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STATUTORY INSTRUMENTS

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**1999 No. 2666**

**EDUCATION, ENGLAND**

**The New School (Admissions) (England) Regulations 1999**

*Made* - - - - *21st September 1999*  
*Laid before Parliament* *22nd September*  
*1999*  
*Coming into force* - - *18th October 1999*

In exercise of the powers conferred on the Secretary of State by sections 72, 138(7) and (8) of, and paragraph 1(9) of Schedule 10 to, the School Standards and Framework Act 1998<sup>(1)</sup>, the Secretary of State for Education and Employment hereby makes the following Regulations:

**Citation, commencement, extent and application**

1.—(1) These Regulations may be cited as the New School (Admissions) (England) Regulations 1999 and shall come into force on 18th October 1999.

(2) These Regulations apply in relation to new schools in England which, in the school year in which they will first admit pupils, are to be community, foundation or voluntary schools.

(3) Regulations 4, 5 and 6 shall not apply in relation to a new school where the admission authority for such a school, established in connection with proposals involving the discontinuance of another school maintained by a local education authority, determine that the initial admission arrangements shall be the same as those of that school.

**Interpretation**

2. In these Regulations, unless the context otherwise requires—

“the 1996 Act” means the Education Act 1996<sup>(2)</sup>;

“the 1998 Act” means the School Standards and Framework Act 1998;

“S.I.1999/124” means the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999<sup>(3)</sup>;

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(1) 1998 c. 31; by virtue of S.I. 1999/672, the powers conferred by these provisions are exercisable by the Secretary of State only in relation to England. For the meaning of “regulations” see section 142(1).  
(2) 1996 c. 56.  
(3) S.I. 1999/124.

“S.I. 1999/125” means the Education (Objections to Admissions Arrangements) Regulations 1999(4);

“S.I. 1999/362” means the Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999(5);

“S.I. 1999/704” means the Education (Transition to New Framework) (School Organisation Proposals) Regulations 1999(6);

“admission authority”, in relation to a new school, means the person or body responsible under regulation 3 for making the school’s initial admission arrangements;

“initial year”, in relation to a new school, means the school year in which pupils are (or, it is intended, should be) admitted to the school;

“initial admission arrangements”, in relation to a new school, means the arrangements for the admission of children to the school (including the school’s admission policy) for the initial year and the following school year;

“main entrance” means the principal entrance to the school premises in question, or (if the school has more than one site) the principal entrance to the main administrative building of the school;

“maintained school” means a community, foundation or voluntary school;

“new school” means a new school within the meaning of section 72(3) of the 1998 Act or a school or proposed school with a temporary governing body as defined by these Regulations;

“school opening date”, in relation to a new school, means the date when the school first admits pupils;

“temporary governing body” means—

- (a) a temporary governing body constituted under section 44 of the 1998 Act,
- (b) a transitional governing body treated as so constituted by virtue of regulation 13(5) of S.I. 1999/362, or
- (c) a temporary governing body treated as so constituted by virtue of regulation 13 of S.I. 1999/704.

### **Responsibility for initial admission arrangements**

3.—(1) The initial admission arrangements for a new school which is to be a community or voluntary controlled school shall be made by—

- (a) the local education authority, or
- (b) the temporary governing body where, with the agreement of that body, the local education authority have delegated to them responsibility for determining those arrangements.

(2) The initial admission arrangements for a new school which is to be a foundation or voluntary aided school shall be made by—

- (a) the temporary governing body, or
- (b) the promoters where—
  - (i) that body have not yet been constituted, and
  - (ii) the promoters consider it expedient for the admission arrangements to be determined without delay.

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(4) S.I. 1999/125.

(5) S.I. 1999/362.

(6) S.I. 1999/704.

### **Procedure for determining admission arrangements**

4.—(1) The admission authority for a new school shall determine the initial admission arrangements not less than 6 months before the school opening date.

(2) Before determining the initial admission arrangements the admission authority shall consult the following about the proposed arrangements, namely—

- (a) in the case of a local education authority, every local education authority any part of whose area adjoins the area of the consulting authority;
- (b) in the case of a temporary governing body or promoters, every local education authority any part of whose area lies within, or adjoins, the relevant area; and
- (c) in all cases, the admission authorities for all other maintained schools in the relevant area.

