



# Education and Skills Act 2008

## 2008 CHAPTER 25

### PART 5

#### MISCELLANEOUS AND GENERAL

#### CHAPTER 2

#### MISCELLANEOUS

#### *School admissions*

#### **151 Admission arrangements**

- (1) The School Standards and Framework Act 1998 (c. 31) is amended as follows.
- (2) After section 88 insert—

*“Admission arrangements: England”*

- (3) In section 88A (prohibition on interviews), in subsections (1) and (3), after “maintained school” insert “in England”.
- (4) After section 88A insert—

#### **“88B Admission arrangements relating to children looked after by local authority**

- (1) Regulations may require the admission authorities for maintained schools in England to include in their admission arrangements such provision relating to the admission of children who are looked after by a local authority in England as may be prescribed.

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- (2) Regulations under subsection (1) may in particular include provision for securing that, subject to sections 86(3), 86B(2) and (4) and 87, such children are to be offered admission in preference to other children.

### **88C Procedure for determining admission arrangements**

- (1) The admission authority for a maintained school in England must, before the beginning of each school year, determine in accordance with this section the admission arrangements which are to apply for that year.
- (2) The admission authority must, before determining the admission arrangements that are to apply for a year, carry out such consultation about the proposed arrangements as may be prescribed.
- (3) Regulations under subsection (2) may in particular make provision—
- (a) specifying persons who must be consulted, or who must be consulted about prescribed provisions of proposed arrangements;
  - (b) specifying provisions of proposed arrangements about which any such consultation is to be carried out;
  - (c) specifying matters to which any such consultation is, or is not, to relate;
  - (d) as to the manner in which, and the time by which, any such consultation is to be carried out.
- (4) When the admission authority have determined the admission arrangements that are to apply for a year, they must notify the appropriate bodies of those admission arrangements.
- (5) Regulations may make provision—
- (a) as to the manner in which, and the time by which, any such notification is to be given;
  - (b) specifying cases in which subsection (4) does not apply.

### **88D Determination of admission numbers**

- (1) A determination under section 88C by the admission authority for a maintained school in England of the admission arrangements which are to apply for a school year must include a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year.
- (2) Such a determination under section 88C may also, if the school is one at which boarding accommodation is provided for pupils, include—
- (a) a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year as boarders, and
  - (b) a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year otherwise than as boarders.
- (3) Regulations may make provision about the making of any determination required by subsection (1), and may in particular require the admission authority for a maintained school to have regard, in making any such determination, to—

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- (a) any prescribed method of calculation, and
  - (b) any other prescribed matter.
- (4) References in this section to the determination of any number include references to the determination of zero as that number.

### **88E Variation of admission arrangements**

- (1) Subsection (2) applies where an admission authority—
- (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but
  - (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined.
- (2) The authority must—
- (a) refer their proposed variations to the adjudicator, and
  - (b) notify the appropriate bodies of the proposed variations.
- (3) Subsection (2)(a) does not apply in a case where the authority's proposed variations fall within any description of variations prescribed for the purposes of this subsection.
- (4) Where the local education authority are the admission authority for a community or voluntary controlled school, they must consult the governing body before making any reference under subsection (2)(a).
- (5) On a reference under subsection (2)(a), the adjudicator must consider whether the admission arrangements should have effect with the proposed variations until the end of the school year in question.
- (6) If the adjudicator determines—
- (a) that the arrangements should so have effect, or
  - (b) that they should so have effect subject to such modification of those variations as the adjudicator may determine,
- the arrangements are to have effect accordingly as from the date of the adjudicator's determination.
- (7) Where the adjudicator makes a determination under subsection (6), the admission authority must notify the appropriate bodies of the variations subject to which the arrangements are to have effect.
- (8) Regulations may make provision—
- (a) as to the manner in which, and the time by which, any such notification is to be given;
  - (b) specifying cases in which subsection (7) does not apply.
- (9) Regulations may make provision—
- (a) specifying matters which are, or are not, to constitute major changes in circumstances for the purposes of subsection (1)(b);
  - (b) authorising an admission authority, where they have in accordance with section 88C determined the admission arrangements which are

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to apply for a particular school year, to vary those arrangements to such extent or in such circumstances as may be prescribed;

- (c) for the application of any of the requirements of, or imposed under, subsections (2) to (8) to variations proposed to be made by virtue of paragraph (b), or to any prescribed description of such variations, as if they were variations proposed to be made under subsection (1).

