

EXPLANATORY MEMORANDUM TO
THE INFORMATION AS TO PROVISION OF EDUCATION (ENGLAND)
REGULATIONS 2008

2008 No. 4

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.

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

2. **Description**

2.1 These Regulations revoke and replace the Education (Information as to Provision of Education) (England) Regulations 1999, and three sets of amending Regulations, which prescribe the information that Local Authorities (LAs) must provide to the Secretary of State relating to the provision of primary and secondary education in their areas. They make one change, by introducing a new period for compliance with the annual reporting requirements.

2.2 These Regulations also contain a new requirement, that LAs provide the Secretary of State with information relating to the number of 'parental preferences' they have met in accordance with section 86(2) of the School Standards and Framework Act 1998.

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

3.1 None.

4. **Legislative Background**

4.1 Section 29(3) of the Education Act 1996 enables the Secretary of State to require LAs to provide information relating to the provision of primary and secondary education in their areas.

4.2 The Education (Information as to Provision of Education) (England) Regulations 1999 (S.I. 1999/1066), as amended, required LAs to provide the Secretary of State with specified information each year, during the period 2nd to 31st May inclusive. This information is set out in Schedule 1 to these Regulations and includes: the number of registered pupils in each community, foundation and voluntary school maintained by the LA; the number of surplus places in each such school; and the capacity of each such school. Those requirements are re-enacted in these Regulations, with the change that the

information must now be provided in the period between 2nd June and 3rd August inclusive.

4.3 These Regulations also require LAs to provide the Secretary of State with information about ‘parental preferences’ met in accordance with section 86(2) SSFA 1998. Section 86(1) SSFA 1998 requires LAs to make arrangements for enabling the parent of a child in their area to express a preference as to the school at which he wishes education to be provided for his child in the exercise of the LAs functions. Subject to certain exceptions, section 86(2) SSFA requires LAs, and the governing bodies of maintained schools, to comply with any such preference, i.e. to make offers of school places which accord with parents’ preferences.

4.4 These Regulations require LAs to provide the Secretary of State with information relating to the number of parental preferences met in relation to children in their area admitted to secondary schools. The information is set out in Schedule 2 to these Regulations and includes: the number of parents who expressed preferences, and the number of preferences expressed by each; the number of applicants who were offered their highest preference, second preference, etc.; the number who received an offer which did not correspond with any preference expressed by them; and associated information. This information is to be provided each year on National Offer Day (ie 1 March or next working day) and enables LAs to provide further data correct as at 1 September each year.

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 Surplus places - Since 1994, the Department has collected information annually on surplus school places. The information, collected from every LA, sets out the number of pupils on roll, the net capacity and the surplus capacity at both primary and secondary schools within their authority area. The returns also include forecasts of pupil numbers over the next five years for primary schools and the next seven years for secondary schools, and district forecasts are required where applicable. For schools with a surplus of 25% (and at least 30 places) or more, LAs are required to say how that surplus might be removed. Returns are required under these regulations in exercise of the powers conferred on the Secretary of State by sections 29(3) and 569(4) of the Education Act 1996.

7.2 The survey questionnaire is issued to LAs each May and they were previously expected to return completed questionnaires by 1 June. The

amount of data required from LAs can be substantial and the previous timescale often proved difficult to meet. Therefore, regulation 4 of the new Regulations provides that returns must be submitted in the eight weeks between 1 June and 4 August each year, rather than in the four weeks between 1 May and 1 June previously specified. The survey is conducted on-line and we issue full guidance notes to LAs well in advance of the survey going live. The guidance explains what information we require from LAs and the timescales involved. 96% of responses to the consultation supported the changes to be made to the survey timetable. Of the rest, the main objection was that the length of the survey should be extended. The Department will respond to the two LAs concerned explaining that the survey data is required by the closing date for Basic Need funding purposes. One response to the consultation objected to the emphasis on surplus places without any allowance being given to demographic context and that consideration should be given to rural areas. The Department will respond in writing to the parent explaining the presumption against closure of rural primary schools.

7.3 Secondary School Admissions – LAs have a duty to comply with parental preferences as far as possible. The data provided through these Regulations will enable the Secretary of State to monitor to what extent this is possible in each authority area and by gathering further evidence, will be able to consider whether there are particular circumstances that affect the ability to meet parental preferences and whether any improvements can be made to the admissions system or the local organisation of schools to improve parental choice and satisfaction.

7.4 The new data requirements will include information on: the authority responsible for administering the secondary applications and offers process (co-ordination); the applications made by families resident in that authority (eg how many preferences were expressed by each family, the number of online applications made etc) and the number of secondary school places available in that authority area; the offers made to families by that authority (eg which received their first, second, etc, preference); and on the location of that offer (eg how many families received an offer in their authority area or a neighbouring authority area). Of the 43 responses received on this issue (the majority of which were from LAs), several were happy with the proposals, with a few commenting that it was a positive step. A number of LAs stressed that presentation of the results is key and that data need to be seen within the local context. Consequently, we will encourage LAs to submit information in this respect with their data returns each year, which will be taken account of in the data analysis.

7.5 The consultation document also proposed that LAs provide a report containing the information specified in Schedule 2 as on 1 March and 1 September each year. Of those who commented on the dates, over half were happy with submitting data on National Offer Day with a few expressing concern over the fact that it coincided with one of their busiest times of year. To address this, the Department has been working with software suppliers to develop a report that extract the data from the local authority computer systems with little effort. There were mixed views on the September date, with

the many feeling the date should be later in the year as this may give a more accurate picture of which places had been taken up. Some respondents also mentioned that if LAs do not co-ordinate the secondary school applications and offers process after National Offer Day, the only way of submitting this data would be to get information from individual schools or the October Schools Census returns, which would increase burdens on both schools and local authorities. The Department has therefore decided to make this second data submission optional, but where LAs are able to provide the data, they should do so in the format prescribed in Schedule 2 of the Regulations in relation to applicants who applied on-time so that the data is comparable with that received in March. We envisage that those LAs that co-ordinate offers within their authority until the end of August will be able to provide this second set of data. We also invited views on whether a third date between 1 March and 1 September would be useful – the majority of respondents on this issue felt a third date was unnecessary.

7.6 In 2008, National Offer Day falls on 3 March 2008. The Department plans to issue guidance notes to all LAs to coincide with when the Regulations come in to force (14 February 2008) which will remind LAs of this new requirement and give practical guidelines, addressing the technical issues raised during the consultation, on the submission of the data.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument. An initial assessment of the additional costs and burdens on schools and LAs arising from these regulations indicated that there would be no additional costs to schools, as schools are required to participate in their LA's co-ordinated admissions scheme, and no changes have been proposed to this. The assessment also found that any additional costs to local authorities are likely to be negligible. LAs already collect all the data being requested in the regulations in order to apply their coordinated schemes and we have worked with software suppliers to enable local authorities to more easily run a report of the data.

9. Contact

9.1 Prabjeet Pardesi at the Department for Children, Schools and Families, Tel: 020 7925 5277 or email: prabjeet.pardesi@dcsf.gsi.gov.uk can answer any queries regarding the instrument.