(3) In paragraph (2) “the relevant area” is—

- (a) in the case of a school which will first admit pupils before the school year commencing in 2001, the area described by a circle—
  - (i) of which the centre is the proposed main entrance to the new school; and
  - (ii) which has a radius of 4.83 kilometres (3 miles);
- (b) in the case of a school which will first admit pupils in the school year commencing in 2001 or in any later school year, the relevant area or relevant areas determined by the local education authority in accordance with S.I. 1999/124.

(4) A school is only to be regarded as within the relevant area prescribed by paragraph (3)(a) if its main entrance lies within that area.

(5) In relation to the proposed initial admission arrangements for a primary school, paragraph (2) shall only require the admission authority to consult the admission authorities for other schools in the relevant area which are primary schools.

(6) Where the local education authority are the admission authority for a community or voluntary controlled school, for which a temporary governing body have been constituted (or are treated as having been constituted), they shall when preparing proposed initial admission arrangements for consultation under paragraph (2), consult that temporary governing body about the initial admission arrangements which the authority may propose for the school.

(7) Once the admission authority have carried out any consultation under paragraph (2), the authority shall—

- (a) determine that their proposed arrangements (either in their original form or with such modifications as the authority think fit) shall be the initial admission arrangements; and
- (b) notify the bodies whom they consulted under paragraph (2) of those arrangements.

### **Reference of objections to the adjudicator**

5.—(1) Where—

- (a) initial admission arrangements have been determined by an admission authority under regulation 4(7), but
- (b) a body consulted by the admission authority under regulation 4(2) wish to make an objection about those arrangements, and
- (c) the objection does not fall within any description of objections prescribed by regulation 2(2) of S.I. 1999/125,

that body may refer the objection to the adjudicator.

(2) Subject to paragraph (3) an objection may not be referred under paragraph (1) unless it is received by the adjudicator within 6 weeks after the receipt by the objecting admission authority of the notification required by virtue of regulation 4(7)(b).

(3) An objection which is received after the end of the period specified in paragraph (2) shall nevertheless be regarded as properly referred if the adjudicator is satisfied that it was not reasonably practicable for the objection to have been received earlier than the time when it was received.

(4) On a reference under paragraph (1) the adjudicator shall either—

- (a) decide whether, and (if so) to what extent, the objection should be upheld, or
- (b) where the objection is about any criterion for admission to a school relating to a person's religion, religious denomination or religious practice, refer it to the Secretary of State for that question to be decided by him,

save that nothing in this paragraph shall require the adjudicator or the Secretary of State (as the case may be) to take such steps before the proposals required to be published under section 28(1) and (2) of the 1998 Act have been approved in accordance with the provisions of Schedule 6 to that Act.

(5) Where the objection is referred to the Secretary of State under paragraph (4)(b), the adjudicator shall, if the Secretary of State so requests, give his advice on the question referred to in that provision.

(6) Where the adjudicator or the Secretary of State decides that an objection should be upheld to any extent, his decision on the objection may specify the modifications that are to be made to the admission arrangements in question.

(7) The decision of the adjudicator or the Secretary of State (as the case may be) and the reasons for them shall be published by notifying them in writing to the admission authority, the body making the objection and to all other bodies whom the admission authority was required to consult about the initial admission arrangements under regulation 4(2).

(8) The decision of the adjudicator or the Secretary of State (as the case may be) shall, in relation to the initial admission arrangements in question, be binding on the admission authority and on all persons by whom an objection about those arrangements may be made under paragraph (1); and if that decision is to uphold the objection to any extent, those arrangements shall forthwith be revised by the admission authority in such a way as to give effect to the decision.

### **Special arrangements for religious character of new schools**

**6.—(1)** This regulation makes provision for the inclusion in the initial admission arrangements for a school which will be a foundation or voluntary aided school which has a religious character of arrangements in respect of the admission of pupils to the school for preserving the religious character of the school (“special arrangements”).

(2) Where any special arrangements desired by the admission authority for such a school are agreed to by the local education authority—

- (a) the admission authority may incorporate them in the proposed initial admission arrangements which are subject to consultation under regulation 4(2); and
- (b) if the admission authority do so, regulation 5(1) shall apply to any objection about the special arrangements which—
  - (i) is made by the admission authorities which are consulted under regulation 4(2)(b) or (c), and
  - (ii) falls within regulation 5(1),
 as it applies to any other objection falling within regulation 5(1).

