

**2003 No.1041**

**EDUCATION, ENGLAND**

**The New School (Admissions) (England) Regulations 2003**

*Made* - - - - *7th April 2003*

*Laid before Parliament-* *14th April 2003*

*Coming into force* - - *8th May 2003*

The exercise of the powers conferred on the Secretary of State by sections 72 and 138(7) of the School Standards and Framework Act (a), the Secretary of State for Education and Skills hereby makes the following Regulations:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the New School (Admissions) (England) Regulations 2003 and shall come into force on 8th May 2003.

(2) These Regulations apply in relation to new schools in England which, in the school year in which they will first admit pupils, are to be community, foundation or voluntary schools.

(3) Regulations 5,6 and 7 shall not apply in relation to a new school where the admission authority for such a school, established in connection with proposals involving the discontinuance of another school maintained by a local education authority, determine that the initial admission arrangements shall be the same as those of the discontinued school.

**Revocation**

2.—(1) Subject to paragraph (2), the New School (Admissions) (England) Regulations 1999(b) are hereby revoked.

(2) The New School (Admissions) (England) Regulations 1999 shall continue to have effect in relation to any school established under section 28 of the 1998 Act the opening date for which is before the school year 2004-05, and nothing in these Regulations shall apply in relation to such a school.

**Interpretation**

3. In these Regulations-

“the 1998 Act” means the School Standards and Framework Act 1998;

“the 2000 Act” means the Learning and Skills Act 2000(a);

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(a) 1998 c.31; by virtue of S.I. 1999/672 the powers conferred by these sections are exercisable by the Secretary of State only in relation to England. For the meaning of “regulations” see section 142(1).

(b) S.I. 1999/2666.

“the 2002 Act” means the Education Act 2002**(b)**;

“S.I. 1999/124” means the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999**(c)**;

“S.I. 1999/125” means the Education (Objections to Admission Arrangements) Regulations 1999 **(d)**;

“admission authority”, in relation to a new school, means the person or body responsible under regulation 4 for making the school’s initial admission arrangements;

“admission number” means the number of pupils in any relevant age group intended to be admitted to the school as determined by an admission authority in accordance with regulation 6;

“indicated admission number” means the number of pupils in any relevant age group referred to as such in, and determined in accordance with the net capacity assessment method set out in, the guidance, Assessing the Net Capacity of Schools**(e)**, issued by the Department for Education and Skills in August 2002;

“initial year”, in relation to a new school, means the first school year in which pupils are (or, it is intended, should be) admitted to the school;

“initial admission arrangements”, in relation to a new school, means the arrangements for the admission of children to the school (including the school’s admission policy) determined by an admission authority in accordance with regulation 5**(1)**;

“maintained school” means a community, foundation or voluntary school;

“new school” means a new school within the meaning of section 72**(3)(f)** of the 1998 Act;

“relevant committee”, in relation to a maintained school, means the school organisation committee for the area of the local education authority who maintain the school;

“school opening date”, in relation to a new school, means the date when the school first admits pupils;

“temporary governing body” means a temporary governing body constituted under section 34 of the 2002 Act.

### **Responsibility for initial admission arrangements**

**4.—(1)** The initial admission arrangements for a new school which is to be a community or voluntary controlled school shall be made by-

- (a) the local education authority, or
- (b) the temporary governing body where, with the agreement of that body, the local education authority have delegated to them responsibility for determining those arrangements.

**(2)** The initial admission arrangements for a new school which is to be a foundation or a voluntary aided school shall be made by-

- (a) the temporary governing body, or
- (b) (unless sub-paragraph (c) applies) the promoters where-
  - (i) the temporary governing body have not yet been constituted, and
  - (ii) the promoters consider it expedient for the admission arrangements to be determined without delay, or

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**(a)** 2000 c. 21.

