and could be a bureaucratic burden.

Q5b) *What would be most useful to set out in guidance here?*

There were 117 responses to this question.

Summary of comments

61 (52%) respondents said the agreement must clearly state the roles and responsibilities of the employer, the young person, the education provider and local authority.

46 (39%) suggested the agreement should state the hours and days which the young person was expected to attend.

45 (38%) were of the opinion that the agreement should specify the learning targets being offered and the expected education outcomes and qualifications.

42 (36%) said that the agreement must specify the key duties and the nature of the work or training.

Response and next steps

The majority of respondents agreed that a volunteering agreement would be of value to provide clear roles and expectations on all sides. We will work with relevant organisations to suggest a light-touch template which could be used as needed, but will not regulate or insist on this.

Section 4 – Employers

Q6) *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?*

There were 151 responses to this question.

Yes 63 (42%)

No 46 (30%)

Not Sure 42 (28%)

Summary of comments

There were mixed views on the proposal of setting fines and on the level. Respondents who agreed said that the level of fines was related to the equivalent arrangement for adults and so was reasonable and proportionate.

Respondents who disagreed or were unsure often challenged the principle of setting fines here, feeling that this would place an undue burden and would be extremely difficult to administer. They believed that there was a greater need to incentivise rather than penalise and setting such penalties could act as a disincentive to providing young people with opportunities.

39 (26%) respondents went further, completely disagreeing with the setting of fines. They believed that if this went ahead it would end employer goodwill and destroy relationships that had been carefully built between local authorities and employers, and between training providers and employers.

Q7) *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)?*

There were 144 responses to this question.

Maximum Level: 49 (34%) respondents said that the amount of the fine must be set at a maximum level for consistency so that there the level is the same regardless of the local authority or employer. Respondents raised concern about employers' reluctance to employ 16 and 17 year-olds because of the increased potential for fines for this age group.

Guide level: 31 (22%) wanted a guide level because they believed employers needed encouragement and not punitive measures. Others mentioned a guide level would be a fairer system as it would allow higher fines for deliberate or repeated instances. Respondents were of the opinion that fines should only to be used in extreme circumstances or as a last resort.

Not Sure: 64 (44%) were unconvinced that fines would be beneficial. Respondents felt employers should not be penalised and did not feel fines were a constructive

measure. They were worried about cost implications of collecting fines, as they thought it would become a resource-intensive process.

Summary of comments

48 (33%) said employers needed encouragement to support young people and not punitive measures. They suggested there should be an incentive for employers and not barriers that would discourage them. There was concern that implementing fines could risk young people's opportunities to gain experience in the workplace.

37 (26%) believed no fines were appropriate. These respondents were of the opinion that fines would have a detrimental effect on good working relationships built up between local authorities and employers. They commented that the fines would not have the desired impact and were an unnecessary complication. There was a view that employers should be supported to engage in this new initiative and not fined as a consequence of it.

17 (12%) respondents said the setting of fines needed to be flexible.

Q8) *Do you agree that it is right to exempt employers of fewer than 10 people from fines?*

There were 152 responses to this question.

Yes: 52 (34%)

No: 75 (49%)

Not Sure: 25 (17%)

Summary of comments

32 (21%) respondents completely disagreed with the concept of fines and said that no fines were appropriate in any situation.

29 (19%) disagreed with the proposal to exempt employers of fewer than 10 people because they felt that allowing exemptions could weaken implementation of RPA and allow loopholes, which may disadvantage young people.

28 (18%) disagreed with the proposal as they believed that all young people had a right to training and development.

24 (16%) said that micro businesses and small and medium enterprises (SMEs) could take advantage of young people if they were exempt from fines.

24 (16%) respondents suggested that if financial sanctions were waived for these employers then there must be other incentives put in place to encourage them to support participation, as they believed it was essential they were still subject to fulfilling the RPA duty to release young people for part-time study.

Q9) *In addition to information on how to check enrolment and guidance to local authorities on the informal resolution of disputes, is there any further information that could usefully be provided here?*

There were 78 responses to this question.

Summary of comments

37 (47%) respondents wanted to ensure that any new regulations would not deter employers from employing young people. Respondents believed that some employers would not employ young people if they felt that it would involve bureaucracy and red tape. There was some concern that many employers did not understand the implications of RPA fully and so might be disproportionately affected in their behaviour by the potential for fines.

28 (36%) respondents wanted clarity on who is responsible for the key elements of this process.

22 (28%) respondents wanted guidance on what steps to take if young people did not attend their training.

Q10) *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?*

There were 143 responses to this question.

Yes: 62 (43%)

No: 55 (39%)

Not Sure: 26 (18%)

Summary of comments

33 (23%) believed it was unlikely that there would be any surplus funds after the cost of imposing and collecting such small fines was taken into account.

31 (22%) were of the opinion that any surplus money should not be returned to DfE, but retained by local authorities to fund further provision and support for young people in their areas with regard to RPA regulations.

Response and next steps

As set out in the introduction to this document, in the current economic context and given the widespread concerns about the impact of potential fines, we have taken the decision not to commence the duties on employers at this stage. This will mean that from 2013, when RPA is introduced, employers will not be under a duty to check young people's enrolment nor agree working hours for them to attend training.