### **88F Sections 88C to 88E: supplementary**

- (1) Regulations may make provision—
  - (a) requiring an admission authority who have made a determination of a prescribed description under section 88C to publish such information relating to the determination (including information as to the authority’s reasons for making the determination) as may be prescribed;
  - (b) as to such other matters connected with the procedure for determining or varying admission arrangements under sections 88C to 88E as the Secretary of State considers appropriate.
- (2) The power under paragraph (a) of subsection (1) to require an admission authority to publish information includes power to require them to publish it—
  - (a) by giving a notice containing the information to prescribed persons, or
  - (b) in any other prescribed manner.
- (3) In sections 88C and 88E, the “appropriate bodies”, in relation to an admission authority, means—
  - (a) whichever of the governing body and the local education authority are not the admission authority,
  - (b) the admission authorities for all other maintained schools in the relevant area or for such class of schools as may be prescribed;
  - (c) the governing bodies for all community and voluntary controlled schools in the relevant area (so far as not falling within paragraph (a) or (b)),
  - (d) the admission authorities for maintained schools in England of any prescribed description,
  - (e) in the case of a foundation or voluntary school which has a religious character for the purposes of Part 2, such body or person representing the religion or religious denomination in question as may be prescribed,
  - (f) the admission forum for the area of the local education authority in which the school is situated, and
  - (g) such other persons as may be prescribed.
- (4) In subsection (3), “the relevant area” means—
  - (a) the area of the local education authority in which the school in question is situated, or
  - (b) if regulations so provide, such other area in England (whether more or less extensive than the area of the local education authority) as may be determined by or in accordance with the regulations.

### **88G Power to restrict alteration of admission arrangements following establishment or expansion**

- (1) Subsection (2) applies in relation to a maintained school in England where—
  - (a) proposals for the establishment of, or the making of a prescribed alteration to, the school have been published under Part 2 of the Education and Inspections Act 2006 or under section 113A of, or Schedule 7 to, the Learning and Skills Act 2000,
  - (b) in the case of proposals for the making of a prescribed alteration to the school, the proposals are for an increase in the number of pupils that may be admitted to the school or for an enlargement of the premises,
  - (c) the proposals fall to be implemented (with or without modifications), and
  - (d) prescribed conditions are satisfied.
- (2) Regulations may provide that, where this subsection applies in relation to a maintained school—
  - (a) the admission arrangements for the initial period and each of a prescribed number of school years following that period are to be the arrangements which fall to be implemented in accordance with the proposals (or in accordance with the proposals as modified), and
  - (b) those arrangements may not be varied by the admission authority for the school except—
    - (i) to comply with any duty imposed on them by regulations under section 88B, or
    - (ii) in accordance with regulations under subsection (5).
- (3) Regulations under subsection (2) may exclude or modify any provision of section 88C, 88E or 88F in its application to cases to which the regulations apply.
- (4) Regulations under subsection (2) may provide that in cases to which the regulations apply the admission arrangements which fall to be implemented in accordance with the proposals (or in accordance with the proposals as modified) are to be treated for the purposes of section 86(5) to (5B) as having been determined by the admission authority under section 88C.
- (5) Regulations may prescribe circumstances in which an admission authority may refer to the adjudicator proposals to vary admission arrangements in cases to which regulations under subsection (2) apply.
- (6) Regulations may make provision as to the determination by the adjudicator of any reference made by virtue of subsection (5).
- (7) In this section—

“initial period” means—

  - (a) in relation to a maintained school which is being established, the period beginning with the day on which the school opens and ending with the beginning of the first school term to begin after the following July;
  - (b) in relation to a maintained school which is increasing the number of pupils that may be admitted to the school or enlarging

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its premises, the period beginning with the first day on which additional pupils may be admitted or (as the case may be) the enlarged premises are in use and ending with the beginning of the first school term to begin after the following July;

“prescribed alteration” means an alteration prescribed for the purposes of section 18 of the Education and Inspections Act 2006.

