

EXPLANATORY MEMORANDUM TO

THE SCHOOL ADMISSIONS (ADMISSION ARRANGEMENTS AND CO-ORDINATION OF ADMISSION ARRANGEMENTS) (ENGLAND) REGULATIONS

2012 No. 8

THE SCHOOL ADMISSIONS (APPEALS ARRANGEMENTS) (ENGLAND) REGULATIONS

2012 No. 9

AND

THE SCHOOL ADMISSIONS (INFANT CLASS SIZES) (ENGLAND) REGULATIONS

2012 No. 10

1. This explanatory memorandum has been prepared by the Department for Education, and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The following are laid before Parliament under the School Standards and Framework Act 1998 (“the SSFA 1998”).
 - The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 – (“the Admissions Regulations 2012”).
 - The School Admissions (Appeals Arrangements) (England) Regulations 2012 – (“the Appeals Regulations 2012”).
 - The School Admissions (Infant Class Sizes) (England) Regulations 2012 – (“the Infant Class Sizes Regulations 2012”).
 - 2.2 The Admissions Regulations 2012 contain provisions concerning the arrangements by which children are admitted to maintained schools¹ in England, but apply to both maintained schools and Academies in respect of provision concerning the referral of objections to the Schools Adjudicator. The Appeals Regulations 2012 contain provisions concerning appeal panels that must be constituted where a parent or, in certain circumstances, a child appeals against a decision to refuse admission to a school. The Infant Class Sizes Regulations 2012 set the size limit of an infant class at

¹ “Maintained school” is defined in section 84 of the SSFA 1998 to mean a community, foundation or voluntary school.

30 pupils, but provide categories of children who may be admitted beyond this limit. All these Regulations are made in line with ministerial commitments to simplify and remove burdens and duplication from the admissions framework.

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

3.1 None.

4. Legislative Context

- 4.1 The Admissions Regulations 2012 revoke and replace – and in doing so, condense and consolidate – the School Admissions (Admission Arrangements) (England) Regulations 2008², the School Admissions (Coordination of Admission Arrangements) (England) Regulations 2008³, and the School Admissions (Local Authority Reports and Admission Forums) (England) Regulations 2008⁴. The Admissions Regulations 2012 are made under existing powers which have been exercised before, but sections 88F, 88H, 88K and 88Q of the SSFA 1998 have been amended by the Education Act 2011. In particular, sections 88H and 88K (regarding objections to the Adjudicator) have been amended so that they also apply to Academies. The Admissions Regulations of 2008 only applied to maintained schools. Chapter 6 of Part 2 of the Admissions Regulations 2012 now also applies to Academies.
- 4.2 The Appeals Regulations 2012 are made after consulting the Administrative Justice and Tribunals Council pursuant to paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcements Act 2007. These Regulations revoke and replace the Education (Admissions Appeals Arrangements) (England) Regulations 2002, the Education (Admissions Appeals Arrangements) (England) (Amendment) Regulations 2007, and the Education (Admissions Appeals Arrangements) (England) (Amendment) Regulations 2008⁵.
- 4.3 The Infant Class Sizes Regulations 2012 revoke and replace the Education (Infant Class Sizes) (England) Regulations 1998 and the Education (Infant Class Sizes) (England) (Amendment) Regulations 2006⁶.
- 4.4 Section 84⁷ of the SSFA 1998 requires the Secretary of State to issue a Code containing such provision as he thinks appropriate in respect of the discharge of their school admission functions by local authorities, governing bodies of maintained schools, admission forums, appeal panels and schools adjudicators. The Code applies to Academies by virtue of their funding agreements with the Secretary of State. Revised versions of the School Admissions Code and the School Admission Appeals Code (“the Codes”) were laid in Parliament on 1 December 2011.

² SI 2008/3089.

³ SI 2008/3090.

⁴ SI 2008/3091.

⁵ SIs 2002/2899, 2007/3026 and 2008/3092.

⁶ SIs 1998/1973 and 2006/3409.

