2002 No. 2896

EDUCATION, ENGLAND

The Education (Determination of Admission Arrangements) (Amendment) (England) Regulations 2002

Made - - - - -	*18th November 2002*
Laid before Parliament	*2nd December 2002*
Coming into force - -	*20th January 2003*

In exercise of the powers conferred on the Secretary of State by sections 89(2), (2A), (8), (8A), 89A(3) and 138(7) of the School Standards and Framework Act 1998(**a**), the Secretary of State for Education and Skills hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Determination of Admission Arrangements) (Amendment) (England) Regulations 2002, and shall come into force on 20th January 2003.

(2) These Regulations apply only in relation to England.

Amendment of the Regulations

2.—(1) The Education (Determination of Admission Arrangements) Regulations 1999(**b**) shall be amended as follows—

(2) In regulation 2(1) (Interpretation)—

(a) after the definition "the Act" there shall be inserted—

> ""admission number" means the number of pupils in any relevant age group intended to be admitted in any school year as determined by an admission authority in accordance with section 89A(1);";

(b) after the definition of "education authority" there shall be inserted—

> ""indicated admission number" means the number of pupils in any relevant age group referred to as such in, and determined in accordance with the net capacity assessment method set out in, the guidance, Assessing the Net Capacity of Schools(**c**), issued by the Department for Education and Skills in August 2002;".

(**a**) 1998 c. 31; section 89(2) and (2A) were substituted by paragraph 5(2) of Schedule 4 to the Education Act 2002 (c. 32) and subsections (8)(fa) and (8A) were inserted by paragraphs 5(4) and (5) respectively of that Schedule; section 89A was inserted by section 47(2) of the 2002 Act. For the meaning of "regulations" and "prescribed" *see* section 142(1) of the 1998 Act. By virtue of S.I. 1999/672 and section 211(1) of the 2002 Act the powers conferred by these sections are exercisable by the Secretary of State only in relation to England.

(**b**) S.I. 1999/126.

(**c**) Reference DfES/0793/2001 REV, ISBN 1 84185 610 X.

(3) For regulation 3 (Determination of admission arrangements) there shall be substituted—

"**3.**—(1) Every admission authority for a school, in determining their admission arrangements under section 89 of the Act, shall have regard to the current indicated admission number when determining an admission number for each relevant age group.

(2) Except where regulation 5A applies, every admission authority for a school shall, in respect of their proposed admission arrangements for the school for each school year, take all steps necessary to ensure that they will have completed the consultation required by section 89(2) before 1st March in the determination year.

(3) In addition, every such admission authority shall take all steps necessary to ensure that they will have determined those admission arrangements before 15th April in the determination year.".

(4) In regulation 5(1) (Additional consultation requirements) for "89(2)(c)" there shall be substituted "89(2)(d)"(**a**).

(5) After regulation 5 there shall be inserted—

"Suspension of consultation requirements

5A.—(1) Subject to paragraph (3), this regulation prescribes for the purposes of section 89(2A) the conditions under which a governing body who are the admission authority for a school shall not be required to undertake the consultation required under subsection (2) of that section in any determination year to which this regulation applies.

(2) The conditions are that—

(a) in the preceding determination year the governing body have undertaken the consultation required under section 89(2) in relation to the proposed admission arrangements for the school;

(b) the governing body propose to determine the same admission arrangements for the school as those determined in the preceding year; and

(c) no objection was made to the adjudicator under section 90(1) or (2) about the admission arrangements proposed by the governing body in any of the preceding five years.

(3) This regulation shall not apply unless, in relation to any preceding determination year relating to a qualifying school year, the local education authority maintaining the school have provided the Secretary of State with the relevant notification.

(4) In this regulation—

"the relevant notification" means notification that all the admission authorities in the relevant area have undertaken the consultation required under section 89(2) in relation to their proposed admission arrangements;

"qualifying school year" means the school year 2004–05 or any subsequent school year.".

(6) In regulation 6(2)(a) (Matters to which consultation is to relate) for "104(4)" there shall be substituted "104(2)".

(7) In regulation 8(1)(a) (Manner of notification of admission arrangements) for "bodies the authority were required to consult under section 89(2)" there shall be substituted "appropriate bodies as defined in section 89(10)"(**b**).

(8) For regulation 9 there shall be substituted—

"Circumstances in which additional publication is required

9.—(1) This regulation applies in any case where—

(a) the admission arrangements for a school determined by an admission authority include pre-existing selection arrangements;

(b) the determined admission number for any relevant age group at a school is lower than the current indicated admission number for that age group.

(2) For the purposes of paragraph (1)(a)—

(a) "selection arrangements" means those arrangements (if any) in the admission arrangements determined for a school for a particular school year which make provision for the selection of pupils by ability or aptitude within the meaning of section 99(5); and

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(**a**) Section 89(2)(c) of the 1998 Act was re-enacted as 89(2)(d) by paragraph (5)(2) of Schedule 4 to the 2002 Act.
(**b**) Section 89(10) of the 1998 Act was inserted by paragraph 5(7) of Schedule 4 to the 2002 Act.

(b) selection arrangements are to be regarded as pre-existing if they—

(i) continue from provision made by the admission arrangements for the school in question at the beginning of the 1997–98 school year and made by successive admission arrangements for the school since that time; and

(ii) depend solely for their lawfulness on section 100.

(3) For the purpose of paragraph (2)(b)(ii), selection arrangements are to be regarded as depending solely for their lawfulness on section 100 if they are not rendered lawful by virtue of section 99(1)(b) or 2(c) (grammar schools or sixth forms), section 101 (pupil banding) or section 102 (aptitude for particular subjects).