**(b)** 2002 c. 32.

**(c)** S.I. 1999/124.

**(d)** S.I. 1999/125, as amended by S.I.2002/2901.

**(e)** Reference DfES/0739/2001REV, ISBN 1 84185 610 X.

**(f)** Section 72**(3)(a)** of the 1998 Act was amended by paragraph 106 of Schedule 21 to the 2002 Act, which substitutes “section 34 of the Education Act 2002” for “section 44”.

- (c) in the case of a foundation school which is to be established by a local education authority pursuant to proposals published under section 28(1)(a) of the 1998 Act, that authority where-
  - (i) the temporary governing body have not yet been constituted, and
  - (ii) that authority considers it expedient for the admission arrangements to be determined without delay.

### **Procedure for determining admission arrangements**

5.—(1) The admission authority for a new school shall determine the initial admission arrangements for the initial year and the following school year not less than 6 months before the school opening date.

(2) Subject to paragraph (4), before determining the initial admission arrangements the admission authority shall consult the following about the proposed arrangements, namely-

- (a) where the local education authority are the admission authority, every local education authority any part of whose area adjoins the area of the consulting authority;
- (b) where the temporary governing body or promoters are the admission authority, every local education authority any part of whose area lies within, or adjoins, the relevant area; and
- (c) in all cases-
  - (i) the admission authorities for all other maintained schools in the relevant area;
  - (ii) the governing bodies of all community and voluntary controlled schools (so far as not falling within paragraph (i)) in the relevant area.

(3) In paragraph (2) “the relevant area” is the relevant area or relevant areas determined by the local education authority in accordance with S.I. 1999/124.

(4) In relation to the proposed initial admission arrangements for a primary school, paragraph (2) shall only require the admission authority to consult-

- (a) the admission authorities for other schools in the relevant area which are primary schools; and
- (b) the governing bodies of all community and voluntary controlled schools (so far as not falling within subparagraph (a)) in the relevant area which are primary schools.

(5) The admission authority for a foundation or voluntary school which is a Church of England school as defined by section 142(1) of the 1998 Act, shall, when preparing initial admission arrangements for consultation under paragraph (2), consult the Diocesan Board of Education about the initial admission arrangements which they propose to determine for the school.

(6) Once the admission authority have carried out any consultation under paragraph (2) the authority shall-

- (a) determine that their proposed arrangements (either in their original form or with such modifications as the authority think fit) shall be the initial admission arrangements, and
- (b) within 14 days of that determination notify the persons whom they consulted under paragraph (2) of those arrangements.

### **Determination of Admission Number**

6.—(1) Subject to paragraph (3), a determination under regulation 5(1) by the admission authority of the initial admission arrangements shall include an admission number determined for each relevant age group in accordance with paragraph (2).

(2) In relation to a new school to be established pursuant to-

- (a) proposals published under section 28 of the 1998 Act, the admission number shall be the same as any admission number stated in any notice of the proposals required to be

published pursuant to regulations(a) made under subsection (3) of that section, or (if applicable) as modified by the relevant committee under paragraphs 3(2) or 5(2) of Schedule 6 to the 1998 Act, or (as the case may be) by the adjudicator under paragraphs 3(7) or 5(7) of that Schedule;

- (b) proposals made under section 113A of the 2000 Act, the admission number shall be the same as any admission number stated in any notice of the proposals required to be published pursuant to regulations(b) made under subsection (9) of that section, or (if applicable) as modified by the Secretary of State under subsection (5) of that section, or under paragraph 1(3) of Schedule 7A to that Act(c);
- (c) proposals published under section 70 of the 2002 Act, the admission number shall be the same as any admission number stated in any notice of the proposals required to be published pursuant to Regulations made under subsections (5) and (6) of that section, or (if applicable) as modified by the Secretary of State under paragraphs 3(1) or 5(2) of Schedule 8 to that Act.

(3) Paragraph (4) applies in any case where at the time when the initial admission arrangements are determined by the admission authority any proposals referred to in paragraph (2) to which those arrangements relate have not been approved.

