

EXPLANATORY MEMORANDUM TO
THE DUTY TO PARTICIPATE IN EDUCATION OR TRAINING (MISCELLANEOUS
PROVISIONS) REGULATIONS 2013

2013 No. 1205

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 Instrument covered by this Explanatory Memorandum is being made in order to implement Part 1 of the Education and Skills Act 2008 (“the Act”) which will come into force in June 2013.

2.2 The Duty to Participate in Education and Training (Miscellaneous Provisions) Regulations 2013 make provision in relation to the duty on young people to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier). They set out the detail of the matters defined in Chapter 1 of Part 1 of the Act, including the types of education or training that will be treated as full time and how serving as a member of the Armed Forces is treated.

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

3.1 None

4. Legislative Context

4.1 Part 1 of the Act places a duty on young people to participate in education or training until they are 18 or have completed a prescribed Level 3 qualification. The duty applies to young people who are resident in England and are older than the compulsory school age. Section 2 of the Act sets out that there are three ways in which a young person may meet the duty - by participating in appropriate full-time education, under an Apprenticeship contract, or by combining full-time employment with part-time education or training. The legislation is being commenced so that from 2013 it will be compulsory for young people to participate up to the end of the academic year in which they turn 17, and by 2015 up to the age of 18.

4.2 Chapter 1 of Part 1 of the Act sets out a number of definitions, and the Duty to Participate in Education or Training (Miscellaneous Provisions) Regulations 2013 provide the detail of these definitions (including the definition of level 3 qualification).

4.3 Chapter 2 of Part 1 of the Act provides local authorities with a number of functions, including a duty to promote participation, and a duty to make arrangements to identify persons not meeting the Section 2 duty. Local authorities are also required to have regard to guidance given by the Secretary of State, which is intended to support authorities in meeting these duties. The guidance will be published on the Department for Education website.

4.4 Chapter 3 of Part 1 of the Act puts duties on employers to take certain actions in respect of young people who meet the duty by combining work with education / training. These duties will not be brought into force at this stage, and the possibility of commencing them will be kept under review.

4.5 Chapter 4 of Part 1 of the Act provides for local authorities to take certain enforcement action against parents of young people who are not fulfilling their duty to participate. Chapter 5 of Part 1 of the Act provides for attendance notices, attendance panels, and rights of appeal. This is a procedure that a local authority may follow if it considers that a person is failing without reasonable excuse to fulfill the duty to participate. These chapters will not be brought into force at this stage, and the possibility of commencing them will be kept under review.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 This instrument is subject to the negative resolution procedure and does not amend primary legislation. No statement is required.

7. Policy background

7.1 Part 1 of The Education and Skills Act 2008 requires all young people (16 and 17 year-olds) in England to participate in education or training until the age of 18 or until attaining a level 3 qualification if earlier. This is known as Raising the Participation Age (RPA). 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, and from summer 2015 onwards, they will be required to participate until their 18th birthday.

7.2 The participation age is being raised because continuing in education or training beyond age 16 brings benefits for young people, the economy and wider society. Young people who continue in learning post-16 are more likely to attain higher levels of qualifications, have increased earnings over their lifetime and are less likely to be involved in anti-social behaviour, suffer from depression and use drugs. They are also better able to gain the skills and qualifications that employers look for, increasing their likelihood of finding sustained skilled employment.

7.3 The Duty to Participate in Education or Training (Miscellaneous Provisions) Regulations 2013 prescribe “level 3 qualifications” for the purposes of section 3 of the Act. They also:

- set out the types of education or training that will be treated as full-time for the purposes of section 4 of the Act,
- make provision for persons to be treated as working for 20 hours a week for the purposes of section 5 of the Act,
- prescribe the date on which a ‘relevant period’ ends for the purposes of section 7 of the Act,
- make provision in relation to guided learning hours for the purposes of section 8 of the Act, and
- modify Chapter 1 of Part 1 of the Act in relation to persons in service as a member of the armed forces of the Crown.

7.4 Further explanation on two of these areas is set out below.

7.5 **Regulation 3 (full-time education or training):** Section 4 of the Act defines “appropriate full-time education or training” as “full-time education or training which is suitable for the persons, having regard to the person’s age, ability and aptitude, and to any learning difficulty which the person may have, and which is provided at a school, college of further education, an institution within the higher education sector or otherwise”. Regulation 3(1) sets out descriptions of education or training which are to be treated as being “full-time”. No provision was made in the Act for a definition of full-time education at a school as that has a settled meaning.