### **88H Reference of objections to adjudicator**

- (1) This section applies where admission arrangements have been determined by an admission authority for a maintained school in England under section 88C.
- (2) Where—
  - (a) an appropriate person wishes to make an objection about the admission arrangements, and
  - (b) the objection does not fall within any description of objections prescribed for the purposes of this paragraph,
 that person may refer the objection to the adjudicator.
- (3) Where—
  - (a) a parent of a prescribed description wishes to make an objection about the admission arrangements, and
  - (b) the objection falls within any description of objections prescribed for the purposes of this paragraph,
 that person may refer the objection to the adjudicator.
- (4) On a reference under subsection (2) or (3) the adjudicator must decide whether, and (if so) to what extent, the objection should be upheld.
- (5) Regulations may make provision—
  - (a) as to any conditions which must be satisfied before—
    - (i) an objection can be referred to the adjudicator under subsection (2) or (3), or
    - (ii) the adjudicator is required to determine an objection referred to him under subsection (3);
  - (b) as to circumstances in which the adjudicator is not required to determine an objection under subsection (4);
  - (c) prescribing the steps which may be taken by an admission authority where an objection has been referred to the adjudicator under subsection (2) or (3) but has not yet been determined.
  - (d) prohibiting or restricting the reference under subsection (2) or (3), within such period following a decision by the adjudicator under this section as may be prescribed, of any objection raising the same (or substantially the same) issues in relation to the admission arrangements of the school in question.
- (6) In subsection (2), “appropriate person” means—
  - (a) a body or person within any of paragraphs (a) to (f) of section 88F(3); or
  - (b) any person prescribed for the purposes of this subsection.

### **88I Other functions of adjudicator relating to admission arrangements**

- (1) This section applies where admission arrangements have been determined by an admission authority for a maintained school in England under section 88C.
- (2) Where it appears to the Secretary of State that the admission arrangements do not, or may not, conform with the requirements relating to admission arrangements, the Secretary of State may refer the admission arrangements to the adjudicator.
- (3) Subsection (4) applies where—
  - (a) the Secretary of State refers the admission arrangements to the adjudicator under subsection (2), or
  - (b) the adjudicator receives a report under section 88P which, pursuant to regulations under subsection (5) of that section, states that the admission arrangements do not, or may not, conform with the requirements relating to admission arrangements.
- (4) The adjudicator must—
  - (a) consider the admission arrangements, and
  - (b) decide whether they conform with those requirements and, if not, in what respect they do not.
- (5) Where it appears to the adjudicator that the admission arrangements do not, or may not, conform with the requirements relating to admission arrangements (and subsection (4) does not apply)—
  - (a) the adjudicator may consider the admission arrangements, and
  - (b) if the adjudicator considers the arrangements under paragraph (a), the adjudicator must decide whether they conform with those requirements and, if not, in what respect they do not.
- (6) Regulations may make provision prescribing the steps which may be taken by an admission authority where the adjudicator—
  - (a) is considering the authority's admission arrangements under subsection (4)(a) or (5)(a), but
  - (b) has not yet made a decision in the case under subsection (4)(b) or (5)(b) (as the case may be).

