
STATUTORY INSTRUMENTS

1998 No. 1948

EDUCATION, ENGLAND AND WALES

The Education Act 1996 (Infant Class Sizes) (Modification) Regulations 1998

<i>Made</i>	- - - -	<i>10th August 1998</i>
<i>Laid before Parliament</i>		<i>11th August 1998</i>
<i>Coming into force</i>	- -	<i>1st September 1998</i>

In exercise of the powers conferred upon the Secretary of State by section 144 of, and paragraph 6 of Schedule 32 to, the School Standards and Framework Act 1998⁽¹⁾, the Secretary of State for Education and Employment, as regards England, and the Secretary of State for Wales, as regards Wales, hereby make the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education Act 1996 (Infant Class Sizes) (Modification) Regulations 1998, and shall come into force on 1st September 1998.

(2) These Regulations apply in relation to any existing maintained school in England or Wales which contains an infant class.

Interpretation

2. In these Regulations—

“the 1996 Act” means the Education Act 1996⁽²⁾;

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

“existing maintained school” means

(a) any county or voluntary school, or

(b) any grant-maintained school,

(within the meaning of the 1996 Act) which contains an infant class;

“infant class” has the meaning given by section 4 of the 1998 Act;

(1) 1998 c. 31; see section 142(1) for the definition of “prescribed” and “regulations”.

(2) 1996 c. 56.

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“relevant time”, in relation to an existing maintained school, means any time after the coming into force of Regulations under section 1 of the 1998 Act by virtue of which any limit on class sizes is to apply in relation to the school⁽³⁾.

Modification of the 1996 Act

3.—(1) The provisions of the 1996 Act referred to in the Schedule shall have effect in relation to any existing maintained school with the modifications specified in that Schedule for the period so specified.

(2) This regulation applies despite anything in the articles or instrument of government of that school.

⁽³⁾ See, in relation to schools in England, the Education (Infant Class Sizes) (England) Regulations 1998 (S.I. 1998/1973); and, in relation to schools in Wales, the Education (Infant Class Sizes) (Wales) Regulations 1998 (S.I. 1998/1943). Both sets of Regulations come into force on 1st September 1998.

SCHEDULE

(Regulation 3)

MODIFICATION OF THE 1996 Act

Cases where parental preference need not be complied with: county and voluntary schools

- 1.—(1) Section 411 of the 1996 Act shall have effect with the following modifications.
- (2) After subsection (3) there shall be inserted the following new subsection

“(3A) For the purposes of subsection (3)(a) prejudice of the kind referred to in that provision may arise by reason of any qualifying measures.”.
- (3) After subsection (9)(4) there shall be inserted the following new subsection—

“(10) In this Chapter “qualifying measures”, in relation to the admission of a child to a school, means measures required to be taken (whether in the school year in which the admission would take place or in any subsequent school year) in order to ensure compliance with the duty imposed by section 1(6) of the School Standards and Framework Act 1998 (duty of local education authority and governing body to comply with limit on class sizes).”.
- (4) This paragraph applies at any relevant time falling before the commencement of section 86(4) of the 1998 Act.

Review of standard numbers

- 2.—(1) After section 421 of the 1996 Act there shall be inserted the following new section

“421A.—(1) The admission authority for a county or voluntary school containing any infant class shall keep under review any standard number applicable to admissions to an infant class, having regard to—
 - (a) the school’s capacity to accommodate pupils, and
 - (b) the need to secure that the admission to the school in any school year of a number of children in any relevant age group equal to the relevant standard number would not cause prejudice of the kind referred to in section 411(3)(a) by reason of any qualifying measures.

(2) The admission authority for any such school shall in particular carry out a review under subsection (1) as soon as reasonably practicable following the coming into force of regulations under section 1 of the School Standards and Framework Act 1998 by virtue of which any limit on class sizes is to apply in relation to any such class at the school.

(3) Where, as a result of a review under subsection (1), the authority consider that any standard number at the school should be varied in order to enable the objective referred to in subsection (1)(b) to be achieved, they shall make an application for an order under section 420(2) varying the standard number.

(4) For the purposes of subsection (1) a school’s capacity to accommodate pupils shall be calculated having regard to any guidance given from time to time by the Secretary of State.

(5) In this Chapter, “infant class” has the meaning given in section 4 of the School Standards and Framework Act 1998.”.
- (2) This paragraph applies at any relevant time falling before the commencement of paragraph 11 of Schedule 23 to the 1998 Act.

(4) Section 411(9) of the 1996 Act was inserted by paragraph 31 of Schedule 7 to, the Education Act 1997 (c. 44).

