

**EXPLANATORY MEMORANDUM TO**  
**THE COMPLAINTS AGAINST SCHOOLS (ENGLAND) REGULATIONS 2010**  
**2010 No. 853**

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 The Regulations prescribe matters for the implementation of a new independent complaints service run by the Local Government Ombudsman. The Service will investigate complaints against a school that the pupil or parent have sustained an injustice in consequence of an act of the governing body or prescribed functions of the head teacher.
  - 2.2 The Regulations include: the statutory functions of head teachers which will come within scope of the Service (i.e. the “prescribed functions”) and which can therefore be the subject of a complaint; those complaints which the Service will not consider as they are covered by other routes of appeal (i.e. complaints relating to permanent exclusions and SEN or disability discrimination claims that could be heard by the First Tier Tribunal); the timescale within which pupils who are no longer on a school’s roll may still have their complaint heard (12 months); and the circumstances where children who are not registered pupils when an incident happens, and have not been in the preceding 12 months, can still make a complaint to the Service (entering the school to take an exam.).
3. **Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**
  - 3.1 None
4. **Legislative Context**
  - 4.1 The Regulations are underpinned by sections 206-224, Chapter 2, Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 (“The Act”).
  - 4.2 The Act extends the remit of the Commissioner for Local Administration in England, known as the Local Government Ombudsman (LGO) to enable investigation of certain complaints against a “qualifying school”. This affects the role of the Secretary of State in considering complaints about schools under sections 496 and 497 of the Education Act 1996. Many of these complaints will now be considered by the LGO. In addition, the Act provides a reserve power for the Secretary of State to direct a governing body where they fail to comply with a recommendation from the LGO. The Act provides that a complaint that relates to a decision about admissions to the school is excluded from the remit of the Service.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

- *What is being done and why*

7.1 The Department for Children Schools and Families ran a public consultation<sup>1</sup> in 2008 on proposals for introducing an independent service for handling parents and young people's complaints about school matters. This fulfilled Children's Plan commitments to look at the way complaints are handled and where possible improve and streamline the processes thus ensuring accountability and transparency. This is also about encouraging parental engagement in their child's learning.

7.2 Respondents supported the proposal to host the new service with the LGO. The Service will investigate certain complaints where they cannot be resolved at school level. The school level process must generally be exhausted before a complainant may approach the LGO. Whole school issues will continue to be handled by Ofsted. Complaints about school admissions are excluded in the Act. The regulations exclude complaints about permanent exclusions (these will continue to be heard by the Independent Appeal Panel) and complaints relating to SEN or disability discrimination, where there is an existing right of appeal to the First Tier Tribunal.

7.3 The Service will be tested to ensure that it meets the needs of all parties, including vulnerable groups, whilst minimising burdens on schools. It will be rolled out gradually. Phase one will begin in April in four local authorities. Phase two is scheduled to roll out from September 2010 and the Department plans a full roll out across all Local Authorities from September 2011.

## **8. Consultation outcome**

8.1 Following Royal Assent for the Act (12 November 2009) the department ran a public consultation on the draft regulations between December 2009 and February 2010 (*consultation on new regulations for the implementation of the service to handle parents' and young people's complaints about school matters*).

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<sup>1</sup> <http://www.dcsf.gov.uk/consultations/index.cfm?action=conResults&consultationId=1570&external=no&menu=3>

8.2 The public consultation was aimed at parents/carers, parents' organisations, governing bodies, local authorities, teaching and support staff. Respondents supported the Regulations as drafted. The consultation period was shorter than ideal to enable the Department and the LGO to begin testing the Service as soon as possible, from April 2010. However, in drafting the Regulations, the Department took account of points raised in Parliament, and direct from our stakeholders, during the passage of the Act. Further, consultees were broadly content with the draft regulations: there was general agreement that the list of head teachers' functions was right; the majority of respondents agreed that the 12 month period was an acceptable time frame within which pupils should be able to complain to the Service, once they had been taken off the school roll; and respondents generally agreed that there were no other types of complaints that should be excluded, where there is an existing right of appeal.

## **9. Guidance**

9.1 The Department does not intend to produce guidance specifically to accompany the regulations. However there will be two sets of guidance: firstly the Department intends to consult widely later in 2010 on draft statutory guidance for all maintained schools on better complaints handling. Under section 29 of the Education Act 2002, schools are already required to establish and publicise their own internal complaints procedures. Guidance, issued under section 29(2), to which schools must have regard, will provide schools with best practice models and has been welcomed by all stakeholders. The purpose of this guidance is to help to resolve matters at an earlier stage thereby avoiding the need for the LGO to become involved, wherever possible.

9.2 Secondly: the Department and the LGO, working with the pilot Local Authorities, will provide guidance for schools, parents and young people on the way the new Service will work. This will include sessions for head teachers and Governors on the new service as well as general good practice which ought to be employed in handling complaints at school level.

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument because no impact on business, charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is minimal. In terms of impact on schools the Department believes that good schools will already be ensuring that they maintain records of complaints, detailing any action they consider necessary to take to deal with this, in line with their internal complaints procedure. The Department is not requiring schools to do anything they should not already be doing. Statutory guidance will be produced for all schools to make clear the processes that should be followed at school level. This has been widely welcomed and will help to minimise the need for the independent service. The guidance for schools will be the subject of a public consultation in 2010. As explained in paragraph 9 the Department and the LGO will

also work with the pilot local authorities to ensure the schools in their area are clear about the new service and what may be expected of them.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The Department intends that the Service will streamline and simplify the complaints process for parents, whilst minimising burdens on schools. During the phased roll out there will be an independent evaluation. It will look at the overall impact of the Service for example: the investigation processes such as transparency, speed of resolution, costs; and the impact on schools' practice. The evaluation will also look at users' experiences including schools and in particular groups of vulnerable children and parents. During the testing phases we will also consider if the regulations are reasonable and practical for all service users, including parents and schools. Additionally the Department and the LGO will agree a Memorandum of Understanding which will cover the management information that the Department requires in order to assess the policy impact and value for money.

## **13. Contact**

Maria Whiting at the Department for Children, Schools and Families (DCSF) Tel: 0870 000 2288 or email: [info@dcsf.gsi.gov.uk](mailto:info@dcsf.gsi.gov.uk) can answer any queries regarding the instrument.