

REGULATORY APPRAISAL

EDUCATION, WALES

THE EDUCATION (DETERMINATION OF ADMISSION ARRANGEMENTS) (WALES) REGULATIONS 2006

Purpose and intended effect of the measure

1. Section 89 of the School Standards and Framework Act 1998 (the 1998 Act) provides that the admission authority for every maintained school must determine the school's admission arrangements annually in accordance with the requirements set out in that section. (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.) These implementing Regulations set out the procedure which admission authorities should follow when determining their admission arrangements, including the consultation and notification process. They revoke and replace the existing Education (Determination of 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:
 - clarification that the whole of the consultation and determination of admissions arrangements process should take place between 1 September and 15 April in the determination year (which is the school year beginning two years before the school year in which the pupils will be admitted). Consultation on the arrangements should not take place before 1 September;
 - a new duty to have regard to the capacity assessment method set out in Assembly guidance "Measuring the capacity of schools in Wales" when setting the admission number of a school;
 - simplification of the requirement for admission authorities which are governing bodies to consult neighbouring local education authorities. Reference to the radial area, which extends 3.2 kilometres around a primary school and 8 kilometres around a secondary school, is removed. It is made clear that the governing body's duty is to consult those LEAs whose areas fall within or adjoin the school's relevant area;
 - schools which are their own admission authority (i.e. foundation and voluntary aided schools) are currently required to consult annually on their admission arrangements. The Regulations allow such governing bodies to suspend annual consultation for up to 3 years provided the arrangements remain unchanged; and
 - in future, when an admission authority determines an admission number which is lower than the number indicated by the capacity assessment this must be published in a local newspaper. The notice must explain that parents may object to this lower admission number. On request the admission authority must provide further details relating to the calculation of the admission number and parents' right of objection. Separate Regulations deal with the procedures for handling objections.

Risk assessment

3. The existing Regulations which set out the procedures for the determining admission arrangements need revision, to take account of the abolition of standard numbers and their replacement by admission numbers which are set annually and based on the capacity of the school. This switch to admission numbers will be brought about by the commencement of section 47 of the 2002 Act. If these Regulations were not made alongside the Commencement Order there would consequently be no requirement on admission authorities to set admission numbers by reference to the capacity of the school as measured in accordance with new Assembly guidance. The duty on admission authorities to admit pupils up to the published admission number which underpins all admissions procedures would become unworkable if there were no provisions regulating how admission numbers should be set, yet the existing provisions relating to standard numbers had been repealed. In addition there would be no requirement to publish details of an admission number set lower than indicated by the capacity assessment and inviting parents to object yet the current requirements for the publication of a statutory notice, objections and approval by the Assembly before any standard number is changed would have been repealed.

Options

Option 1: Do Nothing

4. If these Regulations were not made, the desired move away from standard numbers could not be implemented effectively since admission authorities would not be under a duty to set new admission numbers by reference to the capacity of the school, as measured in accordance with new Assembly guidance. Further, there would no duty on the admission authority to notify parents where it was proposed to determine an admission number for a school which was lower than that indicated by the school's capacity. Governing bodies of voluntary aided and foundation schools would still be under a duty to consult interested parties annually about their admission arrangements, even when no changes had been made.

Option 2: Make the Legislation

5. The Regulations will enable schools, which are their own admission authority to suspend annual consultation on their admission arrangements for up to three years providing the arrangements were unchanged. Admission authorities will also be under a duty to set admission numbers by reference to the capacity of the school with parents' interests safeguarded by admission authorities duty to notify where an admission number is set lower than the school's capacity indicates.

Benefits

6. The administrative burden on some school governing bodies will be eased as they will only have to consult on their admission arrangements every third year instead of annually in certain circumstances. In addition, the Assembly Government has requested that local authorities review 'relevant areas' for admissions purposes before the Regulations come into effect. Admission authorities are under a duty to consult all other admission authorities in the "relevant area" as determined by the authority. In the past the relevant area has often been defined as the whole local authority area. As a result, the duty on voluntary aided and foundation schools to consult can be quite onerous. Redefinition of the relevant areas to more accurately reflect travel to school areas should reduce the burden. A significant number of LEAs have already reviewed the relevant areas for foundation and voluntary aided schools,

with the result that these areas have become smaller and more appropriate. Other authorities have scheduled discussion on relevant areas by admissions forum.

Costs

7. The extension of the duty on admission authorities to consult is imposed by the Education Act 2002. As consultation can be carried out electronically it is unlikely to give rise to additional cost. The additional burden of publishing an admission number lower than the capacity assessment indicates and details of parents' right to object should occur only occasionally and will be more than outweighed by the benefits of a less bureaucratic system for setting and changing admission numbers.
8. There will be no additional financial implications for the Assembly or local authorities in Wales as a result of 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 Regulations relating to school admission arrangements, namely New School (Admissions) (Wales) Regulations 2006; Education (Objections to Admission Arrangements) (Wales) Regulations 2006; Education (Variation of Admission Arrangements) (Wales) 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 Secretaries of Professional Organisations in Wales. A list of consultees is attached at Annex A.
11. 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; and
 - the consultation document does not address who will monitor and audit the process of suspending annual consultation in certain circumstances.
12. A summary of the consultation responses is attached at Annex B.

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

- following receipt of the responses, admission officers of all the LEAs were contacted about the feasibility of moving back 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 asked whether the determination date might be put back from 15 April to 1 June. There was not a consensus of support for this change. The position will be reviewed in 2 years time;

It is considered that fresh consultation would be required before we could suspend the requirements on LEAs to consult annually. This possibility 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 an admission 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; and
- the Regulations require the maintaining LEA to notify the Assembly that appropriate consultation has taken place prior to the suspension of the consultation requirement. Further guidance on how this should be done and on monitoring suspensions of consultation will be included in a revised Code of Practice on school admissions due to be issued by the Assembly in 2006.

With Subject Committee

14. These Regulations were notified to the Education and Lifelong Learning Committee via the list of forthcoming legislation on 28 January 2004 ((ELL(2)02-04(p.1)Annex B Item Number: ELL-26-04) 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.

15. The scrutiny took place at the Committee meeting on 30 November 2005. The Committee recommended approval of the draft Regulations without amendment. A transcript of the Committee Meeting is attached at Annex C to the Regulatory Appraisal.

Review

16. 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

17. These Regulations largely re-enact the procedures, which are already in place in current Regulations. The new requirement on an admission authority to publish a notice where an admission number is set lower than that indicated by the capacity of a

school should occur only occasionally and will be more than offset by simplified procedures for setting and varying admission numbers. The facility for admission authorities for foundation and voluntary aided schools to suspend annual consultation should reduce the administrative burden for these schools.

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

Annex B

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 |
|--------------|---|

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.