



# School Standards and Framework Act 1998

## 1998 CHAPTER 31

### PART III

#### SCHOOL ADMISSIONS

#### CHAPTER I

##### ADMISSION ARRANGEMENTS

##### *Code of practice*

#### **84 Code of practice**

- (1) The Secretary of State shall issue, and may from time to time revise, a code of practice containing such practical guidance as he thinks appropriate in respect of the discharge by—
  - (a) local education authorities,
  - (b) the governing bodies of maintained schools,
  - (c) appeal panels, and
  - (d) adjudicators,of their respective functions under this Chapter.
- (2) The code may include guidelines setting out aims, objectives and other matters in relation to the discharge of their functions under this Chapter by local education authorities and such governing bodies.
- (3) It shall be the duty of—
  - (a) each of the bodies and persons mentioned in subsection (1) when exercising functions under this Chapter, and

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- (b) any other person when exercising any function for the purposes of the discharge by a local education authority, or the governing body of a maintained school, of functions under this Chapter, to have regard to any relevant provisions of the code.
- (4) The Secretary of State shall publish the code as for the time being in force.
- (5) The Secretary of State may under subsection (1)—
  - (a) make separate provision (by means of separate codes of practice) in relation to different functions under this Chapter of the bodies and persons mentioned in that subsection;
  - (b) make different provision for England and for Wales (whether or not by means of separate codes of practice);
 and references in this section to “the code” or to functions under this Chapter shall have effect, in relation to any such separate code of practice, as references to that code or to functions under this Chapter to which it relates (as the case may be).
- (6) In this Chapter—
  - “admission arrangements” and “the admission authority” have the meaning given by section 88;
  - “appeal panel” means a panel constituted under Schedule 24 or 25 for the purpose of hearing an appeal under this Chapter;
  - “child” (except in sections 96 and 97) includes a person who has not attained the age of 19;
  - “maintained school” means a community, foundation or voluntary school;
  - “the relevant standard number”, in relation to a maintained school, a relevant age group and a school year, means the standard number applying under Schedule 23 to the school in relation to that age group and year.

## **85 Making and approval of code of practice**

- (1) Where the Secretary of State proposes to issue or revise a code of practice under section 84, he shall prepare a draft of the code (or revised code).
- (2) The Secretary of State shall consult such persons about the draft as he thinks fit and shall consider any representations made by them.
- (3) If he determines to proceed with the draft (either in its original form or with such modifications as he thinks fit) he shall lay a copy of the draft before each House of Parliament.
- (4) If, within the 40-day period, either House resolves not to approve the draft, the Secretary of State shall take no further steps in relation to the proposed code.
- (5) If no such resolution is made within the 40-day period, the Secretary of State shall issue the code (or revised code) in the form of the draft, and it shall come into force on such date as the Secretary of State may by order appoint.
- (6) Subsection (4) does not prevent a new draft of a proposed code from being laid before Parliament.
- (7) In this section “40-day period”, in relation to the draft of a proposed code, means—

- (a) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later of the two days, and
  - (b) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House,
- no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) In this section references to a proposed code include a proposed revised code.

### *Parental preferences*

## **86 Parental preferences**

- (1) A local education authority shall make arrangements for enabling the parent of a child in the area of the authority—
  - (a) to express a preference as to the school at which he wishes education to be provided for his child in the exercise of the authority's functions, and
  - (b) to give reasons for his preference.
- (2) Subject to subsections (3) and (6) and section 87 (children excluded from two or more schools), a local education authority and the governing body of a maintained school shall comply with any preference expressed in accordance with arrangements made under subsection (1).
- (3) The duty imposed by subsection (2) does not apply—
  - (a) if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources;
  - (b) if the preferred school is a foundation or voluntary aided school and compliance with the preference would be incompatible with any special arrangements under section 91 (admission arrangements to preserve the religious character of a foundation or voluntary aided school); or
  - (c) if the arrangements for admission to the preferred school—
    - (i) are wholly based on selection by reference to ability or aptitude, and
    - (ii) are so based with a view to admitting only pupils with high ability or with aptitude,
 and compliance with the preference would be incompatible with selection under those arrangements.
- (4) For the purposes of subsection (3)(a) prejudice of the kind referred to in that provision may arise by reason of measures required to be taken in order to ensure compliance with the duty imposed by section 1(6) (duty of local education authority and governing body to comply with limit on infant class sizes).
- (5) No prejudice shall, however, be taken to arise for the purposes of subsection (3)(a) from the admission to a maintained school in a school year of a number of pupils in a relevant age group which does not exceed—
  - (a) the relevant standard number, or
  - (b) the admission number fixed in accordance with section 93,
 whichever is the greater.
- (6) Where—