(4) Where this paragraph applies-

- (a) the admission authority shall determine for each relevant age group an admission number which shall be the same as the admission number stated in any notice of proposals referred to in paragraph (2);
- (b) an admission number determined in accordance with sub-paragraph (a) shall be deemed to be a provisional admission number pending approval of the admission number stated in the proposals or (as the case may be) modification of that admission number as described in sub-paragraphs (a), (b) and (c) of paragraph (2); and
- (c) (except where the context otherwise requires) any reference in these Regulations to an admission number shall have effect as if it were a reference to a provisional admission number.

### **References of objections to the adjudicator**

7.—(1) Where initial admission arrangements have been determined by an admission authority under regulation 5(6)(a) an objection to those arrangements may be referred to the adjudicator by any person consulted by the admission authority under regulation 5(2) providing that-

- (a) the objection does not fall within any description of objection prescribed under regulation 2(2) of S.I. 1999/125, or
- (b) in any case where regulation 6(4) applies, the objection does not relate to the admission number in circumstances where any approval of the proposals (whether with or without modification of the admission number) is less than six months before the intended school opening date.

(2) Subject to paragraph (3), an objection may not be referred under paragraph (1) unless it is received by the adjudicator within 6 weeks after the receipt by the objecting person of the notification required by virtue of regulation 5(6)(b).

(3) An objection which is received after the end of the period specified in paragraph (2) shall nevertheless be regarded as properly referred if the adjudicator is satisfied that it was not reasonably practicable for the objection to have been received earlier than the time when it was received.

(4) On a reference under paragraph (1) the adjudicator shall either-

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(a) See the Education (School Organisation Proposals) (England) Regulations 1999 (S.I. 1999/2213) as amended by S.I. 2000/2198 and S.I. 2001/1405.  
(b) See the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003 (S.I. 2003/507).  
(c) Section 113A of the Learning and Skills Act 2000 (c.21) was inserted by section 70 of the Education Act 2002 (c.32) and Schedule 7A to the 2000 Act was inserted by Schedule 9 to the 2002 Act.

- (a) decide whether, and (if so) to what extent, the objection should be upheld, or
- (b) where the objection is about any criterion for admission to a new school relating to a person's religion, religious denomination or religious practice, refer it to the Secretary of State for that question to be decided by him,

save that nothing in this paragraph shall require the adjudicator to make such a determination before-

- (i) proposals published under section 28(1) and (2) of the 1998 Act, have been approved or determined to be implemented in accordance with the provisions of Schedule 6 to that Act,
- (ii) proposals made under section 113A of the 2000 Act, have been approved in accordance with the provisions of subsection (5) of that section,
- (iii) proposals published under section 70 of the 2002 Act, have been approved in accordance with the provisions of Schedule 8 to that Act.

(5) Where the objection is referred to the Secretary of State under paragraph (4)(b), the adjudicator shall, if the Secretary of State so requests, give his advice on the question referred to in that provision.

(6) Where the adjudicator or the Secretary of State decides that an objection should be upheld to any extent, his decision on the objection may specify the modifications that are to be made to the initial admission arrangements in question.

(7) The decisions of the adjudicator or the Secretary of State (as the case may be) and the reasons for them shall be publicised by notification in writing to the admission authority or person (as the case may be) making the objection and to all other persons whom the admission authority was required to consult about the initial admission arrangements under regulation 5(2).

(8) The decision of the adjudicator or the Secretary of State (as the case may be) shall, in relation to the initial admission arrangements in question, be binding on the admission authority and on any persons by whom an objection about those arrangements may be made under paragraph (1); and if that decision is to uphold the objection to any extent, those arrangements shall forthwith be revised by the admission authority in such a way as to give effect to that decision.

