

## **REGULATORY APPRAISAL**

### **EDUCATION, WALES**

#### **EDUCATION (OBJECTIONS TO ADMISSION ARRANGEMENTS) (WALES) REGULATIONS 2006**

##### **Purpose and intended effect of the measure**

1. Section 90 of the School Standards and Framework Act 1998 (the 1998 Act) provides for objections about admission arrangements for maintained schools, which have been determined under section 89 of the Act to be referred to the National Assembly for Wales. These Regulations prescribe the conditions under which such objections may be referred and decided and the implementation of any decisions. The Regulations revoke and replace the existing Education (Objection to Admission Arrangements) Regulations 1999 to reflect amendments made to the 1998 Act by the Education Act 2002 (the 2002 Act).
2. Changes from the 1999 Regulations are as follows:
  - currently admission authorities are only required to consult other admission authorities about their admission arrangements and only other admission authorities can object. The admission authority of a foundation or voluntary aided school is the governing body and in the case of a community or voluntary controlled school it is the LEA. The 2002 Act extends the right to be consulted to community and voluntary controlled schools within a relevant area. Their right to object is, however, limited by these Regulations to an objection to the determination of an admission number for their own school or to the admission arrangements of a voluntary aided or foundation school;
  - the Regulations also give parents the right to object to an admission number, which has been set lower than the number indicated by the capacity of the school. The definition of a parent for these purposes has been extended to include a parent of a child who has attained the age of two years, but not more than five, or a parent whose child is of compulsory school age receiving primary education. The matter will only be referred to the National Assembly for determination if five or more parents object; and
  - the existing provision enabling parents to object to any pre-existing selective admission arrangements has been amended, so that in future the Assembly will determine the matter if five or more parents object. Currently at least ten parents must register an objection before the matter is referred to the Assembly for determination.

##### **Risk Assessment**

3. Given that there are existing provisions in S90 of the 1998 Act for objections to be made to school admission arrangements, it is necessary for there to be Regulations, which lay down the procedures for such objections and specify who may object and in what circumstances. The existing Regulations need to be updated to take account of changes to other aspects of school admissions legislation, mainly the method of setting the number of pupils who should be admitted to a school. A few small improvements are being made at the same time.

4. If this updating of the Objection to Admissions Arrangements Regulations did not occur but the other changes were to proceed, there would be inconsistencies and gaps in the arrangements. The main risk in such a situation would be that large numbers of schools (all community and voluntary controlled schools) would have been given a new right to be consulted about other schools admission arrangements and would have thereby acquired unlimited rights to object to any aspect of those admission arrangements, such as catchment areas. This is not what was intended. It could be very disruptive to local education authorities if all schools could register formal objections to any aspect of their proposed admission arrangements. Such a proposition would almost certainly have been strongly opposed during consultation.
5. If none of the proposed changes to school admissions legislation were to proceed as envisaged in the Education Act 2002, all of the perceived disadvantages of standard numbers would remain and we would be unable to adopt a new method of measuring school capacity. These changes have been the subject of extensive consultation and have been widely welcomed. There is no body of opinion opposing this package of changes, which are designed to improve the administration of school admissions arrangements.

## **Options**

### Option 1: Do Nothing

6. The options are constrained by primary legislation, namely: the Education Act 2002, which, when commenced, will replace standard numbers with admission numbers. If the Regulations are not made parents would not have the opportunity of objecting to an admission number set lower than that indicated by the capacity of the school. On the other hand community and voluntary controlled schools would have unrestricted powers to object to any aspect of the LEAs admission arrangements not just to the admission number of their own school or the arrangements for foundation or voluntary aided schools.

### Option 2: Make the Legislation

7. The Regulations will provide parents with the opportunity of registering objections against inappropriately low admission numbers. They will also limit the new rights of community and voluntary controlled schools to object to matters, which are of direct relevance to them.

## **Benefits**

8. The parental right of objection should act as a check against admission authorities determining inappropriately low admission numbers. Extending the right of community and voluntary controlled schools to object to the admission arrangements of voluntary aided and foundation schools will address the situation where an LEA itself is unwilling to object to such arrangements.

## **Costs**

9. The extended right to be consulted is imposed by the Education Act 2002. If many community and voluntary controlled schools or parents were to exercise their new right of objection this would marginally increase administrative costs for the admission authority concerned and for the Assembly, which would be responsible for making a determination. However currently numbers of objections about admission arrangements are very low indeed, with only two in the last five years, and we do not expect there to be a significant increase.

