

**EXPLANATORY MEMORANDUM TO
THE SCHOOLS FORUMS (ENGLAND) (CORONAVIRUS) (AMENDMENT)
REGULATIONS 2020**

2020 No. 540

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations make provisions to clarify that schools forums can hold public meetings remotely, for a temporary period, while they are unable to meet physically in a room during the coronavirus (COVID-19) pandemic. This includes (but is not limited to) telephone conferencing, video conferencing, live webcast, and live interactive streaming. This will provide certainty to local authorities and schools forums that the forums are able to continue to meet and operate effectively during the COVID-19 pandemic, to support the delivery of schools and early years funding.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales
- 4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Section 47A(1) of the School Standards and Framework Act 1998 (SSFA 1998) requires each local authority to establish a schools forum for their area, in accordance with regulations. The relevant regulations are the Schools Forums (England) Regulations 2012 (the “2012 Regulations”), which are made under the provisions of sections 47A and 138(7) of the SSFA 1998. Section 47A(3) of the SSFA 1998 sets out the functions of schools forums, which is primarily to advise the relevant local

authority on such matters relating to the local authority's schools budget as may be prescribed by regulations made under section 45A(3) of the SSFA 1998 (currently the Schools and Early Years Finance (England) Regulations 2020 (the "2020 Regulations")) and section 47A(3)(a) of the SSFA 1998 (the 2012 Regulations).

7. Policy background

What is being done and why?

- 7.1 Schools forums are statutory bodies established by each local authority to advise on matters relating to the local authority's schools budget. This includes 5-16 year old provision in mainstream schools, early years provision for two, three and four year olds, and high needs provision for children and young people (aged 0-25) with complex needs. Schools forums consist mainly of representatives from local maintained schools and academies, but local authorities must appoint some other local stakeholders to the forum as well.
- 7.2 The 2020 Regulations, which govern the 2020-21 financial year, require local authorities to consult their schools forums on various matters, and to seek their forums' approval for certain matters, relating to schools, high needs and early years funding. Schools forums must be consulted, for example, when local authorities make any changes to the local schools funding formula, which determines budget allocations for 5-16 year old provision in mainstream schools. In some cases it is the responsibility of the schools forum to take final decisions, such as to agree to the level and allocation of funding that the local authority proposes to retain centrally for a significant increase in pupils in the local area.
- 7.3 The 2012 Regulations set out the composition, functions and operation of schools forums. Regulation 8 states that schools forums are required to "meet" at least four times per year and all meetings must be "public meetings". Regulation 8 also states that meetings are only quorate if at least two-fifths of the total membership is present at the meeting.
- 7.4 It is important that schools forums are able to continue to operate effectively during the COVID-19 pandemic, while still adhering to official public health guidance on social distancing, particularly when other means of consultation with schools may be disrupted. Local authorities have asked the Department for clarity on this question, particularly ahead of meetings planned for the 2020 summer term. We are therefore clarifying that meetings of schools forums can be held by remote means up to and including 31 March 2021, the end of the 2020-21 financial year, to align with the schools and early years funding cycle.
- 7.5 The Regulations clarify that, during this period, the requirement in the 2012 Regulations for schools forums to "meet" can be carried out remotely, through electronic means (including but not limited to telephone conferencing, video conferencing, live webchat and live streaming), and that those meetings will be "public meetings" where members of the public can attend remotely through such electronic means. The Department will update guidance (see paragraph 11.1) to ask local authorities and schools forums to ensure that members understand that they can attend remotely. The Regulations also clarify that members of schools forums are "present" at meetings if they attend through remote means and they can hear and be heard, and where practicable, see and be seen by other attendees of the meeting. Meetings will be considered quorate if two-fifths of the total membership are present, including through remote means.

7.6 While we need to make this clarification urgently, in light of the COVID-19 pandemic, we can consider making the change on a permanent basis following the 2020-21 financial year. At that point, we will have the opportunity to engage local authorities and schools forums more extensively, including to consider feedback from this year.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 While we have heard representations from some local authorities, the Department did not conduct a public consultation on these Regulations due to the amendments being temporary and minor clarifications, which need to be in place immediately. There is no statutory obligation to consult on the Regulations. We will continue to engage with schools forums and local authorities to review the operation of the Regulations on an ongoing basis.

11. Guidance

11.1 The Department will update the Schools Forum Operational and Good Practice Guidance, to clarify that forums are able to meet remotely until 31 March 2021. This will be available at: <https://www.gov.uk/government/publications/schools-forums-operational-and-good-practice-guide-2015>.

12. Impact

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

12.2 The impact on the public sector is likely to be beneficial. Schools forums will have clarity that they can meet remotely and can continue to operate effectively to support local authorities during the COVID-19 pandemic.

12.3 An Impact Assessment has not been prepared for this instrument. The Regulations do not have an impact on business, charities or voluntary bodies and have effect for a temporary period up to and including 31 March 2021 in order to minimise the risks to public health arising from Covid-19.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to engage with schools forums and local authorities to review the operation of these regulations. That will include consideration of making this change on a permanent basis.

14.2 The Regulations do not include a statutory review clause and have effect for a temporary period up to and including 31 March 2021. It will be possible to make amending secondary legislation to bring forward this date, if it is considered

appropriate in light of social distancing rules being relaxed or removed on the basis of medical and scientific advice.

15. Contact

- 15.1 Andrew Hackett at the Department for Education Telephone: 02073407741 or email: andrew.hackett@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Tom Goldman, Deputy Director for the Funding Policy Unit, at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt Hon Nick Gibb MP, Minister of State for School Standards at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.