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- (a) the admission arrangements for two or more maintained schools provide for co-ordinated admissions on the part of those schools, and
  - (b) they are approved by the Secretary of State for the purposes of this subsection, they shall have effect in relation to each of those schools despite anything in subsection (2).
- (7) Where the arrangements for the admission of pupils to a maintained school provide for applications for admission to be made to (or to a person acting on behalf of) the governing body of the school, a parent who makes such an application shall be regarded for the purposes of this section as having expressed a preference for that school in accordance with arrangements made under subsection (1).
- (8) The duty imposed by subsection (2) in relation to a preference expressed in accordance with arrangements made under subsection (1) shall apply also in relation to—
  - (a) any application for the admission to a maintained school of a child who is not in the area of the authority maintaining the school, and
  - (b) any application made by a parent as mentioned in section 438(4) or 440(2) of the Education Act 1996 (application for a particular school to be named in a school attendance order);
 and references in subsection (3) to a preference and a preferred school shall be construed accordingly.
- (9) Where admission arrangements for a school provide for all pupils admitted to the school to be selected by reference to ability or aptitude, those arrangements shall be taken for the purposes of this section to be wholly based on selection by reference to ability or aptitude, whether or not they also provide for the use of additional criteria in circumstances where the number of children in a relevant age group who are assessed to be of the requisite ability or aptitude is greater than the number of pupils which it is intended to admit to the school in that age group.

## **87 No requirement to admit children permanently excluded from two or more schools**

- (1) The duty imposed by section 86(2) does not apply in the case of a child to whom subsection (2) below applies.
- (2) Where a child has been permanently excluded from two or more schools, this subsection applies to him during the period of two years beginning with the date on which the latest of those exclusions took effect.
- (3) Subsection (2) applies to a child whatever the length of the period or periods elapsing between those exclusions and regardless of whether it has applied to him on a previous occasion.
- (4) However, a child shall not be regarded as permanently excluded from a school for the purposes of this section if—
  - (a) although so excluded he was reinstated as a pupil at the school following the giving of a direction to that effect to the head teacher of the school; or
  - (b) he was so excluded at a time when he had not attained compulsory school age.
- (5) In this section “school” means—
  - (a) in relation to any time before or after the appointed day, a school maintained by a local education authority; or

- (b) in relation to any time before the appointed day, a grant-maintained or grant-maintained special school within the meaning of the Education Act 1996.
- (6) For the purposes of this section the permanent exclusion of a child from a school shall be regarded as having taken effect on the school day as from which the head teacher decided that he should be permanently excluded.
- (7) Nothing in this section applies to a child unless at least one of the two or more exclusions mentioned in subsection (2) took effect on or after 1st September 1997.

### *Admission arrangements*

## **88 Admission authorities and admission arrangements**

- (1) In this Chapter “the admission authority”—
  - (a) in relation to a community or voluntary controlled school, means—
    - (i) the local education authority, or
    - (ii) where with the governing body’s agreement the authority have delegated to them responsibility for determining the admission arrangements for the school, the governing body; and
  - (b) in relation to a foundation or voluntary aided school, means the governing body.
- (2) In this Chapter “admission arrangements”, in relation to a maintained school, means the arrangements for the admission of pupils to the school, including the school’s admission policy.

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

- (1) The admission authority for a maintained school shall, before the beginning of each school year, determine in accordance with this section the admission arrangements which are to apply for that year.
- (2) Before determining the admission arrangements which are to apply for a particular school year, the admission authority shall consult the following about the proposed arrangements, namely—
  - (a) the local education authority (where the governing body are the admission authority),
  - (b) the admission authorities for all other maintained schools in the relevant area or for such class of such schools as may be prescribed, and
  - (c) the admission authorities for maintained schools of any prescribed description.
- (3) In subsection (2) “the relevant area” means—
  - (a) the area of the local education authority; or
  - (b) if regulations so provide, such other area (whether more or less extensive than the area of the local education authority) as may be determined by or in accordance with the regulations.
- (4) Once the admission authority have carried out any such consultation, the authority shall—

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- (a) determine that their proposed arrangements (either in their original form or with such modifications as the authority think fit) shall be the admission arrangements for the school year in question; and
  - (b) (except in such cases as may be prescribed) notify the bodies whom they consulted under subsection (2) of those admission arrangements.
- (5) Where an admission authority—
  - (a) have in accordance with subsection (4) determined the admission arrangements which are to apply for a particular school year, but
  - (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined,