(3) Where any special arrangements desired by the admission authority for a new such school are not agreed to by the local education authority—

- (a) the admission authority may incorporate a draft of any such arrangements in the proposed initial admission arrangements which are subject to consultation under regulation 4(2); but
- (b) if the admission authority do so—
  - (i) they shall refer the draft arrangements to the adjudicator, and
  - (ii) they shall not determine to adopt those arrangements in the initial admission arrangements for the school unless (and to the extent that) the adjudicator or the Secretary of State decide under this regulation that they may do so, and
  - (iii) any of the bodies consulted under regulation 4(2) may make an objection to the adjudicator about the draft arrangements.

(4) On such a reference the adjudicator shall either—

- (a) decide whether (having regard to any objections received by him under paragraph (3)) the draft arrangements may be adopted by the admission authority, whether with or without modification, or
- (b) where any objections so received are about any criterion for admission to a school relating to a person's religion, religious denomination or religious practice, refer the draft arrangements to the Secretary of State for that question to be decided by him,

save that nothing in this paragraph shall require the adjudicator or the Secretary of State (as the case may be) to take such steps before the proposals required to be published under section 28(1) and (2) of the 1998 Act have been approved in accordance with the provisions of Schedule 6 to that Act.

(5) Where the draft arrangements are referred to the Secretary of State under paragraph 4(b), the adjudicator shall, if the Secretary of State so requests, give his advice on the question referred to in that provision.

(6) In the case of any draft arrangements referred to him under paragraph (3), the adjudicator or the Secretary of State (as the case may be) shall publish his decision on the reference and the reasons for it by notifying in writing the admission authority, the body making the objection and all other bodies whom the admission authority was required to consult about the initial admission arrangements under regulation 4(2).

(7) The decisions of the adjudicator or the Secretary of State (as the case may be) on any such reference shall, in relation to the draft arrangements in question, be binding on the admission authority and on all persons whom they consulted under regulation 4(2).

(8) Where an admission authority have, in accordance with the preceding provisions of this regulation (and, so far as applicable, regulations 4 and 5), determined that the initial admission arrangements for their school should include any special arrangements, those provisions shall apply on any subsequent occasion—

- (a) when the admission authority desire to modify those special arrangements; or
- (b) where the local education authority agreed to any such arrangements, when the authority withdraw their agreement to those arrangements or any part of them, whether with a view to seeking any modification of them or otherwise.

### **Variation of initial admission arrangements**

7.—(1) This regulation applies where—

- (a) the admission authority—
  - (i) have determined the initial admission arrangements, in accordance with regulation 4(7), but

- (ii) at any time during the initial year or the following school year consider that the arrangements should be varied in view of a major change of circumstances occurring since they were so determined; or
- (b) the admission authority for a new school established in connection with proposals involving the discontinuance of another school maintained by a local education authority—
  - (i) have determined that the initial admission arrangements shall be the same as those of that school, but
  - (ii) at any time during the initial year or the following school year consider that the arrangements should be varied in view of a major change of circumstances occurring since they were so determined.
- (2) Where this regulation applies—
  - (a) the admission authority shall refer the proposed variations to the adjudicator, and shall in every case where there has been consultation under regulation 4(2) notify the bodies whom they consulted of the proposed variations; and
  - (b) where the local education authority are the admission authority for a community or voluntary controlled school, they shall in addition consult the temporary governing body or (as the case may be) the governing body before making any reference under subparagraph (a).
- (3) The adjudicator shall consider whether the arrangements should have effect with those variations until the end of the initial year or (as the case may be) the following school year; and if he determines that the arrangements should so have effect or that they should so have effect subject to such modification of those variations as he may determine—
  - (a) the arrangements shall have effect accordingly as from the date of his determination; and
  - (b) in every case where there has been consultation under regulation 4(2) the admission authority shall notify the bodies whom they consulted of the variations subject to which the arrangements are to have effect;

save that nothing in this paragraph shall require the adjudicator to make such determination before the proposals required to be published under section 28(1) and (2) of the 1998 Act have been approved in accordance with the provisions of Schedule 6 to that Act.

### **Application of enactments**

**8.** The provisions of the Education Acts specified in the Schedule to these Regulations shall apply to new schools, subject to the modifications prescribed in that Schedule.