(4) Where paragraph (1)(a) applies, the admission authority shall publish the following information in a newspaper circulating in the locality served by the school, namely—

(a) the names of the admission authority and of the school or schools in respect of admission to which the provision for selection applies;

(b) the fact that admission arrangements have been determined which make provision for selection and a statement summarising the effect of the selection arangements;

(c) the fact that parents living in the relevant area are able to refer an objection about the selection arrangements to the adjudicator;

(d) the address to which the date by which such an objection must be sent to the adjudicator;

(e) the fact that further information about the selection arrangements or about parents' right of objection may be obtained from the admission authority, including an address and telephone number for such contact.

(5) Where paragraph (1)(b) applies the admission authority shall publish the following information in a newspaper circulating in the locality served by the school, namely—

(a) the names of the admission authority and of the school or schools in respect of which an admission number lower than the current indicated admission number has been determined for any relevant age group;

(b) the current indicated admission number relating to each relevant age group to which the admission authority had regard when determining a lower admission number;

(c) the determined admission number relating to each relevant age group which is lower than the current indicated number for that age group;

(d) the admission authority's reasons for determining an admission number which is lower than the current indicated admission number;

(e) the fact that parents living in the relevant area are able to refer an objection about the admission number to the adjudicator;

(f) the address to which and the date by which such an objection must be sent to the adjudicator;

(g) the fact that further information about the admission number or about parents' right of objection may be obtained from the admission authority, including an address and telephone number for such contact.

(6) The information specified in paragraphs (4) and (5) must be published in the manner specified within 14 days after the date on which the admission authority determined the admission arrangements.".

(9) In regulation 10 (Provision of further information)—

(a) for paragraph (1) there shall be substituted—

"(1) An admission authority which is required to publish information under regulation 9 shall in addition provide to any person without charge any of the following on request—

(a) (in any case to which regulation 9(1)(a) applies) a copy of the selection arrangements and of any other parts of the admission arrangements that are material to them;

(b) (in any case to which regulation 9(1)(b) applies) details of the assessment of the school's current indicated admission number relating to any relevant age group for which a lower admission number has been determined;

(c) a written statement of information about parents' right of objection specified in paragraph (2).";

(b) in paragraph (2)—

(i) for "paragraph (1)(b)" there shall be substituted "paragraph (1)(c)";

(ii) in sub-paragraph (c)(i) after "pre-existing selection arrangements" there shall be inserted "(within the meaning of regulation 9(1)(a)), or the determination of an admission number which is lower than the indicated admission number.".

David Miliband,
Minister of State
Department for Education and Skills

18th November 2002

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the Education (Determination of Admission Arrangements) Regulations 1999 (S.I. 1999/126) ("the principal Regulations"). They are consequential upon amendments to the School Standards and Framework Act 1998 ("the 1998 Act") made by the Education Act 2002.

Regulation 2(3) re-enacts regulation 3 (Determination of admission arrangements) of the principal Regulations with amendments. This imposes a duty on admission authorities to have regard to the indicated admission number (now defined in regulation 2(1) of the principal Regulations) for each relevant age group when determining an admission number. The duty on an admission authority to consult on their admission arrangements by 1st March in the determination year, and determine those arrangements by the 15th April, remains unchanged, except where the new regulation 5A of the principal Regulations applies.

Regulation 2(5) inserts the new regulation 5A (Suspension of consultation requirements) into the principal Regulations. This relieves a governing body who are an admission authority from the duty to consult on their admission arrangements in any alternate year where certain criteria are satisfied. These are: that in the preceding determination year the governing body consulted on their proposed admission arrangements in accordance with section 89(2) of the 1998 Act; that no objection was made to the adjudicator under section 90 of the 1998 Act about those proposed arrangements; and that they propose to determine the same admission arrangements in the determination year in question. However, before this exemption can apply, the local education authority maintaining the school must have notified the Secretary of State that all admission authorities in the relevant area undertook the consultation required under section 89(2) in the determination year relating to the 2004–05 school year or any following determination year.

Regulation 2(7) amends regulation 8(1)(a) (Manner of notification of admission arrangements) of the principal Regulations in the light of section 89(2A) of the 1998 Act, which relieves governing body admission authorities from the duty to consult under sub-section (2) on their proposed admission arrangements where prescribed conditions are satisfied. The effect of the amendment is that all bodies who were entitled to be consulted under section 89(2) are to be notified of an admission authority's determined admission arrangements, even if they were not actually consulted, so retaining their right of objection to the adjudicator under section 90.

Regulation 2(8) re-enacts regulation 9 (Circumstances in which additional publication is required) of the principal Regulations with amendments. The effect is to extend the circumstances in which an admission authority are required to undertake additional publication of their admission arrangements to enable parents living in the relevant area to refer an objection to the adjudicator. Previously, additional publication was only required where admission arrangements included pre-existing selection arrangements. However, an admission authority must now also undertake additional publication where they have determined an admission number for a relevant age group which is lower than that indicated by the net capacity assessment method set out in guidance (Assessing the Net Capacity of Schools). This guidance can be obtained from DfES Publications, PO Box 5050, Sherwood Park, Annesley, Nottingham, NG15 0DJ. The new regulation 9(4) and (5) of the principal Regulations prescribes the additional information which an admission authority must publish.

Regulation 2(9) amends regulation 10 of the principal Regulations. This amendment is consequential upon the changes to the publication requirements made by paragraph (8), and extends the requirement on admission authorities to provide, on request, further information regarding their admission arrangements. Previously, such information was limited to pre-existing selection arrangements but is now extended to information relating to the determination of an admission number lower than the indicated admission number.

STATUTORY INSTRUMENTS

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