

EXPLANATORY MEMORANDUM TO

THE SCHOOL ADMISSIONS (ALTERATION AND VARIATION OF, AND OBJECTIONS TO, ARRANGEMENTS)(ENGLAND) REGULATIONS 2007

2007 No. 496

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This instrument consolidates existing Regulations relating to objections to school admission arrangements and variation of admission arrangements. It also includes new provision as a result of amendments made to sections 89 and 90 of the School Standards & Framework Act 1998 by the Education & Inspections Act 2006.
- 2.2 As it relates to the establishment or expansion of a maintained school, Regulation 4 (which is new provision) of the instrument restricts admission authorities from altering admission arrangements, for the initial year in which they apply and for each of the next two years, from those which have been approved.
- 2.3 Regulation 5 makes provision for variation in the approved admission arrangements during this period if this is necessary in order to comply with an admission forum protocol, and (new) provision to vary arrangements in order to comply with mandatory provision of the School Admissions Code or Part 3 of the School Standards & Framework Act 1998 (school admissions).
- 2.4 Regulations 6 to 12 relate to objections. They prescribe the type of objections which may not be made, and set out circumstances in which parents may object. Parents' existing rights to object are extended, so that they may now object to the adoption of admission arrangements which do not comply with admissions legislation or mandatory provision of the School Admissions Code. Previously, the Secretary of State or Adjudicator could only consider an objection to "pre-existing selection arrangements" (i.e. where a school has continually, since 1997/98, selected part of its intake on the basis of ability or aptitude which it would now not be lawful to introduce) on receipt of 10 objections from eligible parents. This limit is removed in relation, and one objection from an eligible parent will be sufficient to trigger consideration of an objection to such partially selective admission arrangements. Regulation 7 sets out the requirement for admission authorities for schools with pre-existing partial selection to publish a notice to inform parents of its determination of admission arrangements and of their right to object to them, prescribing that any objections must be lodged within 6 weeks of publication.
- 2.5 To enable the Adjudicator or Secretary of State to gather the information they need to give full consideration to an objection, new provision in Regulation 11 requires admission authorities to provide, on request, any of the information

prescribed in Schedule 2.

- 2.6 And new provision in Regulation 12 requires the Secretary of State or Adjudicator to ensure that a report on his consideration of an objection is provided to all parties to the objection and to all statutory consultees in the area. In the case of objections to pre-existing partial selection or to admission numbers being set which are lower than that indicated by a school's net capacity assessment, details must be published in a local newspaper.
 - 2.7 Regulation 13 applies where the Adjudicator or Secretary of State has made a determination in relation to a particular school's admission arrangements, and another school in the area with the same arrangements wishes to make to achieve consistency with the adjudication e.g. by removing an admission criterion adjudged to be unfair.
 - 2.8 Regulation 14 is new provision, which provides that changes made to a school's admission arrangements, as a result of an Adjudicator or Secretary of State's determination of an objection, must be incorporated for the two subsequent school years (or lesser period stipulated in the determination). It provides for applications to alter these arrangements to be made only where there has been a major change of circumstances.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
 4. **Legislative Background**
 - 4.1 The instrument results from changes made to the School Standards and Framework Act 1998 by the Education and Inspections Act 2006. The 2006 Act inserts new provisions into the 1998 Act relating to restrictions on alteration of, variations of, and objections to admission arrangements.
 - 4.2 These Regulations are made under sections 89(8)(e), 89(D), 90(1), (2) and (9), 90A, and 138(7) of the 1998 Act.
 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**
 - 7.1 In relation to establishment or expansion of a maintained school, the policy aim is to ensure that once Statutory Proposals have been approved, the admission arrangements set out in them (which must comply with the new School Admissions Code) should be given time to 'bed-in'. Therefore, this provision prescribes that these admission arrangements should be binding for the initial year of operation and the following two years. The provision allows change within this period in exceptional cases i.e. because of major changes of circumstances; the need to comply with admission forum protocols; and to achieve consistency with local adjudications; by allowing change to be made or applications for 'variation' to be referred to the adjudicator in prescribed circumstances.
 - 7.2 Experience of the adjudication process has shown that, under the existing system, the Adjudicator can rule out unfair admission criteria, only for them to be reinstated

by the admission authority in the next year. This undermines the Adjudicator and can lead to repeat objections being made in successive years. Enabling the Adjudicator or Secretary of State to make decisions binding for a longer period and to prevent further change or objections during that time, supports the government's aim to ensure that admission arrangements are fair, clear and objective and in parents' best interests.

- 7.3 This provision also extends parents' rights to object to unfair admission arrangements – removing the requirement for there to have been 10 objections to pre-existing partially selective arrangements before the Adjudicator can consider a case; and giving parents a right to object to use of admission criteria which are either prohibited or required by the new School Admissions Code, which came into force on 28 February.

Consultation

- 7.4 A public consultation took place via the Department for Education and Skills Consultation website on two sets of draft regulations ('Restrictions on Alteration of Admission Arrangements' and 'Objections to Admission Arrangements'), alongside the School Admissions Code, between 8 September and 1 December. Members of both Houses were given a copy of the draft regulations at this time as part of a consultation pack called 'School Admissions Consultation 2006'. Local authorities, schools, parent groups, faith groups and other representative organisations were consulted. The Council on Tribunals was consulted separately. No comments were received on these regulations, which have now been consolidated into this instrument.

8. **Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

9. **Contact**

- 9.1 Neil Lawson at the Department for Education and Skills Tel: 0207 925 5694 or e-mail: neil.lawson@dfes.gsi.gov.uk can answer any queries regarding the instrument.