the authority shall (except in a case where their proposed variations fall within any description of variations prescribed for the purposes of this subsection) refer the proposed variations to the adjudicator, and shall (in every case) notify the bodies whom they consulted under subsection (2) of the proposed variations.
- (6) The adjudicator shall consider whether the arrangements should have effect with those variations until the end of that 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) the admission authority shall (except in such cases as may be prescribed) notify the bodies whom they consulted under subsection (2) of the variations subject to which the arrangements are to have effect.
- (7) In relation to a maintained school in Wales any reference to the adjudicator in subsection (5) or (6) shall be read as a reference to the Secretary of State.
- (8) Regulations may make provision—
  - (a) specifying matters to which any consultation required by subsection (2) is, or is not, to relate;
  - (b) as to the manner in which, and the time by which, any such consultation is to be carried out;
  - (c) as to the manner in which, and the time by which, any notification required by this section is to be given;
  - (d) specifying matters which are, or are not, to constitute major changes in circumstances for the purposes of subsection (5)(b);
  - (e) authorising an admission authority, where they have in accordance with subsection (4) determined the admission arrangements which are to apply for a particular school year, to vary those arrangements to such extent or in such circumstances as may be prescribed;
  - (f) for the application of any of the requirements of subsections (5) and (6) to variations proposed to be made by virtue of paragraph (e), or to any prescribed description of such variations, as if they were variations proposed to be made under subsection (5);
  - (g) as to such other matters connected with the procedure for determining or varying admission arrangements under this section as the Secretary of State considers appropriate.

- (9) Where the local education authority are the admission authority for a community or voluntary controlled school, they shall—
- (a) when preparing for consultation under subsection (2) their proposed arrangements for any school year, consult the governing body about the admission arrangements which the authority may propose for the school; and
  - (b) in addition consult the governing body before making any reference under subsection (5).

## **90 Reference of objections to adjudicator or Secretary of State**

- (1) Where—
- (a) admission arrangements have been determined by an admission authority under section 89(4), but
  - (b) a body consulted by the admission authority under section 89(2) wish to make an objection about those arrangements, and
  - (c) the objection does not fall within any description of objections prescribed for the purposes of this paragraph,
- that body may refer the objection to the adjudicator.
- (2) Where—
- (a) admission arrangements have been determined by an admission authority under section 89(4), but
  - (b) any parent of a prescribed description wishes to make an objection about those arrangements, and
  - (c) the objection falls within any description of objections prescribed for the purposes of this paragraph,
- that person may refer the objection to the adjudicator.
- (3) On a reference under subsection (1) or (2) the adjudicator shall either—
- (a) decide whether, and (if so) to what extent, the objection should be upheld, or
  - (b) in such cases as may be prescribed, refer the objection to the Secretary of State for that question to be decided by him.
- (4) Where the objection is referred to the Secretary of State under subsection (3)(b), the adjudicator shall, if the Secretary of State so requests, give his advice on the question referred to in that provision.
- (5) In relation to a maintained school in Wales—
- (a) the reference to the adjudicator in subsection (1) or (2) shall be read as a reference to the Secretary of State;
  - (b) subsections (3) and (4) shall not apply; and
  - (c) where any objection is referred to the Secretary of State by virtue of paragraph (a) above, he shall decide whether, and (if so) to what extent, the objection should be upheld.
- (6) Where the adjudicator or the Secretary of State decides that an objection referred to him under this section 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.

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- (7) In the case of any objection referred to him under this section, the adjudicator or the Secretary of State (as the case may be) shall publish his decision on the objection and the reasons for it.
- (8) The decision of the adjudicator or the Secretary of State on the objection shall, in relation to the 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 subsection (1) or (2); 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.
- (9) Regulations may make provision—
  - (a) as to any conditions which must be satisfied before—
    - (i) an objection can be referred to the adjudicator or the Secretary of State under subsection (1) or (2), or
    - (ii) the adjudicator or the Secretary of State is required to determine an objection referred to him under subsection (2);
  - (b) prescribing the steps which may be taken by an admission authority where an objection has been referred to the adjudicator or the Secretary of State under subsection (1) or (2) but has not yet been determined;
  - (c) as to the manner in which any matters required to be published under subsection (7) are to be published;
  - (d) requiring such matters to be notified to such persons, and in such manner, as may be prescribed;
  - (e) prohibiting or restricting the reference under subsection (1) or (2), within such period following a decision by the adjudicator or the Secretary of State under this section as may be prescribed, of any objection raising the same (or substantially the same) issues in relation to the admission arrangements of the school in question;
  - (f) prescribing circumstances in which an admission authority may revise the admission arrangements for their school in the light of any decision by the adjudicator or the Secretary of State relating to the admission arrangements for another school, and the procedure to be followed in such a case.
- (10) Regulations shall make provision for the cases to be referred to the Secretary of State under subsection (3)(b) to include cases where the objection is concerned with admissions criteria relating to a person's religion or religious denomination.