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Cases where parental preferences need not be complied with: grant-maintained schools

3.—(1) After section 425A of the 1996 Act⁽⁵⁾, there shall be inserted the following new section

“**425B.**—(1) An application for the admission of a child to a grant-maintained school may be refused on the grounds that his admission would prejudice the provision of efficient education or the efficient use of resources at the school.

(2) For the purposes of subsection (1) prejudice of the kind referred to in that provision may arise by reason of any qualifying measures.

(3) No prejudice shall, however, be taken to arise from the admission of a child to the school if, were he to be admitted to the school, the number of pupils within the relevant age group to which he would be admitted in the school year in which he would be admitted would not exceed the number of pupils intended to be admitted to the school in that age group in that year.”.

(2) This paragraph applies at any relevant time falling before the commencement of section 86(3) to (5) of the 1998 Act.

Decision on application to reduce approved admission number: grant-maintained schools

4.—(1) In section 426 of the 1996 Act, after subsection (4) there shall be inserted the following new subsections

“(5) Where

(a) the governing body are seeking approval for a reduction of any approved admission number applicable to admissions to an infant class, and

(b) the Secretary of State is satisfied that the admission to the school in any school year of a number of children in any relevant age group equal to the approved admission number would result in prejudice to the provision of efficient education or the efficient use of resources by reason of any qualifying measures,

the Secretary of State shall approve a reduction in that approved admission number by the smallest number which he considers sufficient to avoid such prejudice arising.

(6) Where an order under section 27(1) relating to primary education applies to the area of the local education authority in which the school is situated, subsection (5) shall have effect as if the references to the Secretary of State were to the funding authority.”.

(2) This paragraph applies at any relevant time falling before the commencement of paragraph 6(5) of Schedule 23 to the 1998 Act (in relation to any school in England), or paragraph 10(5) of that Schedule (in relation to any school in Wales).

Review of approved admission numbers

5.—(1) After section 426 of the 1996 Act, there shall be inserted the following new section

“**426A.**—(1) The governing body of a grant-maintained school containing any infant class shall keep under review any approved admission number applicable to admissions to an infant class, having regard to

(a) the school’s capacity to accommodate pupils, and

(5) Section 425A of the 1996 Act was inserted by section 14(1) of the Education Act 1997 (c. 44).

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(b) the need to secure that the admission to the school in any school year of a number of children in any relevant age group equal to the approved admission number would not result in prejudice to the provision of efficient education or the efficient use of resources by reason of qualifying measures.

(2) The governing body of any such school shall in particular carry out a review under subsection (1) as soon as reasonably practicable following the coming into force of regulations under section 1 of the School Standards and Framework Act 1998 by virtue of which any limit on class sizes is to apply in relation to any such class at the school.

(3) Where, as a result of a review under subsection (1), the governing body consider that any approved admission number at the school should be varied in order to enable the objective referred to in subsection (1)(b) to be achieved, they shall seek approval to the variation of that number in accordance with section 426(4).

(4) For the purposes of subsection (1) a school's capacity to accommodate pupils shall be calculated having regard to any guidance given from time to time by the Secretary of State."

(2) This paragraph applies at any relevant time falling before the commencement of paragraph 11 of Schedule 23 to the 1998 Act.

Restrictions on power to direct admission of child to school

6.—(1) In section 431 of the 1996 Act, after subsection (3) there shall be inserted the following new subsection

"(3A) A direction under this section to admit a child shall not specify a school if his admission would result in prejudice to the provision of efficient education or the efficient use of resources by reason of any qualifying measures."

(2) This paragraph applies at any relevant time falling before the commencement of section 96 of the 1998 Act.

Restriction on power of Secretary of State to determine which school is to be directed to admit child

7.—(1) In section 432 of the 1996 Act, after subsection (4) there shall be inserted the following new subsection

"(4A) The Secretary of State shall not make a determination under subsection (4) in relation to a school if the child's admission to the school would result in prejudice to the provision of efficient education or the efficient use of resources by reason of any qualifying measures."

(2) This paragraph applies at any relevant time falling before the commencement of section 97 of the 1998 Act.

Restriction on power to specify school in notice preceding school attendance order

8.—(1) In section 439 of the 1996 Act, after subsection (4) there shall be inserted the following new subsection

"(4A) A local education authority shall not specify a school in a notice under section 438(2) if the admission of the child concerned would result in prejudice to the provision of efficient education or the efficient use of resources by reason of any qualifying measures (as defined in section 411(10))."