### **88J Changes to admission arrangements**

- (1) This section applies where the adjudicator is required to make a decision (“the primary decision”)—
  - (a) under section 88H(4) on whether to uphold an objection to admission arrangements, or
  - (b) under section 88I(4)(b) or (5)(b) on whether admission arrangements conform with the requirements relating to admission arrangements.
- (2) The adjudicator—
  - (a) must consider whether it would be appropriate for changes to be made to any aspect of the admission arrangements in consequence of the primary decision, and

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- (b) may consider whether it would be appropriate for any other changes to be made to any aspect of the admission arrangements.
- (3) Where the adjudicator decides under subsection (2) that it would be appropriate for changes to be made to the admission arrangements—
  - (a) that decision may specify the modifications that are to be made to the arrangements, and
  - (b) the admission authority must forthwith revise those arrangements in such a way as to give effect to that decision.
- (4) The adjudicator may—
  - (a) decide, in the case of any change required by subsection (3)(b), that it is to be a protected change for the purpose of section 88L, and
  - (b) where the adjudicator does so but considers that the change ought not to be protected for the number of years prescribed under subsection (2) of that section, decide that the change is to be protected only for such lesser number of school years as the adjudicator may specify.

#### **88K Sections 88H to 88J: supplementary**

- (1) Subsection (2) applies to any decision of the adjudicator—
  - (a) under section 88H(4) on whether to uphold an objection to admission arrangements,
  - (b) under section 88I(4)(b) or (5)(b) on whether admission arrangements conform with the requirements relating to admission arrangements, or
  - (c) under section 88J(2) as to whether or not it would be appropriate for changes to be made to admission arrangements.
- (2) Any decision of the adjudicator to which this subsection applies is binding on—
  - (a) the admission authority in question, and
  - (b) all persons by whom an objection may be referred to the adjudicator under section 88H(2) or (3) in relation to the admission arrangements.
- (3) In the case of a decision mentioned in subsection (1)(a) or (b), the adjudicator must publish a report containing the following—
  - (a) the adjudicator’s decision on the objection or (as the case may be) on whether the admission arrangements conform with the requirements relating to admission arrangements,
  - (b) the decision of the adjudicator under section 88J(2)(a), and any decision of the adjudicator under section 88J(2)(b), on whether it would be appropriate for changes to be made to the admission arrangements,
  - (c) any decision of the adjudicator—
    - (i) under section 88J(4)(a) that a change is to be a protected change for the purposes of section 88L, or
    - (ii) under section 88J(4)(b) that a change is to be protected only for such lesser number of school years as the adjudicator may specify, and



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- (d) the adjudicator’s reasons for the decisions mentioned in paragraphs (a) to (c).
- (4) Regulations may make provision—
- (a) requiring an admission authority for a maintained school in England to provide information which—
    - (i) falls within a prescribed description, and
    - (ii) is requested by the adjudicator for the purposes of the exercise by the adjudicator of functions under sections 88H to 88J or this section or of enabling the adjudicator to decide whether to exercise the power conferred by section 88I(5);
  - (b) as to the manner in which a report required to be published under subsection (3) is to be published;
  - (c) requiring such matters to be notified to such persons, and in such manner, as may be prescribed;
  - (d) prescribing circumstances in which an admission authority may revise the admission arrangements for their school in the light of any decision by the adjudicator relating to the admission arrangements for another school, and the procedure to be followed in such a case.
- (5) In sections 88I and 88J and this section “the requirements relating to admission arrangements” means the requirements imposed by or under this Part as to the content of admission arrangements for maintained schools in England.