## **91 Special arrangements to preserve religious character of foundation or voluntary aided school**

- (1) This section makes provision for the inclusion in the admission arrangements for 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 governing body of such a school are agreed to by the local education authority—
  - (a) the governing body may incorporate them in the proposed admission arrangements for a school year which are subject to consultation under section 89(2); and

- (b) if the governing body do so, subsection (1) of section 90 shall apply to any objection about the special arrangements which—
    - (i) is made by any of the admission authorities consulted under section 89(2)(b) or (c), and
    - (ii) falls within that subsection,as it applies to any other objection falling within that subsection.
- (3) Where any special arrangements desired by the governing body of such a school are not agreed to by the local education authority—
  - (a) the governing body may incorporate a draft of any such arrangements in the proposed admission arrangements for a school year which are subject to consultation under section 89(2); but
  - (b) if the governing body do so—
    - (i) they shall refer the draft arrangements to the adjudicator, and
    - (ii) they shall not determine to adopt those arrangements for inclusion in the admission arrangements for the school unless (and to the extent that) the adjudicator or the Secretary of State decide under this section that they may do so, and
    - (iii) any of the bodies consulted under section 89(2) may make an objection in the prescribed manner 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 subsection (3)) the draft arrangements may be adopted by the governing body, whether with or without modification, or
  - (b) in such cases as may be prescribed, refer the draft arrangements (and any objections so received) to the Secretary of State for that question to be decided by him.
- (5) Where the draft arrangements are referred to the Secretary of State under subsection (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 relation to a maintained school in Wales—
  - (a) any reference to the adjudicator in subsection (3)(b)(i) or (iii) shall be read as a reference to the Secretary of State;
  - (b) subsections (4) and (5) shall not apply; and
  - (c) where any draft arrangements are referred to the Secretary of State by virtue of paragraph (a) above, he shall decide whether (having regard to any objections received by him by virtue of that paragraph) the draft arrangements may be adopted by the governing body, whether with or without modification.
- (7) In the case of any draft arrangements referred to him under this section, the adjudicator or the Secretary of State (as the case may be) shall publish his decision on the reference and the reasons for it.
- (8) The decision of the adjudicator or the Secretary of State on any such reference shall, in relation to the draft arrangements in question, be binding on the governing body and on all the bodies whom they consulted under section 89(2).
- (9) Regulations under section 90(3)(b) or (9) shall apply in relation to references and objections made under this section with such modifications as may be prescribed.

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- (10) Where a governing body have, in accordance with the preceding provisions of this section (and, so far as applicable, sections 89 and 90), determined that the admission arrangements for their school should include any special arrangements, those provisions shall apply, with any necessary modifications, on any subsequent occasion—
- (a) when the governing body 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.

## **92 Publication of information about admissions**

- (1) A local education authority shall, for each school year, publish the prescribed information about—
- (a) the admission arrangements for each of the following, namely—
    - (i) the maintained schools in their area, and
    - (ii) if regulations so provide, such maintained schools outside their area as may be determined by or in accordance with the regulations;
  - (b) the authority's arrangements for the provision of education at schools maintained by another local education authority or not maintained by a local education authority;
  - (c) the arrangements made by the authority under sections 86(1) (parental preferences) and 94(1) (admission appeals); and
  - (d) such other matters of interest to parents of pupils seeking admission to schools within paragraph (a) or (b) above as may be prescribed.
- (2) The governing body of a foundation or voluntary aided school shall, for each school year, publish the prescribed information about—
- (a) the admission arrangements for the school;
  - (b) the arrangements made by the governing body under section 94(2) (admission appeals); and
  - (c) such other matters of interest to parents of pupils seeking admission to the school as may be prescribed.
- (3) The governing body of a school maintained by a local education authority—
- (a) shall publish such information as respects that school as may be required by regulations; and
  - (b) may publish such other information with respect to the school as they think fit.
- (4) For the purposes of subsection (3) information about the continuing education of pupils leaving a school, or the employment or training taken up by such pupils on leaving, is to be treated as information about the school.
- (5) A local education authority may, with the agreement of the governing body of any school maintained by the authority, publish on behalf of the governing body the information referred to in subsection (2) or (3).
- (6) Regulations may make provision as to—
- (a) the procedure to be followed by a local education authority before publishing information under subsection (1); and

- (b) the time by which, and the manner in which, information required to be published under any provision of this section is to be published.