Young people will be under a duty to participate, as planned. It will be the young person's responsibility to undertake part-time training if they are in employment and local authorities will have a duty to support them to do so. We know that employers already support young employees to train alongside their work and will continue to do so as we raise the participation age, without the need for unnecessary and burdensome regulation.

The duties will remain on the statute book and we will keep this area under review, with the option to commence these duties, if necessary, at a later point.

Section 5 – Other Comments

Q11) *Do you have any other comments?*

There were 106 responses to this question.

Summary of comments

50 (47%) commented on the level of resource required for local authorities to monitor, manage and administer participation, compared to income generated by any fines on employers.

40 (38%) asked for more information and guidance on a range of different issues.

37 (35%) respondents referred to monitoring and data tracking arrangements.

37 (35%) wanted effective support and careers advice for young people to be put in place.

18 (17%) stated that consideration should be given to ensuring that the needs of young people with SEN are met.

4. Conclusion: Our Next Steps

We will begin drafting the RPA regulations and statutory guidance on the basis of the policy positions set out in this document. Where we have said so, we will hold further discussions with key stakeholders.

Statutory guidance for local authorities will be published in autumn 2012. The regulations relating to RPA will then be laid before Parliament in good time before the commencement of the first phase of RPA in summer 2013.

Annex - List of main named respondent organisations

157 Group

Access Training East Midlands

Acknowledging Youths

Advisory Council for the Education of Romany and other Travellers

Alliance for Inclusive Education

Alton College

Ambitious About Autism

Dorcan Academy

Association of Colleges

Association of Employment and Learning Providers

Association of Learning Providers for Hampshire and the Isle of Wight

Association of National Specialist Colleges

Association of School and College Leaders

Association of Teachers and Lecturers

Barnardo's

Bath and North East Somerset Council

Berkshire Partnership

Action for Children

Birmingham City Council

Blackburn FE College

Blackburn with Darwen Education Improvement Partnership

Blackpool Council

Bournemouth and Poole 14-19 Team

Bracknell Forest Council

Bradford College

Bradford MDC

Brighton & Hove City Council

Brompton Academy

Connexions Thames Valley

Building and Engineering Services Association

Bury Council

Calderdale Council

Cambridgeshire County Council

Careers South West
Confederation of British Industry
Centrepoint
Cheshire East Council
CITB ConstructionSkills
City and Guilds London Institute
City of York Council
The Commission for the New Economy
Complementary Education
Craven College
CSV
DART Limited
Derbyshire County Council
Devon County Council
Doncaster Metropolitan Borough Council
Dorset County Council
Ealing Council
East Riding College
East Riding of Yorkshire Council
East Sussex County Council
English Schools' Football Association
English Speaking Board (International) Ltd
Essex County Council
Federation of Awarding Bodies
Federation of Small Businesses
Forward Swindon Ltd
Foyer Federation
Halton Borough Council
Hampshire County Council
Harrow Council
Hertfordshire County Council
JHP Group
Kent Local Authority
Lancashire County Council

LEACAN

Learning Curve

The Learning Trust Hackney

Leeds City College

Leeds City Council

Lewisham Council

Linkage Community Trust

Liverpool City Council

Local Government Association

London Borough of Barnet

London Borough of Bexley

London Borough of Haringey

London Borough of Havering

London Borough of Hillingdon

London Borough of Lambeth CYPS

London Borough of Newham

London Councils

Longley Park Sixth Form College

Manchester City Council

Medway Youth Matters

Mencap

Moat House

National Association of Head Teachers

Nasen

NASUWT

National Association of Independent Schools and Non Maintained Special Schools

National Foundation for Educational Research

Nescot

Newcastle City Council

Newcastle College Group

Newcastle Youth Volunteering Group

Edyoursel

North Tyneside Council

North Yorkshire County Council

Nottingham City Council
NW Kent NEET Prevention and Reduction Group
Oxfordshire County Council
Pearson, Edexcel
Plymouth City Council
Plymouth Learning Trust
PM Training
Basingstoke 14-19 Partnership
The Prince's Trust
Prisoners' Education Trust
Prymface
Quesco Ltd
Rathbone
Redcar and Cleveland Borough Council
Rotherham MBC
Royal Borough of Kingston upon Thames
Scarborough Sixth Form College
Schools Support Services Ltd
Sheffield 14-19 Partnership
Shrewsbury Sixth Form College
Shropshire Council
Skills CFA
Somerset County Council 11-19 Team
Southend Borough Council
Special Educational Consortium
St Helens Local Authority
Staffordshire County Council
Stockport College
Sunderland City Council
Surrey County Council
Swindon Borough Council
Sacred Heart Catholic High School
UCU
United Learning Trust

vInspired
Volunteering England
Wakefield College
Walsall Children's Services
Warrington Borough Council
Warwickshire County Council
Worcestershire County Council
West Sussex County Council
Wiltshire Council
Wirral Council Paul Smith
Youth Justice Board for England and Wales



Department
for Education

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