10. With regard to the parental right of objection, it is not anticipated that there will be many instances where an admission number will need to be set lower than the capacity assessment methodology indicates. Admission numbers should reflect the accommodation available at the school, so the number of cases where parents could lodge an objection will be limited. Moreover, parents currently have the right to object to any change in a standard number, so the change will, in fact, reduce the number of instances where objections could or are likely to arise.

## **Consultation**

### With Stakeholders

11. In July 2003 the Assembly published a consultation document – ‘Changes to School Admissions Procedures’, which sought views on general revisions to admissions policy in Wales. Responses to that consultation were taken into account in drafting these Regulations.
12. A further electronic consultation on a new capacity methodology and four sets of Regulations relating to school admission arrangements namely: New School (Admission) (Wales) Regulations 2006; Education (Variation of Admission Arrangements) (Wales) Regulations 2006; The Education (Determination of Admission Arrangements) (Wales) Regulations 2006 and these Regulations and associated Regulatory Appraisals, has taken place with all relevant stakeholders between 14 July 2005 and 20 October 2005. The document was available in electronic format only. Consultees included all Local Education Authorities in Wales, Church Diocesan Authorities, Governors of Voluntary Aided and Foundation Schools, Estyn, the Welsh Language Board, the Children’s Commissioner and Secretaries of Professional Organisations in Wales. A list of consultees is attached at Annex A.
13. Most respondents to the consultation did not raise issues in relation to these Regulations. A few judged the changes to be acceptable, with only one respondent stating that the logistics of giving parents the right to object would increase the administrative burden on admission authorities. This, however, is not the case as the extension of the right to object only applies where an admission number is set lower than the capacity of a school suggests, which should occur infrequently. The number of cases where parents lodge an objection would consequently be limited. Parents currently have the right to object to all changes in a school’s standard number, so the change may well reduce the number of instances for objection. A summary of the consultation responses is attached at Annex B to the Regulatory Appraisal.
14. It was not necessary to make amendments to the Regulations following consultation.

### With Subject Committee

15. These Regulations were notified to the Education and Lifelong Learning Committee via the list of forthcoming legislation (ELL(2)02-04(p.1)) (Item Number: ELL-27-04) on 28 January 2004 and have remained on the list ever since. The Committee identified the Regulations for detailed scrutiny, which took place at the Committee meeting on the 30 November 2005. The Committee recommended approval of the draft Regulations without amendment. A transcript of the Committee meeting is attached at Annex C.

**Review**

16. Officials from Schools Management Division will write to admission authorities within two years of these Regulations coming into force to review the impact of the changes to schools admissions legislation.

**Summary**

17. The Education 2002 Act has extended the right of community and voluntary controlled schools to be consulted about the admission arrangements for other schools in the relevant area. The right to be consulted carries with it the right to object, subject to prescribed limitations. The Education (Objections to Admission Arrangements) (Wales) Regulations limit the right of objection of community and voluntary controlled schools: they can only object to the determination of an admission number for their own school or to the admission arrangements of a voluntary aided or foundation school. The Regulations also give parents a limited right to object to an admission number set lower than the number indicated by the capacity assessment method.

## Annex A - List of Consultees

Directors of Education for all 22 local authorities  
Governing Bodies of foundation and voluntary aided Schools  
10% sample of community schools  
Capacity assessment working group members (drawn from LEAs and District Audit)  
Church Diocesan Authorities  
Council on tribunals  
Welsh Language Board  
Professional Association of Teachers  
Secondary Heads' Association  
National Association of Schoolmasters Union of Women Teachers  
National Association of Headteachers  
Governors Wales  
Welsh Local Government Associations  
Estyn  
Children's Commissioner  
Wales Audit Office  
Welsh Joint Education Committee  
Welsh Secondary Schools Association  
Public Services Ombudsman for Wales  
Department for Education and Skills  
Valuation Office

**REGULATIONS RELATING  
TO SCHOOL ADMISSION ARRANGEMENTS  
CONSULTATION RESPONSE**

**Background to the consultation exercise**

The document sought views on changes to the way in which the capacities of primary and secondary schools are calculated and on draft Regulations relating to the school admissions framework arising from provisions in the Education Act 2002 (the 2002 Act). Responses from this consultation have informed the Assembly Government's decision on the content of the Regulations.