### **Variation of initial admission arrangements**

**8.—(1)** This regulation applies where –

- (a) the admission authority for a new school have determined the initial admission arrangements in accordance with regulation 5(6)(a), or
- (b) the admission authority for a new school established in connection with proposals involving the discontinuance of another school maintained by a local education authority have determined that the initial admission arrangements shall be the same as that school,

but at any time during the initial year or the following school year consider that the arrangements should be varied.

(2) Where this regulation applies the admission authority may-

- (a) vary the admission arrangements in view of a major change of circumstances occurring since the initial admission arrangements were so determined, or
- (b) vary the admission number where such a variation is necessary to implement the approval of proposals published under section 28 of the 1998 Act where-
  - (i) such proposals have been approved under paragraph 3 of Schedule 6, or
  - (ii) the local education authority have determined under paragraph 4 of that Schedule to implement such proposals;

(3) Where paragraph (2)(a) applies, the admission authority shall refer the proposed variation to the adjudicator, and shall in every case where there has been consultation under regulation 5(2) notify the bodies, whom they had consulted, of the proposed variation.

(4) Where paragraph (2)(b) applies, the admission authority shall refer the proposed variation to the adjudicator unless the proposals giving rise to that variation have been approved-

- (a) by the relevant committee under paragraph 3(2)(b) of Schedule 6 without modification of any proposed admission number, or
- (b) (where paragraph 3(5) or (6) of Schedule 6 applies) by the adjudicator in accordance with paragraph 3(7) of that Schedule,

(whether or not the proposals have subsequently been modified by the adjudicator under paragraph 5(7) of Schedule 6) provided in each case that, following such approval, the statutory proposals are not modified in relation to any admission number by the relevant committee pursuant to a request made under paragraph 5(2)(a) of that Schedule.

(5) The adjudicator shall consider whether the arrangements should have effect with those variations until the end of the initial year or (as the case may be) the following school year; and if he determines that the arrangements should have such effect or that they should have effect subject to such modifications of those variations as he may determine-

- (a) the arrangements shall have effect accordingly as from the date of his determination; and
- (b) in every case where there has been consultation under regulation 5(2) the admission authority shall notify the persons whom they consulted of the variations subject to which the arrangements are to have effect.

(6) Any reference in this regulation to Schedule 6 is a reference to Schedule 6 to the 1998 Act.

#### **Application of Enactments**

9. The enactments mentioned in the Schedule to these Regulations shall apply to new schools, subject to the modifications prescribed in that Schedule.

7th April 2003

*David Miliband*  
Minister of State  
Department for Education and Skills

**PROVISIONS OF ENACTMENTS APPLYING IN RELATION TO  
NEW SCHOOLS WITH MODIFICATIONS**

**1.** The following provisions of the Education Acts, namely-

- (a) sections 324(5)(b), 324(5A) and 439 of the Education Act 1996 **(a)**,
- (b) sections 1, 84, 85A, 86, 87, 89B, 89C, 92, 94, 95 to 99, 101, 102 and 103(3) of the 1998 Act **(b)**,
- (c) any Regulations made under any of the provisions referred to in sub-paragraphs (a) and (b) above,

shall apply in relation to a new school, but subject to the exceptions and modifications specified in paragraphs 2 to 9 below.

**2.** A reference in any of the provisions specified in paragraph 1 to a school of one of the following categories, namely-

- (a) a maintained school,
- (b) a school maintained by a local education authority,
- (c) a community, foundation or voluntary school,

shall be construed as a reference to a new school which will become a school of that category when it first admits pupils.

**3.** A reference in any of those provisions to a governing body of a school shall have effect as if it were a reference to a temporary governing body or (where the context admits) to any other person responsible for the admission of pupils under the initial admission arrangements.

**4.** A reference in any of those provisions to “admission arrangements” shall be construed as “initial admission arrangements” as defined in regulation 3.

**5.** A reference in any of those provisions to an “admission authority” shall have effect as if it were a reference to an “admission authority” as defined in regulation 3.

