

Report of Director of Childrens Services

Report to Executive Board

Date: 14 February 2014

Subject: Response to changes in School Organisation legislation



Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The Department for Education consulted between 12 September 2013 and 24 October 2013 on changes to legislation affecting proposals to expand schools, change their age range and establish new schools. Following consultation the new draft legislation was laid before Parliament on 18 December and this came into effect on 28 January 2014.
2. The revised legislation removes the statutory requirement to consult prior to publication of a statutory notice. This report proposes the local response to these changes to ensure that an appropriate level of consultation continues to take place on significant proposals.
3. The revised legislation also allows the governing body to expand their school, on the same site, again without any statutory process. The guidance enables school governing bodies to secure the capital funding necessary and the planning permission. This report also proposes a process by which Executive Board would be the decision-maker in respect of capital funding allocation in any expansion where the local authority provides the necessary funding.

Recommendations

4. That Executive Board is asked to approve the following changes:
 - Permission will no longer be sought for consultation on school organisation changes, where no statutory consultation is required, but permission will continue to be requested before publication of a statutory notice.

- Permission will be sought of Executive Board to approve any expansion of a school brought forward by a governing body that requires the local authority to provide capital funding.

Purpose of this report

- 1.1 This report is to inform Executive Board of some changes to legislation affecting School Organisation proposals that came into effect on 28 January 2014 and to seek permission to amend local practices relating to these changes.

2 Background information

- 2.1 The Department for Education carried out a consultation between 12 September 2013 and 24 October 2014 entitled Changes to the System of School Organisation. The stated aim of the consultation was to give schools more authority over decisions about their size and composition and to be able to respond to what parents want locally, without being unduly restricted by local authority process. However, as local authorities remain legally accountable for the sufficiency of school places these changes could make it more challenging to fulfil this legal duty.
- 2.2 The outcome of the consultation was announced on 18 December 2013. There had been 102 written responses received which are reported to have been broadly in support of reducing bureaucracy whilst advocating the importance of local collaboration.
- 2.3 The draft legislation was laid before Parliament on 18 December with the new Regulations coming into force on 28 January 2014. The guidance accompanying the new regulations was published on the same day. There was no draft of this guidance published in advance of this date so planning for implementation has been problematic.

3 Main issues

- 3.1 There are two significant changes introduced by the new legislation. The first is to proposed changes to schools brought forward by the local authority. The second is that school governing bodies themselves, not the local authority, will be the decision-makers and be able to make significant changes to the size and characteristics of their school without the need for any statutory process or local authority approval.

Proposed changes to schools brought forward by the local authority:

- 3.2 The local authority still has the legal duty to ensure the overall sufficiency of school places. To date, when a need for additional places has been identified, informal discussions have taken place with local elected members and schools to identify a single proposal to take forward for consultation. Previous legislation required a statutory consultation period which the statutory guidance recommended was at least four weeks on a single proposal, and permission was sought from Executive Board before that consultation took place.
- 3.3 The legislation introduced on 28 January removes the legal requirement for this statutory consultation, whilst only *recommending* that local consultation should take place. The guidance also considers it best practice that this consultation should take place during term time, to ensure parents have the maximum

opportunity to be involved. Statutory consultation will now only be required where a school is proposed for closure.

- 3.4 The DfE state that this change to legislation is to reduce the amount of time necessary to make changes. However, it should be noted that whilst needing to ensure the increase in school places, caution is needed in reference to the impact of expansions on communities, neighbouring schools and the overall supply of school places.
- 3.5 The previous requirement to consult on a single proposal was often a source of concern to members of the community as they felt they had not been involved in development of the options. This change in legislation could provide an opportunity to address this concern by more use of Outcomes Based Accountability style events in developing options and use of a range of consultation methods to refine those proposals into a preferred option. The outcome of the consultation would then be summarised to Executive Board in any report requesting permission to publish a statutory notice.
- 3.6 The period of a statutory notice is being reduced from 6 weeks to 4 weeks for all proposals. There will be a need to publish this on the website, in a local newspaper and at the school gate. Executive Board would then be asked to make the final decision within two months of the expiry of the notice, as at present.

Increased Powers for School Governing Bodies

- 3.7 The second significant change as a result of this legislation is to enable governing bodies of all maintained schools to expand, change their age range (but not sixth form, or by a whole phase of education) and add boarding provision without any statutory process or local authority approval. They would first need to secure sufficient capital funding and planning permission. The guidance has an expectation that those schools would work with their local authority and undertake some consultation before proceeding.
- 3.8 At present there is a significant amount of preparatory work undertaken by the local authority in the development of potential proposals. Revenue costs can be involved in providing appropriate feasibility studies in advance of more detailed work being commissioned. If schools are encouraged to bring forward proposals the local authority could not meet the costs of all such feasibility work unless they met a high priority need for places. There would be a need for wider consideration of alternative solutions before such costs were committed.
- 3.9 The DfE continue to make capital allocations directly to the local authority to enable them to meet their duty to provide sufficient school places and the expectation is that in most cases governing bodies that do wish to expand their school would need to work with the local authority in order to secure the necessary funding.