#### **88L Restriction on alteration of admission arrangements following adjudicator’s decision**

- (1) This section applies where—
- (a) in accordance with section 88J(3)(b) the admissions authority for a maintained school in England have revised any provisions of admission arrangements for a school year, and
  - (b) the revisions include any protected change.
- (2) In this section—
- “protected change” means a change which the adjudicator has decided under section 88J(4)(a) is to be a protected change for the purposes of this section;
- “the protected provisions”, in relation to any admission arrangements, means provisions corresponding to—
- (a) provisions so far as implementing a protected change, or
  - (b) provisions so far as revised in accordance with regulations under subsection (6);
- “the required number” means such number as may be prescribed or such lesser number as is specified by the adjudicator under section 88J(4)(b) in relation to a particular protected change.
- (3) The admission authority for the school—
- (a) must incorporate the protected provisions in determining the admission arrangements for each of the required number of school years following the school year mentioned in subsection (1)(a), and

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- (b) may not vary those arrangements in such a way as to alter the protected provisions.
- (4) Subsection (3) does not apply to the extent that—
  - (a) the admission authority are required to determine or vary their admission arrangements in a way which alters the protected provisions in order to comply with any duty imposed on them by regulations under section 88B, or
  - (b) the arrangements may be determined or varied in a way which alters those provisions in accordance with regulations under subsection (6).
- (5) Regulations may exclude or modify any provision of section 88C, 88E or 88F in its application to cases to which this section applies.
- (6) Regulations may prescribe circumstances in which, in a case where this section applies, an admission authority may refer to the adjudicator proposals to determine or vary their admission arrangements in a way which alters the protected provisions.
- (7) Regulations may make provision as to the determination by the adjudicator of any reference made by virtue of subsection (6).

#### **88M Co-ordination of admission arrangements**

- (1) Regulations may require a local education authority in England—
  - (a) to formulate, for any academic year in relation to which prescribed conditions are satisfied, a qualifying scheme for co-ordinating the arrangements for the admission of pupils to maintained schools in their area, and
  - (b) to take prescribed action with a view to securing the adoption of the scheme by themselves and each governing body who are the admission authority for a maintained school in their area.
- (2) Subject to subsection (3), the Secretary of State may make, in relation to the area of a local education authority in England and an academic year, a scheme for co-ordinating the arrangements, or assisting in the co-ordination of the arrangements, for the admission of pupils to maintained schools in that area.
- (3) A scheme may not be made under subsection (2) in relation to a local education authority and an academic year if, before the prescribed date in the year preceding the year in which that academic year commences—
  - (a) a scheme formulated by the local education authority in accordance with subsection (1) is adopted in the prescribed manner by the persons mentioned in paragraph (b) of that subsection, and
  - (b) the authority provide the Secretary of State with a copy of the scheme and inform the Secretary of State that the scheme has been so adopted.
- (4) Regulations may provide—
  - (a) that each local education authority in England must secure that, subject to such exceptions as may be prescribed, no decision made by any admission authority for a maintained school in their area to offer or refuse a child admission to the school is to be communicated to the parent of the child except on a single day, designated by the local education authority, in each year, or

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- (b) that, subject to such exceptions as may be prescribed, a decision made by the admission authority for a maintained school in England to offer or refuse a child admission to the school is not to be communicated to the parent of the child except on a prescribed day.
- (5) In this section
- “academic year” means a period commencing with 1st August and ending with the next 31st July;
  - “qualifying scheme” means a scheme that meets prescribed requirements.
- (6) Nothing in this section applies in relation to arrangements for the admission to maintained schools of pupils—
- (a) who—
    - (i) have ceased to be of compulsory school age, or
    - (ii) will have ceased to be of compulsory school age before education is provided for them at the school, or
  - (b) for the purpose of receiving sixth form education.

