

**EXPLANATORY MEMORANDUM TO**  
**THE SCHOOL ADMISSIONS CODE**  
**AND**  
**THE SCHOOL ADMISSION APPEALS CODE**

1. This explanatory memorandum has been prepared by the Department for Education, and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 The School Admissions Code and the School Admission Appeals Code (“the Codes”) are laid before Parliament in draft form under section 85(3) of the School Standards and Framework Act 1998 (“the SSFA 1998”). The Codes contain requirements and guidelines about the arrangements by which children are admitted to maintained schools<sup>1</sup> in England. Local authorities (“LAs”), governing bodies of maintained schools and other bodies with relevant education functions must act in accordance with relevant provisions of the Codes.
3. **Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The Codes are to be made under sections 84 and 85 of the SSFA 1998, following a public consultation under section 85(2), and must be laid before each House for 40 days under section 85(3) and (4).
  - 4.2 Section 84(1)<sup>2</sup> of the SSFA 1998 requires the Secretary of State to issue a Code containing such provision as he thinks appropriate in respect of the discharge of their school admission functions by LAs, governing bodies of maintained schools, admission forums, appeal panels and schools adjudicators. Section 84(2) provides that such a Code may impose requirements and may include guidelines setting out aims, objectives and other matters in relation to the discharge of functions by LAs and governing bodies of maintained schools. Section 84(3) requires those bodies, as well as admission forums, appeal panels and schools adjudicators, to act in accordance with the provisions of the Codes.
  - 4.3 The Codes will replace the existing Codes made under sections 84 and 85 of the SSFA 1998, aiming to take effect – subject to Parliament – on 1 February 2012, in order to affect admissions arrangements being determined in respect of the pupil intake for the 2013/14 academic year and thereafter. Admissions related regulations,

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<sup>1</sup> “Maintained school” is defined in Section 84 of the SSFA 1998 to mean a community, foundation or voluntary school.

<sup>2</sup> As amended by Section 40 of the Education and Inspections Act 2006

which are referred to in the Codes, will also - subject to Parliament - come into force on 1 February.

## **5. Territorial Extent and Application**

5.1 The Codes apply to England only.

## **6. European Convention on Human Rights**

6.1 As the Codes are subject to the equivalent of the negative resolution procedure and do not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The school admissions legislative framework, which includes the Codes, is intended to ensure that the system for allocating school places in state-funded schools, including Academies by virtue of their funding agreements, is administered locally in a fair and transparent way. The existing Codes have evolved over a number of years, with successive versions adding additional regulation in response to specific policy issues. In the process, the current Codes have become complex, repetitive and confusing, currently comprising over 130 pages of densely worded text with more than 650 mandatory requirements.

7.2 In the White Paper 'The Importance of Teaching' published in November 2010, the Secretary of State announced a review of the school admissions system to make it simpler, fairer and more transparent. The revised Codes in draft form are substantially reduced in size, and have been simplified greatly to ensure that the local burdens in their application are minimal.

7.3 The Codes are written on the basis of greater trust in local compliance, a view which the then Chief Schools Adjudicator substantiated as part of his evidence to the Education Select Committee on 2 February 2011, in stating that most issues "continue to be resolved locally", and that "the vast majority of admissions authorities ... if they are breaching the rules, don't mean to be doing so." The most recent annual report from the Chief Adjudicator shows there were 127 new admissions-related cases in 2010/11, the lowest number since the 2001/02 report, and particularly in comparison to the more than 5,000 admission authorities of which only 152 are local authorities.

7.4 Key proposals in the Codes include the following:

- Giving children who leave care under an adoption, special guardianship or residence order (collectively referred to in the Codes as 'previously looked after children') the same, highest priority for places as looked-after children – aiming to benefit some 3,000 vulnerable children each year.
- Introducing a national offer day for primary places on 16 April 2014, and annually thereafter – to mirror 1 March offers for secondary places, and thereby simplifying arrangements for parents applying outside their area.
- Giving greater freedom to schools to increase the number of places they are able to offer to parents by making it easier to increase admissions numbers

through removing the duty to consult locally on, and the ability to object to, any such revised numbers.

- Allowing locally-determined priority for the children of staff either employed at the school for at least two years or who will meet a clear skills shortage.
- Allowing classes for five, six and seven year old children to exceed the statutory limit of 30 to prevent the separation of twins or children from a multiple-birth, and to accommodate the admission of children of serving armed forces personnel outside of the normal admission around.
- Allowing schools that are their own admission authority to take direct applications for pupil places from parents in-year, and then to simply notify the local authority of all such applications and any outcomes.
- Prohibiting the use of random allocation as the principal method of allocating places across the local authority area, to ensure parents are not unduly frustrated by being allocated a place at considerable distance from home.
- Requiring admission authorities to consult on unchanged arrangements only every seven years, rather than every three years.
- Allowing anyone to object<sup>3</sup> to the schools adjudicator about determined admissions arrangements, rather than the currently prescribed lists of objectors or topics, including objections concerning academies' admissions policies<sup>4</sup>.
- Greater clarity on decision-making and related processes for parental appeals contesting a refused school place, to ensure greater uniformity and reduce costs across the system.

7.5 Our assessment of the proposed changes concludes that they have no impact on the private or civil society sectors. Where they do have an impact on schools and educational institutions in the public sector, they do not impose any new information obligations or impose any new administrative costs or unfunded policy costs above the thresholds set out in the Impact Assessment guidance.