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(2) This paragraph applies at any relevant time falling before the commencement of paragraph 115(4) of Schedule 30 to the 1998 Act.

Restriction on power of admission appeal committees for grant-maintained schools

9.—(1) In Schedule 23 to the 1996 Act, after paragraph 6, there shall be inserted the following new paragraph—

“**6A.**—(1) This paragraph applies in relation to any appeal which

- (a) is made in pursuance of arrangements made by the governing body by virtue of paragraph 6(1) and (2), and
- (b) relates to a decision of the governing body refusing to admit a child to the school on the ground that his admission would result in prejudice to the provision of efficient education or the efficient use of resources by reason of any qualifying measures (as defined in section 411(10)).

(2) Where this paragraph applies in relation to any appeal, the appeal committee shall determine that a place is to be offered to the child at the school only if they are satisfied

- (a) that the decision was not one which a reasonable governing body would make in the circumstances of the case; or
- (b) that the child would have been offered a place if the school’s admission arrangements (as published in the school’s articles of government) had been properly implemented.

(3) In sub-paragraph (2)

“admission arrangements” in relation to a school means the arrangements for the admission of pupils to the school, including the school’s admission policy; and

“appeal committee” means an appeal committee constituted for the purposes of an appeal in accordance with the instrument of government of the school.”

(2) This paragraph applies at any relevant time falling before the commencement of paragraph 12 of Schedule 24 to the 1998 Act.

Decision on application to reduce relevant standard number: county and voluntary schools

10.—(1) Paragraph 5 of Schedule 32 to the 1996 Act shall have effect with the following modifications.

(2) In sub-paragraph (2), at the beginning there shall be inserted “Subject to sub-paragraph (3A)”.

(3) After sub-paragraph (3) there shall be inserted the following new sub-paragraph

“(3A) Where

- (a) an application is for an order reducing any standard number applicable to admissions to an infant class, and
- (b) the Secretary of State is satisfied that the admission to the school in any school year of a number of children in any relevant age group equal to the relevant standard number would cause prejudice of the kind referred to in section 411(3)
 - (a) by reason of any qualifying measures,

the Secretary of State shall make an order reducing the standard number by the smallest number which he considers sufficient to avoid such prejudice arising.”

(4) This paragraph applies at any relevant time falling before the commencement of paragraph 6(5) of Schedule 23 to the 1998 Act (in relation to any school in England), or paragraph 10(5) of that Schedule (in relation to any school in Wales).

Restriction on power of admission appeal committees for country and voluntary schools

11.—(1) In Schedule 33 to the 1996 Act, after paragraph 11 there shall be inserted the following new paragraph

“11A.—(1) Where the decision under appeal was made on the ground that prejudice of the kind referred to in section 411(3)(a) would arise as mentioned in subsection (3A) of that section, an appeal committee shall determine that a place is to be offered to the child only if they are satisfied

- (a) that the decision was not one which a reasonable admission authority would make in the circumstances of the case; or
- (b) that the child would have been offered a place if the admission arrangements (as published under section 414) had been properly implemented.

(2) In sub-paragraph (1) “admission arrangements”, in relation to a school, means the arrangements for the admission of pupils to the school, including the school’s admission policy.”.

(3) This paragraph applies at any relevant time falling before the commencement of paragraph 12 of Schedule 24 to the 1998 Act.

7th August 1998

Tessa Blackstone
Minister of State,
Department for Education and Employment

10th August 1998

Peter Hain
Parliamentary Under Secretary of State, Welsh
Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make modifications to the provisions of the Education Act 1996 in connection with the imposition of a limit on the size of infant classes at schools in England and Wales by Regulations made under section 1 of the School Standards and Framework Act 1998 (which come into force on 1st September 1998). The modifications apply during the transitional period before the coming into force of the provisions of the 1998 Act concerning (a) the new school framework, and (b) the admission of pupils to schools in that framework (which is expected to be on 1st September 1999).

The Education Act 1996 is modified so as to insert provisions corresponding to those in the 1998 Act relating to the admission of children to infant class at primary schools. This is so that, in the period before the new school framework comes into being, admission authorities for maintained schools

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under the existing 1996 Act framework containing infant classes will not be required to offer places to children whose admission would be incompatible with the duty to comply with class size limits (which will apply with effect from the 1999—2000 school year in relation to schools in Wales, or from the 2001—2002 school year in relation to schools in England).

The modifications will also require the admission authority for every such school to carry out a review of the relevant standard number (or approved admission number) applying to the admission of children to infant classes at the school and, where appropriate, to seek a reduction in that number so that it is compatible with meeting class size limits.