**Consultation exercise - July 2005**

During July 2005, the Welsh Assembly Government published electronically a bilingual consultation document focusing upon the delivery of a new capacity assessment methodology and **Regulations relating to the school admissions framework**, following the 2002 Act. The document was distributed electronically to representatives of the following organisations:

- Local Education Authorities
- Governing Bodies of Foundation and Voluntary Aided Schools
- Church Diocesan Authorities
- 10% sample of community schools in Wales
- Estyn
- Welsh Language Board
- Children's Commissioner
- Council on Tribunals
- Secretaries of Professional Organisations in Wales

The document and response proforma were also made available online via the Assembly's Learning Wales internet site at [www.learning.wales.gov.uk](http://www.learning.wales.gov.uk). The deadline for the submission of responses to the consultation was 20 October 2005.

**Consultation questions - July 2005**

The consultation document asked the following questions:

- Q16 Do you have any comments on the draft Education (Determination of Admission Arrangements) (Wales) Regulations and Regulatory Appraisal? (See Annex A part (i))
- Q17 Do you have any comments on the draft Education (Objection to Admission Arrangements) (Wales) Regulations and Regulatory Appraisal? (See Annex A part (ii))

Q18 Do you have any comments on the draft Education (Variation of Admission Arrangements) (Wales) Regulations and Regulatory Appraisal? (See Annex A part (iii))

Q19 Do you have any comments on the draft New School (Admissions) (Wales) Regulations and Regulatory Appraisal? (See Annex A part (iv))

A total of 22 replies were received in response to the consultation document as a whole - not all commented on the Regulations. A detailed breakdown of respondents is provided below:

Respondent	Total
School Governor or Governing Body	1
Headteacher or Teacher	2
School Staff	0
Teaching union	0
LEA Member of Officer	12
Diocesan Body	1
Other	6
<b>Total</b>	<b>22</b>

### Action following consultation

#### 1. Education (Determination of Admission Arrangements) (Wales) Regulations 2006

The following issues were raised by respondents:

- The fact that admission arrangements have to be determined so far in advance restricts changes which may be made in the interval between determination and application of the arrangements;
- The concession allowing governing bodies which are admission authorities to suspend annual consultation on admission arrangements should in certain circumstances be extended to LEAs;
- It is expensive to publish a notice in the local paper if the admission authority wishes to lower any admission number.
- The consultation document does not address who will monitor and audit the concession to governing bodies to suspend annual consultation.

It is not proposed to amend the Regulations in the light of this feedback for the following reasons:

- Following receipt of the feedback, admission officers at all the LEAs were contacted about the feasibility of moving the date by which arrangements should be determined. Changes to the timetable are constrained as sufficient time must be allowed for notification of consultees, for any objections to be made and for consideration of any objections by the Assembly prior to publication of the composite prospectus, usually early in the autumn term. Admission officers were therefore asked whether the determination date might be put back from 15 April to 1 June. There was not, however, a consensus of support for this change. The position will be reviewed in 2 years time.

- We consider that fresh consultation would be required before we could suspend the requirements on LEAs to consult annually. This option will be considered when the new admissions framework is reviewed in 2 years time.
- The proposed procedure for setting and varying admission numbers is considerably less expensive than the current system which requires publication of a statutory notice for every change to a standard number. The publication requirement in the Regulations is intended to safeguard the interests of parents where an admission number is set lower than the capacity of the school indicates. It is anticipated that this will occur only infrequently.
- The Regulations state that the LEA should notify the Assembly that appropriate consultation has taken place prior to the suspension of the consultation requirement. Further guidance on how this concession will be monitored will be included in a revised Code of Practice on school admissions which should be issued in 2006.

## **2. Education (Objections to Admission Arrangements) (Wales) Regulations 2006**

Most respondents to consultation did not raise issues in relation to these Regulations. A few judged the changes to be acceptable, with only one respondent stating that the logistics of giving parents the right to object would increase the administrative burden on admission authorities. This view is, however, misguided as the right to object only applies where an admission number is set lower than the capacity of a school suggests. This is likely to occur only infrequently. The number of cases where parents could lodge an objection is consequently limited. Moreover, parents currently have the right to object to all changes to a school's standard number, so the legislative change should reduce the number of instances of objection. It was therefore not considered necessary to make amendments to the Regulations following consultation.