Involving communities

- 3.10 It is important for communities that whether the local authority propose an expansion to a school, or the school themselves wish to expand, a similar level of consultation be carried out so that concerns and issues can be raised. There needs to be assurance that expansion by one school is necessary to meet the needs of an area and will not inadvertently destabilise other local schools, and that the capital funding held by the local authority can be appropriately prioritised.
- 3.11 A transparent process is necessary that enables the local authority to balance all proposals against the priorities of Basic Need, ensuring funding is allocated appropriately. This will require further development so that concerns about ensuring appropriate community engagement, meeting the highest priority needs of the City for school places, highways issues and appropriate procurement procedures, can be addressed.
- 3.12 To ensure equitable decision-making takes place permission to approve a request for funding from a governing body will be brought to Executive Board. Sufficient information about the consultation that has taken place with elected members and the local community will be provided with confirmation that the proposals would meet with the priorities of the Basic Need programme.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Although the statutory consultation period will no longer be required in the majority of proposals, the expectation is that community and stakeholder engagement and consultation will be carried out utilising a range of methods. The council will have an expectation that where a governing body requests funding for expansion, they will carry out consultation with local elected members, parents, residents and other interested parties.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 The recommendations within this report do not have any direct nor specific impact on any of the groups falling under equality legislation and the need to eliminate discrimination and promote equality. A screening document has been prepared and an independent impact assessment is not required for the approvals requested.
- 4.2.2 The screening document has been sent to the Equality Team to be approved and published and held on file. A copy is included as appendix A to this report

4.3 Council policies and City Priorities

- 4.3.1 These changes will affect the continued delivery under the City Council's Basic Need Programme, which is required to fulfil the Local Authority's statutory responsibility to provide sufficient school places.
- 4.3.2 A key objective within the Best Council Plan 2013-2017 is to build a child friendly city. The delivery of pupil places through Basic Need is a fundamental entitlement

of a Child Friendly City. A good quality school place contributes to the achievement of targets within the Children and Young People's Plan, such as our obsession to 'improve behaviour, attendance and achievement'. In addition, the "Narrowing the Gap" and "Going up a League" agendas are fundamental to the ambitions to raise education standards across the city.

- 4.3.3 A further objective of the Best Council Plan 2013-2017 is to ensure high quality public services. We want to promote choice and diversity for parents and families and deliver additional school places in the areas where families need them. Meeting this expectation whilst demonstrating the five outcomes underpinning all we do, is key to the basic need programme.

4.4 Resources and value for money

- 4.4.1 To ensure the capital funding allocated for the purposes of Basic Need are prioritised appropriately, the council will wish to satisfy itself that any governing body seeking funding in order to expand, meets with the strategic priorities. As such the final decision on whether such an expansion should be funded will rest with Executive Board

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 These suggested changes are a response to the revised legislation relating to School Organisation proposals. There will no longer be the need for a statutory consultation period other than for the closure of a school. However there will be an expectation that consultation takes place prior to the publication of a statutory notice. The period for all such notices has been reduced to 4 weeks.
- 4.5.2 All proposals relating to specialist provision for children with SEN will still require a statutory process, whether brought forward by a governing body or the local authority.
- 4.5.3 If the need for a new school is identified there is a presumption that this will be an academy. In the event no suitable academy sponsor can be found the Secretary of State may give permission for a competition to be held. The notice period for a competition has also been reduced to four weeks.
- 4.5.4 It has not been possible to provide a full 28 days-notice of this decision due to the late notification of the implementation date for the new legislation by the DfE. Due to the need to continue with the Basic Need Programme a decision on the local management of this change is necessary in February to enable timely consultations to continue to take place.

4.6 Risk Management

- 4.6.1 A detailed risk register will be established and maintained for each project undertaken as part of the Basic Need Programme.

5 Conclusions

- 5.1 The removal of the statutory requirement to consult does not negate the need to engage with local communities about changes that affect them. The council will

take this opportunity to consult in a more flexible way enabling more engagement in the shaping of proposals as well as consultation on the options.

5.2 Guidance will be made available to governing bodies setting down expectations about consultation with local communities and with the local authority. It will further outline a process which would lead to an Executive Board decision before their request for capital funding would be approved.

5.3 The aim is that elected members, parents, residents and other interested parties will receive the same level of consultation about changes affecting them whether proposed by the local authority or a school governing body.

6 Recommendations

6.1 That Executive Board is asked to approve the following changes:

- Permission will no longer be sought for consultation on school organisation changes, where no statutory consultation is required, but permission will continue to be requested before publication of a statutory notice.
- Permission will be sought of Executive Board to approve any expansion of a school brought forward by a governing body that requires the local authority to provide capital funding.

7 Background documents¹

7.1 None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.