### *Admission numbers*

## **93 Fixing admission numbers**

- (1) The admission authority for a maintained school shall not fix as the admission number for any relevant age group and any school year a number which is less than the relevant standard number.
- (2) Subject to section 1(6) (duty of local education authority and governing body to comply with limit on infant class sizes), the admission authority may fix as the admission number for any relevant age group and any school year a number which exceeds the relevant standard number.
- (3) Schedule 23 (determination, variation and review of standard numbers) shall have effect.
- (4) A proposal may be made to the admission authority in accordance with subsection (5) by whichever of the governing body and the local education authority are not the admission authority for fixing as the admission number for any relevant age group and any school year a number which exceeds both—
  - (a) the relevant standard number, and
  - (b) any admission number fixed, or proposed to be fixed, for that age group and year by the admission authority.
- (5) Any such proposal—
  - (a) shall be made in writing,
  - (b) may relate to one or more relevant age groups, and
  - (c) may relate to a particular school year or to each school year falling within any period specified in the proposal.
- (6) If the admission authority do not give the body making the proposal notice in writing rejecting the proposal within the period of two months beginning with the day after that on which the proposal was received by the admission authority, the admission authority shall give effect to the proposal.
- (7) Where the admission authority give such notice within that period, the body making the proposal may, within 28 days of receiving the notice, make an application under paragraph 4(3) or 8(3) (as the case may be) of Schedule 23 for a decision increasing the relevant standard number.
- (8) Regulations may provide for the operation of subsection (1) and section 86(5) to be suspended to such extent as the Secretary of State considers appropriate for the purpose of enabling—
  - (a) admission authorities to review under paragraph 11 of Schedule 23 any standard number applicable to admissions to an infant class at any maintained school, and
  - (b) any application to reduce any such number under paragraph 4(4) or 8(4) (as the case may be) of that Schedule to be decided in accordance with that Schedule, following the coming into force of regulations under section 1 by virtue of which any limit on class sizes is to apply, or be varied, in relation to any such class.

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- (9) Regulations under subsection (8) may provide for any suspension to apply—
- (a) in relation to such age groups,
  - (b) for such period, and
  - (c) subject to such conditions,
- as may be specified in the regulations; and in that subsection “infant class” has the meaning given by section 4.
- (10) In this section references, in relation to a school, to the “admission number” for any relevant age group and any school year are references to the number of pupils in that age group it is intended to admit to the school in that school year.

### *Admission appeals*

## **94      Appeal arrangements: general**

- (1) A local education authority shall make arrangements for enabling the parent of a child to appeal against—
- (a) any decision made by or on behalf of the authority as to the school at which education is to be provided for the child in the exercise of the authority’s functions, other than a decision leading to or embodied in a direction under section 96 (directions for admission), and
  - (b) in the case of a community or voluntary controlled school maintained by the authority, any decision made by or on behalf of the governing body refusing the child admission to the school.
- (2) The governing body of a foundation or voluntary aided school shall make arrangements for enabling the parent of a child to appeal against any decision made by or on behalf of the governing body refusing the child admission to the school.
- (3) Joint arrangements may be made under subsection (2) by the governing bodies of two or more foundation or voluntary aided schools maintained by the same local education authority.
- (4) A local education authority and the governing body or bodies of one or more foundation or voluntary aided schools maintained by the authority may make joint arrangements consisting of—
- (a) such of the arrangements made by the authority in pursuance of subsection (1) as the authority may determine; and
  - (b) arrangements made by the governing body or bodies in pursuance of subsection (2).
- (5) Schedule 24 has effect in relation to the making and hearing of appeals pursuant to arrangements made under this section.
- (6) The decision of an appeal panel on an appeal under Schedule 24 shall be binding on—
- (a) the local education authority or the governing body by whom or on whose behalf the decision under appeal was made, and
  - (b) in the case of a decision made by or on behalf of a local education authority, the governing body of a community or voluntary controlled school at which the appeal panel determines that a place should be offered to the child in question.

**95 Appeals relating to children to whom section 87 applies**

- (1) Nothing in section 94(1) or (2) requires any arrangements to be made for enabling the parent of a child to appeal against a decision—
  - (a) made by or on behalf of the admission authority for a maintained school, and
  - (b) refusing the child admission to the school,
 in a case where, at the time when the decision is made, section 87(2) applies to the child.
- (2) Where a local education authority are the admission authority for a community or voluntary controlled school, the authority shall make arrangements for enabling the governing body of the school to appeal against any decision made by or on behalf of the authority to admit to the school a child to whom, at the time when the decision is made, section 87(2) applies.
- (3) Schedule 25 has effect in relation to the making and hearing of appeals pursuant to arrangements made under subsection (2).
- (4) The decision of an appeal panel on an appeal made pursuant to arrangements under subsection (2) shall be binding on the local education authority and the governing body.

*Power to direct admission of child to school***96 Direction to admit child to specified school**

- (1) The local education authority may give a direction under this section if, in the case of any child in their area, either (or both) of the following conditions is satisfied in relation to each school which is a reasonable distance from his home and provides suitable education, that is—
  - (a) he has been refused admission to the school, or
  - (b) he is permanently excluded from the school.
- (2) A direction under this section shall specify a school—
  - (a) which is a reasonable distance from the child's home, and
  - (b) from which the child is not permanently excluded.
- (3) A direction under this section shall, unless it is given on the determination of the Secretary of State under section 97(4), specify a school in the area referred to in subsection (1).
- (4) A direction under this section to admit a child shall not specify a school if his admission would result in prejudice of the kind referred to in section 86(3)(a) by reason of measures required to be taken as mentioned in subsection (4) of that section.
- (5) Where a school is specified in a direction under this section, the governing body shall admit the child to the school.
- (6) Subsection (5) does not affect any power to exclude from a school a pupil who is already a registered pupil there.
- (7) In this section “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

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(8) In this section and section 97 “school” means a maintained school.