⁷ As amended by section 40 of the Education and Inspections Act 2006

4.5 Subject to Parliament, and the commencement provisions contained within these Regulations, these Regulations will revoke and replace those existing Regulations named above. The Regulations are intended to take effect on 1 February 2012 alongside, and in alignment with, the revised Codes. It is proposed to commence the relevant sections of the Education Act 2011 on the same date. This will primarily affect admissions arrangements being locally determined in respect of the pupil intake for the 2013/14 academic year and thereafter. Appeals lodged on or after 1 February 2012 will be dealt with under the Appeals Regulations 2012 and the School Admission Appeals Code. The exceptions under the Infant Class Sizes Regulations will also have effect from 1 February 2012⁸.

5. Territorial Extent and Application

5.1 The Regulations apply to England only.

6. European Convention on Human Rights

6.1 As these Regulations are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The legislative framework for school admissions, which includes the Codes, is intended to ensure that the system for allocating school places in state-funded schools is administered locally in a fair and transparent way. In the White Paper 'The Importance of Teaching' published in November 2010, the Secretary of State announced a review of the school admissions system to make it simpler, fairer and more transparent. The revised Codes laid in draft form before Parliament are substantially reduced in size, and have been simplified to ensure that the local burdens in their application are minimal. The requirements within the Regulations are consistent with those set out in the revised Codes.

7.2 The Admissions Regulations 2012 provide for priority for looked after children as having the highest priority for places, with limited exceptions. The School Admissions Code additionally provides for the same priority to be given to 'previously looked after children' (children who leave care under an adoption, special guardianship or residence order). In addition:

- a. Regulations 14 and 15, alongside the Code, give greater freedom to schools to increase their admissions numbers, through removing their duty to consult locally on any such revised numbers. Local authorities must consult the governing body of a community or voluntary-controlled school, for which they are the admission authority, if they propose to increase or keep the same the number. Regulation 15 requires admission authorities to consult on unchanged arrangements only every seven years, rather than every three years.
- b. Regulation 21 prohibits objections to the schools adjudicator about an increase or no change to the admission numbers, except by the governing bodies of

⁸ Apart from the exception for previously looked after children which will affect the academic year 2013/14

community or voluntary-controlled schools about the admission number set by the local authority; and prohibits objections to the adjudicator regarding any agreement between the Secretary of State and the proprietor of an Academy that the admission arrangements may vary from the Code.

- c. Under changes brought by the Education Act 2011, any person or body will be able to object⁹ to the schools adjudicator about determined admissions arrangements, including for admissions to Academies¹⁰. This has removed the need for persons who can object to be prescribed in regulations. Regulation 23 requires such objections to be made by 30 June (brought forward from the 31 July), to enable where possible any subsequent changes to be made before local authorities publish their composite prospectus. Regulation 24 requires that objectors must provide their name and address.
- d. Regulation 30, alongside the School Admissions Code, introduces a national offer day for primary school places on 16 April 2014, and annually thereafter, to simplify arrangements for parents particularly those applying outside their local area.

7.3 The Appeals Regulations 2012 revoke and replace the Appeals Regulations 2002 (as amended). As required by Sections 94 and 95 of the SSFA 1998, the Appeals Regulations 2012 set out the requirements relating to the constitution of appeal panels, including persons who are disqualified from membership, as well as requirements relating to the payment of allowances to panel members. All other requirements relating to appeals are set out in the revised School Admission Appeals Code, ensuring it is the single point of reference on admission appeals. The revised Code reduces prescription wherever possible, whilst maintaining the requirements necessary to ensure fairness and transparency in the appeals system.

7.4 The Infant Class Sizes Regulations 2012, alongside the School Admissions Code, provide for classes for five, six and seven year old children to exceed the statutory limit of 30 only where the additional pupil is in an excepted pupil category. The Schedule to the Regulations sets out the excepted pupil categories, and includes new categories of excepted pupil (compared with previous versions of the Regulations) – one will prevent the separation of twins or children from a multiple-birth; another will accommodate children of serving armed forces personnel seeking a school place outside of the normal admission round. Thirdly, previously looked after children (see 7.2 above) will be an excepted category alongside looked after children. These Regulations also remove the time-limit that the previous Regulations place on most categories of excepted pupils, which meant that after the end of the pupil's admission year the school had to take measures to accommodate the pupil within the statutory limit (even if those measures prejudiced efficient education or efficient use of resources). Excepted pupils will now remain so until they can be accommodated without prejudice or until they move out of the school's infant classes

7.5 Our assessment of the proposed changes concludes that they have no impact on the private or civil society sectors. Where they do have an impact on schools and

⁹ Section 88H of the SSFA 1998, as amended by section 36 of the Education Act 2011.