7.6 Regulation 3(1)(a) makes provision for a study programme which can be delivered in at least 540 hours per year to be treated as full-time. A public consultation on study programmes for 16-19 year olds ended on 4 January 2012. In the Government’s response to the consultations it indicated that schools, colleges and other training providers would be expected to introduce study programmes from September 2013. The response can be found here:

<https://www.education.gov.uk/publications/standard/Post16Learning/Page1/DFE-00069-2012>

7.7 Regulation 3(1)(b) sets out that education or training that is provided for a person specifically for the purpose of enabling them to participate in education or training in accordance with section 2(1) of the 2008 Act should be treated as full-time. This type of activity, often termed ‘re-engagement provision’, is designed to support those young

people who find it most difficult to take up and remain in education or training and is tailored to the needs and abilities of the individual. This regulation will enable that important provision to continue and the regulations do not require a person participating in such a way to do so for any set number of hours as these young people often need very flexible provision that is built up gradually over time.

7.8 Regulation 3(1)(c) provides that education at home is treated as full-time. As is the case for children up to the age of 16, home education is at the discretion of the home educator and we have not defined the number of hours of home education in which a 16 or 17 year old has to participate to meet the requirements for RPA.

7.9 **Treatment of service with the Armed Forces:** Serving in the Armed Forces provides relevant training for young people and is a valid and valuable career route. As the terms of service and training within the Armed Forces vary, we have made provision in regulations 5(b) and 8 so that a serving member of the Armed Forces who is participating in the training given to new members will automatically be treated as meeting their duty under RPA without the need for further investigation.

8. Consultation outcome

8.1 A 12 week public consultation was undertaken between 20th January and 13th April 2012. In addition a number of consultative meetings were held with key stakeholders and representative bodies. The consultation sought views on the policy approach to be implemented via these regulations. The consultation covered the definitions of residency and full time education, ways of working and the possible size of fines against employers who breached their duties.

8.3 176 responses were received to the consultation, 40% of which were from Local Authorities. Colleges, the Voluntary and Community Sector, representative bodies and parents provided the next most numerous responses.

8.4 **Residency:** The majority of respondents (73%) agreed that the Government should not regulate to define residency and that local judgement is the most appropriate method of making decisions on the small number of cases that will arise. Therefore, we are not regulating on this matter.

8.5 **Full time education:** In some areas, such as defining full time education, the responses were more finely balanced, with concerns raised about the funding arrangements. A revised funding system for 16-19 education will be in place from 2013 based on funding a study programme for all full-time students of around 600 hours per year. For those who are not at school, we are setting a minimum definition of 'full-time' education at 540 hours.

8.6 A detailed analysis of the results is provided in the Government's response to the consultation, published in July 2012 on the Department for Education website at:

<http://www.education.gov.uk/childrenandyoungpeople/youngpeople/participation/rpa/a00210946/consultation-response>

9. Guidance

9.1 We are providing Statutory Guidance for local authorities to set out their responsibilities in relation to Raising the Participation Age. It will be published on the Department for Education website.

9.2 We have also published a range of fact sheets for LAs, parents, education and training providers, young people and employers on the DfE website at: <http://education.gov.uk/childrenandyoungpeople/youngpeople/participation/rpa/a00201391/useful-information-what-does-raising-the-participation-age-mean-for-me> and are using the Department's communication channels to provide information to key partners.

10. Impact

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

10.2 There is no impact on the public sector because post-16 education providers will receive funding for each student, at a level that supports the number of hours of learning needed to meet the requirements of RPA.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The overall aim of Raising the Participation Age is to ensure that young people in England continue in education or training until at least age 18.

12.2 The impact of Raising the Participation Age will be reviewed annually. If it is not achieving this aim, we will consider what further action should be taken, including introducing those duties not initially being commenced if necessary.

13. Contact

Andrew Ettinger at the Department for Education (Tel: 020 7340 8248 or email: Andrew.ettinger@education.gsi.gov.uk) can answer any queries regarding the instrument.