

## **REGULATORY APPRAISAL**

### **EDUCATION, WALES**

#### **NEW SCHOOL (ADMISSIONS) (WALES) REGULATIONS 2006**

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

1. These Regulations make provision for the determination of initial admission arrangements and applications for admission to new schools. They revoke and replace the New Schools (Admissions) (Wales) Regulations 1999 (SI 1999/2800) and reflect amendments made to the School Standards and Framework Act 1998 Act by the Education Act 2002.

2. Changes from the 1999 Regulations are as follows:

- in addition to the existing requirement to consult all admission authorities within the relevant area, a local education authority must, in future, consult neighbouring local education authorities. This brings the consultation requirements for new school admission arrangements into line with those for existing schools. School governing bodies which are admission authorities will need to consult those local education authorities whose areas lie within or adjoin their relevant area. Admission authorities will also be required to consult the governing bodies of all community and voluntary controlled schools in the relevant area. (The admission authority of a foundation or voluntary aided school is the governing body and in the case of community or voluntary controlled schools it is the LEA;)
- admission authorities for foundation or voluntary schools which are Church in Wales or Roman Catholic schools must consult the relevant diocesan authorities when preparing initial arrangements which they propose to determine for the school;
- there is a new duty to include an admission number in the initial admission arrangements for each relevant age group. This will determine the number of pupils to be admitted in any school year. The admission number will be that referred to in the statutory proposal notice. It will be a provisional admission number until the proposals have been approved; and
- the Regulations prescribe that an admission authority may vary an initial admission number they have determined for any relevant age group where such a variation is necessary to implement approved school re-organisation proposals published under section 28 of the 1998 Act. In such circumstances there is no need to refer the matter for the National Assembly for determination or notify those who were consulted.

##### **Risk assessment**

3. It is currently a key principle of school admissions policy that a school's standard number is the minimum number of pupils to be admitted to a year group if there are sufficient applications for places. It would cause significant administrative difficulties if new schools did not have an admission number in place following the repeal of standard numbers. Popular new schools would have no basis on which to limit the number of pupils admitted to the number of places available.

## **Options**

### Option 1: Do Nothing

4. If the Regulations were not made, new schools would have neither a standard number, which indicates the minimum number of children a school must admit if there are sufficient applications for places, nor an admission number based on the capacity of the school. This could make it impossible to effectively control admissions to the school. In addition, consultation requirements would not be extended so that interested parties, namely neighbouring community and voluntary controlled schools, would not be given the opportunity to express their views on a new school's admission arrangements.

### Option 2: Make the Legislation

5. New schools would have admission numbers based on the new capacity assessment methodology. In addition, due to the additional consultation requirements, there will be increased opportunity for interested parties to express their view on the admission arrangements for a new school.

## **Benefits**

6. These Regulations do not significantly alter the 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. In addition a diocesan authority, which has a strategic view of the school provision for its denomination in a particular area, will be guaranteed the opportunity to give its views on initial admission arrangements for schools of that faith before the arrangements proceed to full consultation.

## **Costs**

7. The extension of the duty on admission authorities to consult is imposed by the Education Act 2002. Local education authorities and governing bodies of foundation and voluntary aided maintained schools already incur administrative costs in consulting on and determining admission arrangements for new schools. As these Regulations largely reflect the current procedures and the consultation may be conducted electronically, there will be no additional financial implications for local education authorities as a result of making these Regulations.

## **Consultation**

### With Stakeholders

8. 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.
9. A further electronic consultation on a new capacity methodology and four sets of Regulations relating to school admission arrangements namely: Education (Objections to Admission Arrangements) (Wales) Regulations 2006; Education (Variation of Admission Arrangements) (Wales) Regulations 2006; 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 and 20 October 2005. 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 the Council on Tribunals and Secretaries of Professional Organisations in Wales. A list of consultees is attached at Annex A.

10. 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 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 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. A summary of the consultation response is attached at Annex B.

#### With Subject Committee

11. 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-30-04) at its meeting of 28 January 2004 and have remained on the list ever since. The Committee identified these 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 copy of the Committee transcript is attached at Annex C.

#### **Review**

12. 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**

13. These Regulations largely reflect the procedures, which are already in place in current legislation. There are two additional duties on admission authorities. The first extends the admission authority's duty to consult specified interested parties before determining the initial admission arrangements for a new school. This should not prove too burdensome for admission authorities as the consultation may be conducted electronically. Any administrative burden should be offset by the improved opportunity afforded to those affected by admission arrangements to express their views. The second is the additional duty on Church in Wales and Roman Catholic schools to consult the appropriate Diocesan Authority about the initial admission arrangements, which they propose to determine for a new school. In practice this would normally occur already.

## 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 or 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))

<b>Respondent</b>	<b>Total</b>
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>

<b>Executive summary</b>	<b>Total</b>
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))

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

<b>Executive summary</b>	<b>Total</b>
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))

<b>Respondent</b>	<b>Total</b>
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>

<b>Executive summary</b>	<b>Total</b>
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))

<b>Respondent</b>	<b>Total</b>
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>

<b>Executive summary</b>	<b>Total</b>
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.