## **3. Education (Variation of Admission Arrangements) (Wales) Regulations 2006**

The majority of respondents did not comment about these Regulations. Those who expressed an opinion supported the making of the Regulations, as they judged their introduction would result in a simpler, more flexible process. It was therefore not necessary to make amendments to the Regulations as a result of the consultation.

## **4. New School (Admissions) (Wales) Regulations 2006**

One respondent questioned the value of the extension of the consultation requirements to include all community schools, while another welcomed the opportunity for interested parties to provide input. The extension of the consultation requirements for new schools mirrors those being applied to existing schools. The additional requirement is for admission authorities to consult all community and voluntary controlled schools in the 'relevant area' before determining the admission arrangements. LEAs already do this but it will be a new duty for voluntary aided or foundation schools. To facilitate this process the Assembly has contacted all LEAs and requested that they review their relevant area(s) before the consultation requirements change, to ensure that the consultation areas for the voluntary aided and foundation schools are not too extensive. The review of consultation areas should ensure that the extended consultation is appropriate, while the administrative burden is kept to a



minimum. In view of the limited and contradictory responses on these Regulations it was not judged appropriate to amend them. It is considered desirable to ensure the consultation requirements for new schools are consistent with those for existing schools. In addition it is not anticipated that the consultation requirements in relation to the limited number of new schools opened each year will prove burdensome, particularly since the consultation may be conducted electronically.

## RESPONSE TO INDIVIDUAL QUESTIONS

Q16 Do you have any comments on the draft Education (Determination of Admission Arrangements) (Wales) Regulations and Regulatory Appraisal? (See Annex A part (i))

Respondent	Total
Local education authority	8
School	0
School Governor	1
Headteacher or Teacher	0
Parent	0
Diocesan Body	0
Other	1
<b>Total</b>	<b>10</b>

Executive summary	Total
Agree	3
Neither agree or disagree	7
Disagree	0
<b>Total</b>	<b>10</b>

### Individual comments

If the LEA has to consult on admission arrangements two years in advance it will restrict any changes that are wished to be made in the interim period e.g. such as those that have become apparent this year following appeals processes.

We feel that the concession allowing governing bodies which are admission authorities to suspend annual consultation on admission arrangements in certain circumstances should also be extended to Local Authorities.

The facility for schools to suspend the annual consultation is good as it will reduce bureaucracy. Our concern, however, is that the document does not address the issue of who will monitor and audit this process. How will neighbouring schools know this has been done after a three year period?

Q17 Do you have any comments on the draft Education (Objection to Admission Arrangements) (Wales) Regulations and Regulatory Appraisal? (See Annex A part (ii))

Respondent	Total
Local education authority	5
School	0
School Governor	0
Headteacher or Teacher	0
Parent	0
Diocesan Body	0
Other	1

Executive summary	Total
Agree	3
Neither agree or disagree	2
Disagree	1
<b>Total</b>	<b>6</b>

<b>Total</b>	<b>6</b>
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### Individual comments

It is unclear as to when parents will be able to object to an admission number. Will this be at the time the change is proposed? There could be problems if objections can be lodged at any time.

The logistics of giving parents the right to object will increase the administrative burden on schools and authorities - to set up a system for informing parents and the means to express objections and the collation of responses will undoubtedly increase the administrative burden.

Q18 Do you have any comments on the draft Education (Variation of Admission Arrangements) (Wales) Regulations and Regulatory Appraisal? (See Annex A part (iii))

Respondent	Total
Local education authority	5
School	0
School Governor	0
Headteacher or Teacher	0
Parent	0
Diocesan Body	0
Other	0
<b>Total</b>	<b>5</b>

Executive summary	Total
Agree	5
Neither agree or disagree	0
Disagree	0
<b>Total</b>	<b>5</b>

### Individual comments

The LEA agrees that the new system is far simpler and better.

The Regulations will ensure that the administrative burden on admission authorities is kept to a minimum following the introduction of admission numbers and changes to the process for determining admission arrangements.

Q19 Do you have any comments on the draft New School (Admissions) (Wales) Regulations and Regulatory Appraisal? (See Annex A part (iv))

Respondent	Total
Local education authority	4
School	1
School Governor	0
Headteacher or Teacher	0
Parent	0
Diocesan Body	0
Other	0
<b>Total</b>	<b>5</b>

Executive summary	Total
Agree	2
Neither agree or disagree	2
Disagree	1
<b>Total</b>	<b>5</b>

### Individual comments

These Regulations are fine.