7.6 These Codes significantly reduce administrative requirements upon admission authorities without removing the key safeguards they must adhere to in order to maintain the fair, open and transparent allocation of state-funded school places. We have retained the specific safeguards for looked after children and for children with statements of special education needs, and added a further category of priority for 'previously looked after children' who have left care through an adoption, special guardianship or residence order.

7.7 It is difficult, however, to quantify the reduction of these burdens as we do not collect specific information from admission authorities on burdens resulting from the current Codes. In 2009/10, there were over 88,000 admissions appeals and all indications are that this number will continue to rise. In the 2009-10 financial year, local authorities predicted a budgeted spend of approximately £67 million in supporting the admissions system. In the current economic climate, we are confident that local authority expenditure will be reduced. An example of such routine expenditure would

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<sup>3</sup> Section 88H of the SSFA 1998, as amended by section 36 of the Education Act 2011. Relevant provisions of the 2011 Act are intended to be commenced at the same time as the Codes are brought into force.

<sup>4</sup> Section 88H of the SSFA 1998, as amended by section 64 of the Education Act 2011

be the current Codes guidance that admission authorities should hold appeals in a venue other than the school, which often led to the booking of hotels and other commercial premises at taxpayers' expense. The draft School Admission Appeals Code simply provides that the venue must be appropriate and accessible in order to allow admission authorities more flexibility to provide appeals in a more cost-effective manner.

- 7.8 The school admissions framework, including the Codes, is intended to ensure that the system is administered fairly on behalf of all. In redrafting the Codes, the Department considered carefully the equality implications for: age, disability, gender, race, sexual orientation, religion or belief, gender reassignment, pregnancy or maternity, and this has shaped subsequent policy proposals. It is difficult to give precise estimates of the impact on specific groups, but we consider the package of measures – particularly in allowing academies to prioritise children in receipt of Pupil Premium – provide for an increase in the pool of places available to those from disadvantaged backgrounds, and will have a positive impact overall on the admissions process for the most vulnerable children.
- 7.9 We have also clarified the existing local authority duty to ensure that all parents have access to clear and timely information on admissions in their area, alongside wider reforms on accountability such as inspection measures and public examinations, to ensure that prospective parents have the information about schools they need, alongside the local authority prospectus and schools' own marketing materials.

## **8. Consultation outcome**

- 8.1 The requirement to consult in section 85(2) of the SSFA 1998 is satisfied by the public consultation undertaken between 27 May and 19 August 2011, prior to laying of these Codes before Parliament. The consultation was undertaken for twelve weeks and elicited 1,337 responses, of which 700 were from parents and 153 were from headteachers or teachers. A fuller analysis was published by the Department for Education on 2 November 2011 and is attached to this explanatory memorandum for information.
- 8.2 Most of the responses broadly welcomed the proposed changes to the Codes, with strong support for allowing anyone to object to admission arrangements, and for allowing exemptions to statutory infant class size limits for children of multiple births or from armed services families. One of the proposals consulted upon, but which is not achieved through the Code but through individual funding agreements with academies and free schools, was to allow academies to prioritise pupils eligible for the Pupil Premium additional funding, whether determined by free school meal or another deprivation indicator agreed at national level. Some concerns were expressed about the implementation of this proposal, possibly stemming from seeking to apply the priority to all schools; as well as that of priority for school staff, which has now been more sharply defined in the Codes. The draft School Admission Appeals Code proposed a new timetable for lodging and hearing appeals which will reduce costs and bureaucracy for admission authorities.
- 8.3 Revised draft Codes were published by the Secretary of State on 2 November 2011, in order to assist those admission authorities considering the adoption of any proposed

additional freedoms – such as priority for children of staff – in order to then consult on these as part of their arrangements for the 2013/14 intake.

## **9. Guidance**

- 9.1 The Codes laid before Parliament provide statutory guidance to admission authorities and those bodies named at paragraph 4.2 above who have statutory responsibilities in relation to pupil admissions, and to others who may be involved in that locally administered process. The consultation document published on 27 May 2011 provided early warning to admission authorities and others of the proposed changes. This document will have enabled these local bodies both to fulfil proposed new requirements and, where desired, adopt additional freedoms in their policies, as part of the local consultation process.

## **10. Impact**

- 10.1 These Codes do not impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is confined to the state-funded schools sector, as the Codes only apply directly to maintained schools and indirectly to Academies by virtue of their funding agreement.
- 10.3 An Impact Assessment not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The Codes do not apply to small businesses.

## **12. Monitoring and review**

- 12.1 The Department will continue to review its national policy framework covering admissions to state-funded schools, and to monitor impact at the local level, to ensure that important safeguards are retained whilst keeping local burdens to the minimum.
- 12.2 The Department will collect annually from each local authority, statistical data on the preferences expressed by parents, and those met, for all schools in their area, as well as the number of appeals and the rates of these being upheld. These data will be published each year and will form part of the departmental monitoring of its national policy framework.

## **13. Contact**

- 13.1 Questions regarding these Codes should be directed to Suzanne Farrell at the Department for Education, Tel: 020 7340 8158 or by email to: [suzanne.farrell@education.gsi.gov.uk](mailto:suzanne.farrell@education.gsi.gov.uk).