## **97 Procedure for giving direction under section 96**

- (1) Before deciding to give a direction under section 96, the local education authority shall consult—
  - (a) the parent of the child, and
  - (b) the governing body of the school they propose to specify in the direction.
- (2) Where the local education authority decide to give such a direction specifying any school—
  - (a) they shall, before doing so, serve a notice in writing of their decision on the governing body and head teacher of the school, and
  - (b) they shall not give the direction until the period for referring the matter to the Secretary of State under subsection (3) has expired and, if it is so referred, the Secretary of State has made his determination.
- (3) The governing body may, within the period of 15 days beginning with the day on which the notice was served, refer the matter to the Secretary of State and, if they do so, shall inform the local education authority.
- (4) On a reference under subsection (3) the Secretary of State may determine which school is to be required to admit the child and, if he does so, that school shall be specified in the direction.
- (5) The Secretary of State shall not make a determination under subsection (4) in relation to a school if the child’s admission to the school would result in prejudice of the kind referred to in section 86(3)(a) by reason of measures required to be taken as mentioned in subsection (4) of that section.
- (6) Where the local education authority give a direction specifying a school, they shall give notice in writing of that fact to the governing body and head teacher of the school.

*Nursery and special schools, etc: children with statements*

## **98 Admission for nursery education or to nursery or special school: children with statements of special educational needs**

- (1) Children admitted to a school for nursery education and subsequently transferred to a reception class at the school shall be regarded for the purposes of this Chapter as admitted to the school (otherwise than for nursery education) on being so transferred.
- (2) The admission of children to a school for nursery education shall be disregarded for the purpose of—
  - (a) applying in relation to a primary school any provision of section 93 or Schedule 23 which refers to the number of pupils admitted or intended to be admitted to a school in any school year, or
  - (b) determining for the purposes of any provision of section 93 or Schedule 23 what is a relevant age group in relation to a primary school.
- (3) Subject to subsection (4), nothing in this Chapter applies in relation to—
  - (a) nursery schools, or

- (b) children who will be under compulsory school age at the time of their proposed admission.
- (4) Where the arrangements for the admission of pupils to a maintained school provide for the admission to the school of children who will be under compulsory school age at the time of their proposed admission, this Chapter shall apply in relation to the admission of such pupils to the school otherwise than for nursery education.
- (5) Regulations may make provision in connection with the arrangements for the admission of pupils to community or foundation special schools, and for the allocation between the local education authority and the governing body of such a school of functions in connection with such arrangements.
- (6) Apart from section 92(3) to (6) and subsection (5) above, nothing in this Chapter applies in relation to special schools.
- (7) Subject to subsections (8) and (9), nothing in this Chapter applies in relation to children for whom statements of special educational needs are maintained under section 324 of the Education Act 1996.
- (8) Any provision made by, or (as the case may be) by virtue of, section 84 or 92(3) to (6) or this section applies, or (as the case may be) may be made so as to apply, in relation to such children.
- (9) Such children shall, in addition, be taken into account for the purposes of—
  - (a) the reference in section 86(5) or (9) to a number of pupils, and
  - (b) the fixing of admission numbers under section 93 and the determination, variation and review of standard numbers under Schedule 23.
- (10) In subsection (8) the reference to any provision made by this section includes a reference to subsection (4) only so far as it has effect for the purposes mentioned in subsection (9).

## CHAPTER II

### SELECTION OF PUPILS

#### *Partial selection*

#### **99 General restriction on selection by ability or aptitude**

- (1) No admission arrangements for a maintained school may make provision for selection by ability unless—
  - (a) they make provision for a permitted form of such selection; or
  - (b) the school is a grammar school (as defined by section 104(7)).
- (2) The following are permitted forms of selection by ability—
  - (a) any selection by ability authorised by section 100 (pre-existing arrangements);
  - (b) any selection by ability authorised by section 101 (pupil banding); and
  - (c) any selection by ability conducted in connection with the admission of pupils to the school for secondary education suitable to the requirements of pupils who are over compulsory school age.

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*Status: This is the original version (as it was originally enacted).*

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- (3) No admission arrangements for a maintained school may make provision for selection by aptitude unless they make provision for a permitted form of such selection.
- (4) The following are permitted forms of selection by aptitude—
  - (a) any selection by aptitude authorised by section 100 (pre-existing arrangements); and
  - (b) any selection by aptitude authorised by section 102 (aptitude for particular subjects).
- (5) For the purposes of this Chapter—
  - (a) a school's admission arrangements make provision for selection by ability or by aptitude if they make provision for all or any of the pupils who are to be admitted to the school in any relevant age group to be so admitted by reference to ability or to aptitude (as the case may be);
  - (b) "ability" means either general ability or ability in any particular subject or subjects;
  - (c) "admission arrangements" has the meaning given by section 88(2); and
  - (d) "maintained school" means a community, foundation or voluntary school.