21st September 1999

*Estelle Morris,*  
Minister of State,  
Department for Education and Employment

## SCHEDULE

Regulation 8

### PROVISIONS OF THE 1996 AND 1998 ACTS APPLYING IN RELATION TO NEW SCHOOLS WITH MODIFICATIONS

1. The following provisions of the Education Acts, namely—
  - (a) sections 324(5)(b) and (5A) and 439 of the 1996 Act(7),
  - (b) paragraph 3(4) of Schedule 27 to the 1996 Act(8),
  - (c) sections 1, 84, 86, 87, 92, 93(1) and (2), 94, 95 to 99, 101, 102 and 103(3) of the 1998 Act,
  - (d) paragraph 2 of Schedule 23 (in so far as it would not otherwise apply to a new school) and Schedules 24 and 25 to the 1998 Act, and
  - (e) any Regulations made under any of the provisions referred to in sub-paragraphs (a) to (d) above,

shall apply in relation to a new school, but subject to the modifications specified in paragraphs 2 to 8 below.

2. A reference in any of the provisions specified in paragraph 1 to a school of one of the following categories, namely—

- (a) a maintained school,
- (b) a school maintained by a local education authority,
- (c) a community, foundation or voluntary school, or
- (d) a voluntary controlled or a voluntary aided school,

shall be construed as a reference to a new school which will become a school of that category when it first admits pupils.

3. A reference in any of those provisions to a governing body of a school shall have effect as if it were a reference to a temporary governing body or (where the context admits) to any other person responsible for the admission of pupils under the initial admission arrangements.

4. A reference in any of those provisions to “admission arrangements” shall be construed as a reference to “initial admission arrangements” as defined in regulation 2.

5. Section 92(1) and (2) of the 1998 Act shall have effect as if for the words “each school year” there shall be substituted “the year in which pupils are first to be admitted to a new school”.

6. Section 99 of the 1998 Act shall not apply in relation to a new school to be established in substitution for one or more discontinued schools each of which either has been or could have been designated as a grammar school under section 104 of the 1998 Act but shall otherwise have effect as if subsections (2)(a) and (4)(a) were omitted.

7. Section 101(1) of the 1998 Act shall have effect as if in sub-paragraph (a) for the words “any year” there shall be substituted “the year in which pupils are first to be admitted to a new school”.

8. Section 103(3) of the 1998 Act shall have effect as if the words “(whether authorised by section 100 or section 101)” were omitted.

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(7) Section 324(5)(b) was amended, and section 325(5A) inserted, by paragraph 77 of Schedule 30 to the 1998 Act. Section 439 was amended by paragraph 115 of that Schedule.

(8) Paragraph 3 of Schedule 27 was amended by paragraph 186 of Schedule 30 to the 1998 Act.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision in relation to the determination of the initial admission arrangements for, and applications for admission to, new schools.

Regulation 3 specifies who is to be the admission authority for a new school in relation to its initial year, that is to say the body responsible for the determination of the arrangements for admission of pupils to the school for the school year in which it will first admit pupils. Where the school is to be a community or voluntary controlled school, the admission authority will be the local education authority or the temporary governing body where the local education authority have delegated this responsibility to them. Where the new school will be a foundation or voluntary aided school, the temporary governing body (or promoters) will be the admission authority.

Regulation 4 requires an admission authority for a new school to determine the initial admission arrangements not less than 6 months before the school opening date and, before doing so, to undertake consultation.

Regulation 5 makes provision, after the initial admission arrangements have been determined, for other admission authorities consulted in accordance with regulation 4 to refer objections to the adjudicator. If, at the time the objection is referred to the adjudicator, the proposals for the establishment of the school which are required to be published under the 1998 Act have not yet been approved, the adjudicator is not required to determine the objection until such time as the proposals have been approved.

Regulation 6 applies where a new school will have a religious character. It makes provision, where any special arrangements desired by the admission authority are agreed by the local education authority, for their inclusion in the initial admission arrangements, subject to consultation and determination by the adjudicator if objection to them is made by another admission authority. Where any special arrangements are not agreed by the local education authority the admission authority may nevertheless incorporate a draft of any such arrangements in the initial admission arrangements, in which case they are to refer the draft arrangements to the adjudicator and not adopt them until the adjudicator (or the Secretary of State) has decided that they may do so. The draft arrangements are subject to consultation in the usual way and another admission authority consulted may refer an objection about them to the adjudicator.

Regulation 7 provides for the initial admission arrangements to be varied in view of a major change of circumstances after they have been determined, subject to referral to the adjudicator. If, at the time of the referral, the proposals for the establishment of the school which are required to be published under the 1998 Act have not yet been approved, the adjudicator is not required to determine the proposed variation until such time as the proposals have been approved.

Regulation 8 and the Schedule provide for certain provisions of the Education Acts to apply, with modifications, to new schools.