The value of the additional duty to consult is questioned. For any new community schools the admission arrangements would reflect those of the other community schools from the same sector (primary/ secondary). Only the admission number is likely to be peculiar to the new school.

These Regulations largely reflect current procedures. However, the extended duty to consult will provide interested parties with a valuable opportunity to provide input on the initial admission arrangements for a school before they are determined.

Annex C

### **Craffu ar Is-ddeddfwriaeth Scrutiny of Secondary Legislation**

**Peter Black:** We have four sets of regulations relating to school admissions. I invite the Minister to introduce them, and we will then take any questions or points on them.

**Jane Davidson:** The four are here because they are part of a package; you could not take two out, as the four are consequential on each other. They only make very small adjustments to existing procedures, so they are tidying-up measures.

**Peter Black:** Does anyone have any questions or points? Janet?

**Janet Ryder:** In the consultation, a question was raised about who was going to monitor and audit the process, but I cannot find the answer to that.

12.00 p.m.

**Ms MacGregor:** I am not sure that I understand the question.

**Janet Ryder:** It relates to the admission arrangements process.

**Ms MacGregor:** Do you understand the question?

**Ms Massey:** Yes. We were going to set it out in guidance because it is not covered in the regulations. The LEAs have admissions fora where they can discuss things like that.

**Janet Ryder:** This point was raised in consultation as a query, but it is not responded to in the papers.

**Ms MacGregor:** Are we talking about the admissions code?

**Janet Ryder:** It appears in a couple of the papers.

**Peter Black:** It is referred to in ELL(2) 13-05, paper 03, 'Regulations'. On page 3, the last bullet point of paragraph 11 says that: 'the consultation document does not address who will monitor and audit this process'. That is the response to consultation, and I think that that is what Janet referred to.

**Janet Ryder:** Yes.

**Ms MacGregor:** Sorry, the answer is there—it is in the code of practice. I am sorry, it took me a long time to find out what the question was. There is a current code of practice on school admissions, and there is another on appeals on school admissions, both of which need to be revised. When all of this is in place, we will revise the codes. Does that answer the question?

**Janet Ryder:** Very clearly.

**Mark Isherwood:** Last year, a school, which I will not name, received a number of appeals by parents after they did not get their initial choice of school. Many of them were successful, and the school in question, therefore, had to make provision for, I think, another 12 or 14 pupils above the LEA's identified admissions number. The parents of a couple of those children then decided to place their children elsewhere. Therefore, the school had technically resourced up to the expected intake but there were then a couple of spare places. The local authority in question did not allow others who had applied and who still wished to go to that school to fill those two vacancies because the school was above its own initial admissions number. How would that be addressed?

**Ms MacGregor:** That is a question about admission arrangements, which—

**Mark Isherwood:** How flexible should that identified number be when the appeals system takes it above that?

**Ms MacGregor:** Are we talking about a secondary school or a primary school?

**Mark Isherwood:** A secondary school.

**Ms MacGregor:** I am not sure that a secondary school that admitted above its standard number would necessarily resource up; it would simply put more children in the teaching groups.

**Mark Isherwood:** This one did. It appointed additional staff.

**Ms MacGregor:** I do not think that I can answer that. The decisions on admissions are made by LEAs with reference to the framework and the code of practice. Without details of the exact case, I do not think that I can say what should or should not have been done. If you want to write to us with the specifics, we can investigate with the LEA and find out what it did, but, without knowing the exact circumstances, I cannot give a judgment as to whether the LEA did the right or the wrong thing. The law requires LEAs to pay attention to the standard number, so, in principle, I would expect that, even if an admission appeal panel had gone above the standard number, that would remain as the standard number as it is based on the capacity of the school. You cannot resource up unless you have put in a demountable classroom, which then changes the capacity. I am sorry that I cannot give you a definitive answer on that, but I do not know the details of the case.

**Peter Black:** Perhaps, Mark, you would like to write to the Minister with the specific example, so that you get an answer on that particular case.

**Mark Isherwood:** I would need the headteacher's permission. It would be too late for the children concerned, as this occurred last summer. I did everything that I could do locally.

**Peter Black:** Are there any other questions or points on these regulations? Do I take it that the committee is content with the regulations? I see that it is. As usual, we will lay a report before the Business Committee to that effect, covering the points that have been raised in questions. Thank you very much indeed.