

Explanatory Memorandum to the Education (Infant Class Sizes) (Amendment) (Wales) Regulations 2009

This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills and will be laid before the National Assembly for Wales in accordance with Standing Order 24.1.

Description

The Education (Infant Class Sizes) (Wales) Regulations 1998 restrict to 30 the maximum number of pupils in an infant class while an ordinary teaching session is conducted by a school teacher. However, certain types of children ('excepted pupils') can be discounted for the purposes of ascertaining whether or not the limit of 30 is exceeded. The amendments to these Regulations are intended to modify some of the current categories of 'excepted pupils' and add three further categories.

The exceptions for looked after children, and for pupils for whom education at a denominational school or a Welsh medium school is desired, refer to the children being admitted outside the normal admissions round. For the purposes of the 1998 Regulations (which these regulations amend) a child is treated as being admitted outside the normal admission round if:

- (i) at the time of the child's admission to the school, the child did not fall within an age group within which pupils are normally admitted to the school (for the majority of schools, this would be to Year 1 or Year 2); or
- (ii) at the time of the child's admission to the school the child fell within an age group in which pupils are normally admitted (for the majority of schools this will be Reception), there are a greater number of pupils seeking admission than it was intended to admit and the pupil was offered a place after the time when the relevant person had determined who was going to be admitted to the school in accordance with the school's admission arrangements

Matters of special interest to the Subordinate Legislation Committee.

None.

Legislative Background

The powers enabling this instrument to be made are contained in Sections 1 and 138(7) and (8) of the School Standards and Framework Act 1998 (as amended by Sections 50 and 51 of the Education Act 2002.) These powers have been transferred to the Welsh Ministers. The legislation follows the negative resolution procedure.

Purpose and intended effect of the legislation

The three further categories added by the amendment Regulations are:

- i. looked after children admitted outside the normal admissions round - separate Regulations relating to such children are being brought forward which will require admission authorities to comply with admission applications on behalf of such children in nearly all cases. Including looked after children as excepted pupils for the first year only when they are admitted to a school outside of the normal admissions

- round would remove the need for schools to undertake potentially disruptive measures when these children are admitted;
- ii. pupils admitted outside the normal admissions round for whom education at a school of a particular religious denomination is desired and where the school concerned is the only such school within a reasonable distance of the pupil's home. This will bring faith schools in line with Welsh medium schools where the principle of ensuring that wherever possible parental preferences are met already applies; and
 - iii. reception age pupils admitted outside the normal admissions round where the admission number applying for that year group has not previously been reached. All primary and infant schools have a published admission number, based on the capacity of the school, which is the minimum number of children who must be admitted to the reception class if sufficient applications are received. Consequently, where the number of pupils in the reception year is below the published admission number the admission authority is required by law to admit the next pupil who applies, even if this would create an infant class of more than 30 and irrespective of whether any other school in the local area would have been able to offer an alternative place. This can cause real difficulties if the 31st child is admitted late in the year after the school has organised its classes and staffing levels. It therefore seems reasonable that in such instances the extra pupil should be treated as an excepted pupil for the remainder of the academic year, giving the school time to make adjustments for the following year.

All three exemptions would only apply for the first academic year in which the pupil is admitted.

In addition the existing Regulations are amended so that:

- the existing exception category relating to those seeking a Welsh medium education applies to all year groups (and not just reception); and
- before treating a child as an excepted pupil because there are no places available at another suitable school within a reasonable distance of the child's home, an admission authority which is not the local authority first seeks confirmation of that fact from the relevant local authority.

Implementation

It is intended that the Regulations will come into force on 22 April 2009.

Consultation

The amendment has been consulted on together with the Codes on School Admissions and School Admission Appeals, amendments to the Admission Appeals Regulations and a new set of Regulations relating to the admission of Looked After Children. Further details are included in the Regulatory Impact Assessment below.

Regulatory Impact Assessment

Options for achieving the policy objective as set out above

Option 1 - Do Nothing

If the amendments to the existing Regulations are not made, prejudice will continue to arise to the provision of efficient education and the efficient use of resources. There will also be a continued and unintended restraint on the operation of parental preference in relation to admissions to denominational and Welsh medium education.

Option 2 - Do minimum

The action proposed is the minimum required to address the issues which have emerged since the Regulations were originally made.

Benefits

Making these amendments will benefit:

- certain categories of children and parents seeking admission to schools outside the normal admissions round as specified;
- admission authorities by enabling them to admit children under limited circumstances without breaching the statutory infant class size limit; and
- schools by giving them a year to make classroom and staffing adjustments.

Costs

It is not anticipated that any additional costs will arise as a result of the implementation of these Regulations.

Competition Assessment

The proposed legislation will not affect business, charities or the voluntary sector.

Consultation

Consultation on this set of Regulations was included in a consultation document "School admissions, school admission appeals and associated regulations" which was issued to: all admission authorities in Wales; Church Diocesan Authorities; a 10% sample of community schools in Wales; Estyn; Administrative Justice and Tribunals Council; and Secretaries of Professional Organisations in Wales, in electronic format in October 2008 for a period of 12 weeks.

The document can be viewed at:

<http://wales.gov.uk/consultations/closedconsultations/?lang=en>

Consultees were asked to respond to the consultation by providing comments on the draft Regulations. The vast majority of consultees had no comments on this set of Regulations. One or two asked for consideration to be made where appropriate to providing 'financial support' to schools who admitted a high number of 'excepted' pupils. It was not considered appropriate to make such a change to the Regulations. Funding to maintain infant class sizes at 30 or below was transferred to the Revenue Support Grant in September 2001 and it is not proposed to increase the monies available for this purpose.

Post implementation review

No review will be required but the application and impact of the additional categories of exception will be monitored through the annual class size count.

Summary

The amendment Regulations are intended to address issues which have arisen since these Regulations were first made in 1998. They will provide schools with a greater degree of flexibility in certain limited circumstances in order to prevent the application of the infant class limit having an unintended prejudicial effect on the provision of education. At the same time they will remove an obstacle to the effective implementation of the principle of parental preference in admissions.