

**EXPLANATORY MEMORANDUM TO
THE SCHOOL ADMISSIONS (ADMISSION ARRANGEMENTS) (ENGLAND)
REGULATIONS 2008**

2008 No. 3089

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 These Regulations prescribe matters relevant to the determination of arrangements by which children are admitted to maintained schools in England.

2.2 They are largely consolidating Regulations, which revoke and replace eight sets of Regulations (detailed in Schedule 1 to the instrument) and amend a further two sets so that they no longer apply in England, but also include a number of new provisions necessary as a result of changes made by the Education and Skills Act 2008 ('ESA 2008').

2.3 The instrument also makes minor amendments to two other sets of Regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The ESA 2008, which received Royal Assent on 26th November, makes changes to the provisions relating to school admissions in the School Standards and Framework Act 1998 ('SSFA 1998'). In particular, sections 150 and 151 of the ESA 2008 insert, respectively, sections 86A and 86B, and sections 88B - 88Q into the SSFA 1998.

4.2 Sections 86A and 86B give new rights to children above compulsory school age to express a preference as to the school at which they wish to receive education. Most of sections 88B – 88Q broadly mirror sections 89, 89A, 89B, 89C, 89D, 90 and 90A of SSFA 1998, but include a number of significant changes, some of which are relevant to these Regulations (see paragraphs 4.5 – 4.7). New sections 88B-88Q apply in England only, and sections 89 – 90A of SSFA 1998 are amended so that they continue to apply in Wales only.

4.3 These Regulations are one of a group of five instruments to be made as a result of these changes. The other sets are:

The School Admissions (Co-ordination of Admission Arrangements) (England) Regulations 2008,
The School Admissions (Local Authority Reports and Admission Forums) (England) Regulations 2008,
The Education (Admission Appeals Arrangements) (England) (Amendment) Regulations 2008, and
The School Information (England) Regulations 2008.

The revised School Admissions Code and School Admission Appeals Code to be laid under section 85 of SSFA 1998, and the four sets of Regulations listed above, are to come into force at the beginning of February 2009. A separate explanatory memorandum accompanies those Regulations.

4.4 However, because this instrument makes provision about the determination of the admission arrangements under which pupils will be admitted to schools in September 2010, it is necessary for them to come into force now. (In particular, regulation 17 requires that the consultation prescribed in Part 4 of the Regulations must allow consultees at least eight weeks to respond and must be completed by 1st March 2009.)

4.5 Regulation 12 is a new provision. Persons to be consulted about proposed admission arrangements were previously set out in primary legislation. However section 88C(3) of SSFA contains a regulation making power under which consultees are to be prescribed. Regulation 14 introduces additional consultation requirements in the case of a proposed increase in admission number.

4.6 Part 8 of the Regulations contains new provisions consequent on section 88I of SSFA 1998 which gives the schools adjudicator new powers to consider the legality of determined admission arrangements which come to his attention otherwise than by way of an objection.

4.7 Regulation 35 amends the Information as to Provision of Education (England) Regulations 2008 to reflect changes introduced by sections 86A and 86B of SSFA 1998.

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 Local consultation process - All admission authorities are currently required to consult by 1 March each year on their proposed admission arrangements for the following year, whether the arrangements have changed or not. This annual requirement can be time consuming for admission authorities. The policy aim of regulation 17 is to replace the requirement for annual consultation with a requirement that they consult only every three years, unless changes have been made to the arrangements since the previous consultation. All admission authorities will be required to consult on arrangements for admissions to the academic year 2010-2011.

7.2 To improve engagement with parents and local groups, there is also a new requirement for admission authorities to consult with relevant parents and other groups with an interest in the proposed admission arrangements, for example, community groups. These new groups may have an interest in the impact of admission arrangements on the take-up of school places in the area. Consultation must take place for a minimum of eight weeks (and, from 2009 onwards must start no earlier than 1

November) to allow parents and local groups a chance to respond. The prescribed period in which consultation must take place also ensures that it does not take place too early and that consultees know when to expect it. Regulation 14 requires admission authorities to consult unions for all permanent staff at the school who may be affected by a proposed increase in the published admission number.

7.3 Schools Adjudicator - The Schools Adjudicator currently has the power to consider the admission arrangements of a school, only within certain conditions where a complaint has been made to him. Section 88I of the SSFA 1998 places a new duty on the Schools Adjudicator to consider the legality of admission arrangements referred by way of a report from a local authority or by the Secretary of State. The Schools Adjudicator also has the power under that section to consider arrangements which he thinks may be unlawful and which have come to his attention by any other means. We believe this more proactive role will help to ensure that admissions arrangements comply fully with the law and the School Admissions Code.