#### **100 Permitted selection: pre-existing arrangements**

- (1) Where at the beginning of the 1997-98 school year the admission arrangements for a maintained school made provision for selection by ability or by aptitude (and they have at all times since that date continued to do so), the admission arrangements for the school may continue to make such provision so long as there is, as compared with the arrangements in force at the beginning of that year—
  - (a) no increase in the proportion of selective admissions in any relevant age group, and
  - (b) no significant change in the basis of selection.
- (2) In relation to any time before the appointed day, the reference in subsection (1) to a maintained school is a reference to the school as a county, voluntary or grant-maintained school within the meaning of the Education Act 1996.
- (3) In this section "the proportion of selective admissions", in relation to a relevant age group, means the proportion of the total number of pupils admitted to the school in that age group (determined in the prescribed manner) which is represented by the number of pupils so admitted by reference to ability or to aptitude (as the case may be).
- (4) Nothing in this section applies to a school with selective admission arrangements (as defined by section 104(2)).

#### **101 Permitted selection: pupil banding**

- (1) Subject to subsections (2) to (4), the admission arrangements for a maintained school may make provision for selection by ability to the extent that the arrangements are designed to secure—
  - (a) that in any year the pupils admitted to the school in any relevant age group are representative of all levels of ability among applicants for admission to the school in that age group, and
  - (b) that no level of ability is substantially over-represented or substantially under-represented.

- (2) Subsection (1) does not apply if the arrangements have the effect that, where an applicant for admission has been allocated to a particular range of ability by means of some process of selection by reference to ability, some further such process is required or authorised to be carried out in relation to him for the purpose of determining whether or not he is to be admitted to the school.
- (3) The introduction for a maintained school of admission arrangements to which subsection (1) applies shall be one of the alterations to such a school which are prescribed for the purposes of section 28.
- (4) Such arrangements are not authorised for any school by this section unless proposals for the school to have such arrangements have been published under section 28 and have fallen to be implemented under Schedule 6.
- (5) Where the admission arrangements for a school make both such provision for selection by ability as is mentioned in subsection (1) above and such provision for selection by aptitude as is mentioned in section 102(1), nothing in this section shall be taken to prevent those arrangements—
  - (a) from authorising or requiring a process of selection to be carried out at any stage for the purpose of establishing that an applicant for admission has a relevant aptitude; or
  - (b) from having the effect of giving priority to such an applicant with a relevant aptitude irrespective of his level of ability.

## **102 Permitted selection: aptitude for particular subjects**

- (1) Subject to subsection (2), the admission arrangements for a maintained school may make provision for the selection of pupils for admission to the school by reference to their aptitude for one or more prescribed subjects where—
  - (a) the admission authority for the school are satisfied that the school has a specialism in the subject or subjects in question; and
  - (b) the proportion of selective admissions in any relevant age group does not exceed 10 per cent.
- (2) Subsection (1) does not apply if the admission arrangements make provision for any test to be carried out in relation to an applicant for admission which is either a test of ability or one designed to elicit any aptitude of his other than for the subject or subjects in question.
- (3) Where, however, the admission arrangements for a school make both such provision for selection by aptitude as is mentioned in subsection (1) and such provision for selection by ability as is mentioned in section 101(1), the reference in subsection (2) above to a test of ability does not include any such test for which provision may be made under that section.
- (4) In this section “the proportion of selective admissions”, in relation to a relevant age group, means the proportion of the total number of pupils admitted to the school in that age group (determined in the prescribed manner) which is represented by the number of pupils so admitted by reference to aptitude for the subject or subjects in question.
- (5) In this section “test” includes assessment and examination.

**103 Permitted selection: introduction, variation or abandonment of provision for such selection**

- (1) In connection with the determination of a maintained school's admission arrangements for a particular school year, sections 89 and 90 shall, except to the specified extent, apply in relation to the making or abandonment by those arrangements of provision for any permitted form of selection by ability or aptitude as they apply in relation to the making or abandonment by those arrangements of provision for other matters.
- (2) In subsection (1) "the specified extent" means the extent to which those admission arrangements would effect an alteration in the provision made by the school's admission arrangements as respects any such form of selection (whether by introducing, varying or abandoning any such form of selection) which constitutes a prescribed alteration for the purposes of section 28.
- (3) Any admission arrangements to which section 101(1) applies (whether authorised by section 100 or section 101) may be varied if (and only if) the arrangements as varied are designed to secure the objectives mentioned in section 101(1)(a) and (b).