¹⁰ Section 88H of the SSFA 1998, as amended by section 64 of the Education Act 2011

educational institutions in the public sector, they do not impose any new information obligations, and nor do they impose any new administrative costs or unfunded policy costs above the thresholds set out in the Impact Assessment guidance. These Regulations, alongside the Codes, significantly reduce administrative requirements upon admission authorities, without removing safeguards necessary to maintain the fair, open and transparent allocation of state-funded school places. The Department has not attempted to quantify the reduction of local financial burdens as specific information on these resulting from the current Regulations is not collected. However, anecdotal evidence suggests strongly either no change or lower burdens will result from the proposed revisions.

- 7.6 The admissions framework is intended to ensure that the system is administered fairly on behalf of all children. In redrafting these Regulations and the Codes, the Department considered carefully the equality implications for: age, disability, gender, race, sexual orientation, religion or belief, gender reassignment, pregnancy or maternity, and this has shaped subsequent policy proposals. It is difficult to give precise estimates of the impact on specific groups, but we consider the package of measures will have a positive impact overall on the admissions process for the most vulnerable children, which would now include previously looked-after children.

8. Consultation outcome

- 8.1 Public consultation on the regulations was undertaken between 10 November and 5 December 2011, which included statutory consultation with the Administrative Justice and Tribunals Council. Given the recent 12 week comprehensive consultation on the revised Codes between May and August 2011, which yielded more than 1,300 detailed responses, the shorter consultation on the draft Regulations is in recognition that these contain mainly consequential changes from the Codes and the Education Act 2011, and otherwise simply aim to condense and consolidate the existing framework.
- 8.2 The consultation elicited 256 responses, of which 179 were from parents and 24 were from headteachers or teachers. Some 83% of respondents agreed that consolidating and condensing the Admissions Regulations 2012 alongside the revised Codes would make it easier to understand the requirements for admission arrangements. Some 79% of respondents agreed that simplification of the Appeals Regulations 2012 would be consistent with the draft Appeals Code, and will support the ambition to reduce local burdens and costs. Some 90% of respondents agreed that the Infant Class Size Regulations 2012 in relation to priority for previously looked after children, as well as for twins and multiple birth children and children of serving armed forces personnel seeking a school place outside of the normal admission round, would support the aim of removing barriers to attainment for the most vulnerable children and are consistent with the revised Codes. A fuller analysis was published by the Department for Education on 10 January 2012

9. Guidance

- 9.1 These Regulations are laid before Parliament in order to underpin the Codes which provide statutory guidance to admission authorities and those bodies (with the exception of admission forums) named at paragraph 4.4 above who have statutory

responsibilities in relation to pupil admissions, and to others who may be involved in that locally administered process. The consultation document on the Codes published on 27 May 2011 notified admission authorities and others of the proposed changes, including consequential changes in these Regulations, in respect of their local consultation process.

10. Impact

- 10.1 These Regulations do not impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is confined to the state-funded schools sector, as the Regulations only apply directly (except to the extent they also apply to Academies in relation to objections to the schools Adjudicator) to maintained schools and indirectly to Academies by virtue of their funding agreement.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The Regulations do not apply to small businesses.

12. Monitoring and review

- 12.1 The Department will continue to review its national policy framework covering admissions to state-funded schools, and to monitor impact at the local level, to ensure that important safeguards are retained whilst keeping local burdens to the minimum.
- 12.2 The Department will collect annually from each local authority, statistical data on the preferences expressed by parents, and those met, for all schools in their area, as well as the number of appeals and the rates of these being upheld. These data will be published each year and will form part of the departmental monitoring of its national policy framework.

13. Contact

- 13.1 Questions regarding these Regulations should be directed to Suzanne Farrell at the Department for Education, Tel: 020 7340 8158 or by email to: suzanne.farrell@education.gsi.gov.uk.