**6.** Section 99 of the 1998 Act shall not apply in relation to a new school to be established in substitution for one or more discontinued schools each of which has been designated as a grammar school under section 104 of the 1998 Act but shall otherwise have effect as if subsections (2)(a) and 4(a) were omitted.

**7.** Section 101(1) of the 1998 Act shall have effect as if in sub-paragraph (a) for the words “any year” there shall be substituted “the year in which pupils are first to be admitted to a new school”.

**8.** Section 103(3) of the 1998 Act shall have effect as if the words “(whether authorised by section 100 or section 101)” were omitted.

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**(a)** Section 324(5)(b) was amended, and section 324(5A) inserted, by paragraph 77 of Schedule 30 to the 1998 Act, and section 324(5)(b) was further amended by paragraph 43 of Schedule 21 to the 2002 Act. Section 439 was amended by paragraph 115 of Schedule 30 to the 1998 Act and further amended by paragraph 14 of Schedule 4 to the 2002 Act.

**(b)** Section 1 was amended by paragraph 87 of Schedule 21 to the 2002 Act. Section 85A was inserted by section 46 of that Act. Section 86 was amended by section 47 of, and paragraph 3 of Schedule 4 to, that Act. Sections 89A, 89B and 89C were inserted by sections 47(2) and 48 respectively of that Act. Sections 84, 87, 92, and 95 to 98 were amended by paragraphs 2, 4, 7, and 9 to 12 respectively of Schedule 4 to that Act. Section 94 was amended by section 50 of, and paragraph 8 of Schedule 4 to, that Act.

9. Part 4 of the Education (School Information) (England) Regulations 2002<sup>(a)</sup> shall not apply in relation to any new school, the school opening date for which is between 15th April and 1st August in any year.

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<sup>(a)</sup> S.I. 2002/2897.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision in relation to the determination of the initial admission arrangements and applications for admission to new schools. They revoke the New School (Admissions) (England) Regulations 1999 (S.I. 1999/2666).

Regulation 4 specifies who is to be the admission authority for a new school in relation to its initial year, that is to say the body responsible for the determination of the arrangements for admission of pupils to the school for the school year in which it will first admit pupils. Where the school is to be a community or voluntary controlled school, the admission authority will be the local education authority or the temporary governing body where the local education authority have delegated this responsibility to them. Where the new school will be a foundation or voluntary aided school, the temporary governing body (or, where appropriate, the local education authority or promoters) will be the admission authority.

Regulation 5 requires an admission authority for a new school to determine the initial admission arrangements not less than six months before the school opening date. An admission authority is under a duty to consult on the initial admission arrangements before they are so determined.

Regulation 6 requires an admission authority to determine, as part of the initial admission arrangements, an admission number for each relevant age group, that is to say the number of pupils in any relevant age group which it intends to admit to the school. Any admission number must be the same as the admission number approved in accordance with the relevant statutory proposals for the establishment of the new school. Where the initial admission arrangements have been determined before the relevant statutory proposals have been approved, the admission authority must determine the admission number in accordance with the admission number proposed under the statutory proposals, which will be deemed as a provisional admission number until the proposals have been approved.

Regulation 7 makes provision, after the initial admission arrangements have been determined, for admission authorities and governing bodies of community and voluntary controlled schools, consulted in accordance with regulation 5, to refer objections to the adjudicator.

Regulation 8 provides for the initial admission arrangements to be varied either in view of a major change of circumstance, or where a variation is necessary to implement the approval of statutory proposals published under section 28 of the 1998 Act. The proposed variation must be referred to the adjudicator unless circumstances, prescribed under the Regulations, apply.

Regulation 9 and the Schedule provide for certain provisions of the Education Acts and the Education (School Information) (England) Regulations 2002 (S.I. 2897), to apply with modifications to new schools.





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STATUTORY INSTRUMENTS

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