7.4 Sixth Forms - The Information as to Provision of Education (England) Regulations 2008 prescribe information to be included in local authority reports to the Secretary of State each year, which includes information about applications made to schools in the authority's area in accordance with arrangements made under section 86 of the SSFA 1998. Currently, section 86 of the SSFA 1998 gives parents a right to express a preference for a school at which they want their child to be educated, covering all education including sixth form education. Section 86A places a new duty on local authorities to make arrangements to enable children who are above compulsory school age (or who will be by the time the relevant education is provided) to apply for a place at a school, alongside the existing right for parents. The right to express a preference is independent of his or her parents, either to study in the sixth form or, if they are above compulsory school age, to study at any level of education (for example to re-sit their GCSEs). Parents retain the right to apply to schools on behalf of their children. The amendment to the Information as to Provision of Education (England) Regulations 2008 means that applications made by children under the new provisions are included in the definition of "application" for those Regulations.

- ***Consolidation***

7.5 This instrument revokes and replaces eight sets of admission Regulations, set out in Schedule 1 to the Regulations, and amends a further two sets so that they no longer apply in England. To the extent that it amends other instruments, the amendments are minor and the Department does not currently have plans for consolidation of those instruments.

8. Consultation outcome

8.1 Local consultation process - Over two-thirds of respondents to the local consultation process proposals agreed with reducing the frequency of consultation to every three years unless arrangements change from the previous year. Many commented that annual consultation was time consuming. 55% also agreed that local groups to consult with should be determined locally due to the variation between areas. Ministers decided to go ahead with these proposals and made guidance available to admission authorities on our website to provide early warning and enable them to fulfil the new requirements

8.2 Schools Adjudicator – 53% of respondents felt that the proposed changes to the role of Schools Adjudicators would improve compliance with the School Admissions

Code. 20% neither agreed nor disagreed with the proposals, and 27% disagreed or strongly disagreed. Ministers therefore decided to go ahead with these proposals.

8.3 Sixth Forms – 45 % of respondents agreed that the new rights for young people to express a preference are clear, with 23% neither agreeing nor disagreeing and 32% disagreeing. There was some concern that there could be a conflict between the parents and the young person if they wanted to make applications for different schools and whether this is permissible. We envisage that where this is the case it would be for the family to resolve. 47% of respondents agreed that the guidelines regarding the rights of parents and young people to appeal about a decision made by an admission authority and the admission authority procedures are clear. 22% neither agreed nor disagreed and 31% disagreed. Ministers therefore decided to go ahead with these proposals.

8.4 A more detailed analysis of the consultation responses to all the proposals consulted on through the School Admissions Consultation 2008 will shortly be placed on our website – www.dcsf.gov.uk/sacode.

9. Guidance

9.1 The revised School Admissions Code, which will be laid before Parliament in draft, provides statutory guidance on these policies to all involved in admissions. In addition, we have made guidance available to admission authorities on our website to provide early warning of the proposed changes and to enable them to fulfil the new requirements for the local consultation process.

10. Impact

10.1 The impact on business, charities or voluntary bodies is broadly neutral.

10.2 The impact on the public sector is broadly neutral.

10.3 We have considered and assessed the impact of this instrument. Changing the annual requirement to consult to every three years will reduce the burden on admission authorities whilst the eight week consultation period will mean that parents and local groups have sufficient time to respond. The additional requirements for consulting parents and those with a local interest in the community create minimal additional burdens. Consulting with parents before admission arrangements are determined should increase the likelihood of determined admission arrangements being lawful and fair, leading to a reduction in objections to the Schools Adjudicator from parents and others. We therefore envisage that widening the role of the Schools Adjudicator will improve compliance with the statutory admissions framework and lead to the majority of issues around non-compliance being determined locally.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The changes will improve engagement with parents and their communities with the setting of admission arrangements, to ensure that they are fair, represent the local area and any unlawful or unfair arrangements are objected to. They will also widen the role of the Schools Adjudicator to enforce fair and lawful admission arrangements and

to be more proactive in this role. This will lead to full compliance with the School Admissions Code and admissions legislation.

12.2 We will continue to keep all our admissions policies under review and monitor their impact. A crucial part of this will be the Schools Adjudicator's annual report to the Secretary of State on the compliance of a sample of admission arrangements and how fair access is being achieved locally. The report will also be made available to Parliament.

13. Contact

13.1 Rebecca Beeton at the Department for Children, Schools and Families (tel: 020 7925 5277 or email: fair.access@dcsf.gsi.gov.uk) can answer any queries regarding the instrument.