#### **88N Further provision about schemes adopted or made by virtue of section 88M**

- (1) Regulations may make provision about the contents of schemes under section 88M(2), including provision about the duties that may be imposed by such schemes on—
  - (a) local education authorities in England, and
  - (b) the admission authorities for maintained schools in England.
- (2) Regulations may provide that where a local education authority in England or the governing body of a maintained school in England have, in such manner as may be prescribed, adopted a scheme formulated by a local education authority for the purpose mentioned in section 88M(1)(a), sections 496 and 497 of the Education Act 1996 are to apply as if any obligations imposed on the local education authority or governing body under the scheme were duties imposed on them by that Act.
- (3) Regulations may provide that where any decision as to whether a child is to be granted or refused admission to a maintained school in England falls to be made in prescribed circumstances, the decision must, if a scheme adopted or made by virtue of section 88M so provides, be made by the local education authority regardless of whether they are the admission authority for the school.
- (4) Where any decision as to whether a child is to be granted or refused admission to a maintained school is (by virtue of regulations under subsection (3)) made by the local education authority although they are not the admission authority, the governing body of the school must implement the decision.
- (5) Before proposing a scheme for adoption under section 88M(1) a local education authority must comply with such requirements as to consultation as may be prescribed.
- (6) Regulations under subsection (5) may in particular require consultations to be undertaken with a view to securing that the arrangements for the admission

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of pupils to maintained schools in the areas of different local education authorities are, so far as is reasonably practicable, compatible with each other.

- (7) Before making a scheme under section 88M(2) in relation to the area of any local education authority, the Secretary of State must consult—
- (a) the local education authority, and
  - (b) any governing body who are the admission authority for a school which appears to the Secretary of State to be a school to which the scheme will apply.
- (8) A scheme made under section 88M(2) may be varied or revoked by the Secretary of State.

### **88O Sharing of information by local education authorities**

The Secretary of State may by regulations require local education authorities in England to provide other local education authorities with such information as may be required by them in connection with the exercise of any of their functions under this Chapter.

### **88P Reports by local education authorities to adjudicator**

- (1) A local education authority in England must make such reports to the adjudicator about such matters connected with relevant school admissions as may be prescribed.
- (2) In subsection (1) “relevant school admissions”, in relation to a local education authority, means—
- (a) the admission of pupils to relevant schools in the authority’s area;
  - (b) the admission of pupils in the authority’s area to other relevant schools;
  - (c) the entry to the sixth form of pupils who have been admitted to relevant schools in the authority’s area; and
  - (d) the entry to the sixth form of pupils in the authority’s area who have been admitted to other relevant schools.
- (3) In this section, “relevant school” means—
- (a) a maintained school,
  - (b) an Academy,
  - (c) a city technology college, or
  - (d) a city college for the technology of the arts.
- (4) The matters which may be prescribed under subsection (1) in relation to a report by a local education authority include, in particular, matters relating to—
- (a) the determination and operation of admission arrangements for maintained schools in the area of the local education authority;
  - (b) the determination and operation of arrangements for the admission of pupils to Academies, city technology colleges and city colleges for the technology of the arts in the area of the local education authority;

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- (c) the adoption and operation of any scheme, whether or not formulated by the local education authority and whether under section 88M or otherwise, for co-ordinating—
  - (i) the admission of pupils to relevant schools in their area,
  - (ii) the admission of pupils in their area to other relevant schools.
- (5) Regulations under subsection (1) may make provision as to—
  - (a) the time by which any report under that subsection must be made; and
  - (b) the form and content of any such report;and may, in particular, require a report to include a statement as to whether or not admission arrangements for maintained schools in the area of the local education authority conform with the requirements imposed by or under this Part as to the content of admission arrangements for maintained schools in England.

### **88Q Reports under section 88P: provision of information**

- (1) A relevant person must, on request, provide a local education authority in England with such information as the authority may reasonably require for the purpose of enabling the authority to fulfil their duties under section 88P.
- (2) In subsection (1), “relevant person”, in relation to a local education authority, means—
  - (a) an admission authority (other than the local education authority) for a maintained school in the area of the local education authority;
  - (b) the admission forum for the area of the local education authority;
  - (c) any member of an appeal panel constituted under section 94 by—
    - (i) the local education authority, or
    - (ii) the governing body of a foundation or voluntary aided school in the area of the local education authority;
  - (d) the proprietor of—
    - (i) an Academy,
    - (ii) a city technology college, or
    - (iii) a city college for the technology of the arts,in the area of the local education authority;
  - (e) any other local education authority in England;
  - (f) such other person as may be prescribed.”