

REGULATORY APPRAISAL

EDUCATION, WALES

EDUCATION (VARIATION OF ADMISSION ARRANGEMENTS) (WALES) REGULATIONS 2006

Purpose and intended effect of the measure

1. There are 180 admission authorities across Wales, comprising 168 governing bodies of voluntary aided and foundation schools and 22 local education authorities. These admission authorities must consult on and determine their admission arrangements in the “determination year”, which begins two years before the year to which the admission arrangements will apply. The final arrangements must be determined by 15 April in the determination year. Following determination the arrangements can currently only be varied if there is a major change of circumstances (e.g. a fire, which destroys classroom space). If an authority wishes to vary arrangements in view of a major change of circumstance they must notify the bodies, which were consulted about the admission arrangements and refer the request for variation to the National Assembly for consideration.
2. At present, where a statutory proposal for an alteration to a school, such as an enlargement, necessitates a change in the school's standard number, this is brought into effect by the published statutory notice and implemented at the same time as the alteration to the school. (The standard number is the number of pupil places available in any school year.) When section 89A of the School Standards and Framework Act 1998, as amended by the Education Act 2002, is commenced (by Commencement Order No. 8) and related guidance is introduced, admission numbers will replace standard numbers and will be set as part of the determination of admission arrangements. (Admission numbers are also the number of pupil places available but are based on the capacity of the school not the number of pupils who were admitted in the past). It is therefore necessary to put in place an alternative statutory arrangement to ensure that any schools, which are altered following a statutory proposal can operate with an appropriate admission number from the date the change is implemented, although in practice very few of the school re-organisation proposals which are published each year involve changes, which would impact on admissions arrangements.
3. These Regulations provide that an admission authority may vary an admission number, which has already been determined where such a variation is necessary to implement a school re-organisation proposal published under section 28 of the School Standards and Framework Act 1998. In such circumstances, there is no separate need to refer the matter to the National Assembly for determination or to notify those who were consulted during the determination of admission arrangements round - the normal arrangements for consultation, publication, objections and Assembly determination (where there are objections) of section 28 statutory proposals would apply. Only a proposal for the expansion of a school or possibly for a change of age range would be likely to require a variation in the admission number.

Risk assessment

4. The Regulations will ensure that no additional procedural burdens are placed on admission authorities when admission numbers replace standard numbers. In addition,

this change to procedure will avoid an increase in the administrative burden on the National Assembly.

Options

Option 1: Do Nothing

5. If these Regulations were not made, admission authorities would not be able to vary an admission number if it became necessary in order to reflect changes to the capacity of a school following the implementation of statutory proposals. The existing arrangements, which ensure standard numbers are set as part of the process of determining statutory proposals, will cease to apply once the provisions relating to standard numbers are repealed and replaced with admission numbers. Although the circumstances where admission numbers might need to be changed as the result of a school re-organisation are rare, proper statutory provision needs to be made to cover the eventuality.

Option 2: Make the Legislation

6. The Regulations will give admission authorities the facility to vary an admission number where it is necessary to reflect changes to school provision as a result of school re-organisation proposals, for instance to enlarge a school or to change the age range, which are implemented after the admissions arrangements have been determined.

Benefits

7. 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.

Costs

8. It is not anticipated that there are any additional financial implications for the Assembly, local education authorities, schools or others arising from these Regulations.

Consultation

With Stakeholders

9. 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.

10. A further electronic consultation on a new capacity methodology and four sets of Regulations relating to school admission arrangements namely: New School (Admissions) (Wales) Regulations 2006; Education (Objections to Admission Arrangements) (Wales) Regulations 2006; The Education (Determination of Admission Arrangements) (Wales) Regulations 2006 and these Regulations and associated Regulatory Appraisals, took place with all relevant stakeholders between 14 July and 20 October 2005. Consultees included: all Local Education Authorities (LEAs) in Wales; Church Diocesan Authorities; Governors of Voluntary Aided and Foundation Schools; Estyn; the Welsh Language Board; the Children's Commissioner and the Council on Tribunals and Secretaries of Professional Organisations in Wales. A list of consultees is attached at Annex A.

11. The majority of respondents did not comment on the 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. A summary of consultation response is attached at Annex B.

With Subject Committee

12. These Regulations were notified to the Education and Lifelong Learning Committee via the list of forthcoming legislation (ELL(2)02-04 (p.1) Annex B, Item Number: ELL-28-04) on 28 January 2004 and have remained on the list ever since. The Regulations were not originally identified for detailed scrutiny. However, as there are four inter-related sets of Regulations on changes to the admissions framework and the Committee had expressed an interest in scrutinising two of the sets of Regulations, it was advised that all four sets be scrutinised.

13. The scrutiny took place at the Committee meeting on the 30 November 2005. The Committee recommended approval of the draft Regulations without amendment. A copy of the transcript of the Committee meeting is attached at Annex C.

Review

14. Officials from the Welsh Assembly Government's 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

15. The Education (Variation of Admission Arrangements) (Wales) Regulations 2006 will mainly affect LEAs and schools, which are their own admission authorities, namely voluntary aided and foundation schools. The main impact of the Regulations is to permit variation of a school's admission number where necessary to implement statutory proposals, which have been determined either by the promoters or approved by the National Assembly.

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. 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
Total	22

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
Total	10

Executive summary	Total
Agree	3
Neither agree or disagree	7
Disagree	0
Total	10

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
Total	6

Total	6
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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
Total	5

Executive summary	Total
Agree	5
Neither agree or disagree	0
Disagree	0
Total	5

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
Total	5

Executive summary	Total
Agree	2
Neither agree or disagree	2
Disagree	1
Total	5

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.