*Grammar schools***104 Designation of grammar schools**

- (1) Where the Secretary of State is satisfied that a maintained school had selective admission arrangements at the beginning of the 1997-98 school year, he may by order designate the school as a grammar school for the purposes of this Chapter.
- (2) A school has selective admission arrangements for the purposes of this Chapter if its admission arrangements make provision for all (or substantially all) of its pupils to be selected by reference to general ability, with a view to admitting only pupils with high ability.
- (3) For the purpose of deciding whether a school's admission arrangements fall within subsection (2), any such additional criteria as are mentioned in section 86(9) shall be disregarded.
- (4) Where a maintained school is a grammar school—
  - (a) sections 105 to 109 have effect for prescribing procedures for altering the school's admission arrangements so that it no longer has selective admission arrangements; and
  - (b) its admission arrangements shall not be so altered except in accordance with those sections.
- (5) Regulations may make provision—
  - (a) for enabling the Secretary of State to make an order designating as a grammar school for the purposes of this Chapter a maintained school established in substitution for one or more discontinued schools each of which either has been or could have been so designated under this section (whether by virtue of subsection (1) or by virtue of the regulations); and
  - (b) for any provisions of this Chapter, or any regulations made under it, to have effect in relation to any such school with such modifications as may be prescribed.

(6) In this section “maintained school” includes, in relation to any time before the appointed day—

- (a) a county or voluntary school, or
- (b) a grant-maintained school,

within the meaning of the Education Act 1996; and in the application of subsection (1) to a maintained school on or after the appointed day the reference to the school shall be read, in connection with determining the nature of its admission arrangements at the beginning of the 1997-98 school year, as a reference to it as a school within paragraph (a) or (b) above.

(7) In this Chapter “grammar school” means a school for the time being designated under this section.

## **105 Procedure for deciding whether grammar schools should retain selective admission arrangements**

(1) The Secretary of State may by regulations make provision for ballots of parents to be held, at their request, for determining whether the grammar schools to which such ballots relate should retain selective admission arrangements.

(2) Ballot regulations may provide for a ballot under this section to relate—

- (a) to all grammar schools within the area of a prescribed local education authority or within such other area as may be prescribed,
- (b) to a prescribed group of grammar schools, or
- (c) to any grammar school not falling within paragraph (a) or (b).

(3) Ballot regulations may make provision—

- (a) requiring a request for a ballot under this section to be made by means of a petition signed by parents eligible to request the ballot;
- (b) prescribing the form of any such petition and other requirements (whether as to the procedure to be followed or otherwise) which are to be complied with in relation to any such petition;
- (c) prescribing the body (“the designated body”) to which any such petition is to be sent and which, under arrangements made by the Secretary of State, is to—
  - (i) make the arrangements for the holding of ballots under this section, and
  - (ii) discharge such other functions with respect to such petitions and the holding of such ballots as may be prescribed (which may include the determination of any question arising as to the validity of any request for a ballot or as to a person’s eligibility to request or vote in a ballot);
- (d) requiring prescribed bodies or persons, or bodies or persons falling within any prescribed category—
  - (i) to provide the designated body or any other person with any prescribed information requested by that body or person, or
  - (ii) to publish prescribed information in such manner as may be prescribed;
- (e) authorising any such bodies or persons to charge a fee (not exceeding the cost of supply) for documents supplied by them in pursuance of regulations made by virtue of paragraph (d)(i);

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- (f) prescribing the terms of the question on which a ballot under this section is to be held and the manner in which such a ballot is to be conducted;
  - (g) enabling the Secretary of State, in any prescribed circumstances, to declare a previous ballot under this section void and require the holding of a fresh ballot;
  - (h) requiring anything falling to be done under the regulations to be done within such period as may be specified in or determined in accordance with the regulations.
- (4) Ballot regulations may provide—
  - (a) for parents of any prescribed description to register with the designated body, in such manner and at such time as may be prescribed, in order to be eligible to request or vote in a ballot;
  - (b) that for all or any prescribed purposes of the regulations references to parents are to be read as excluding those who are not individuals.
- (5) Ballot regulations may provide for a request for a ballot under this section to be made, in any prescribed circumstances, by means of two or more petitions.
- (6) The information required to be provided in pursuance of subsection (3)(d) may include the names and addresses of parents of any prescribed description.
- (7) Ballot regulations may provide for sections 496 and 497 of the Education Act 1996 (default powers of Secretary of State) to apply to proprietors of independent schools in relation to a duty imposed by or under the regulations.
- (8) Where—
  - (a) a ballot has been held under this section, and
  - (b) the result of the ballot was to the effect that the schools or school in question should retain selective admission arrangements,
 no further ballot relating to the schools or school shall be held under this section within such period as is specified in ballot regulations.
- (9) The Secretary of State may make (or arrange for the making of) payments in respect of any expenses incurred by—
  - (a) the governing body of a school maintained by a local education authority,
  - (b) the proprietor of an independent school, or
  - (c) a local education authority,
 in complying with any obligations which may be imposed by regulations made under subsection (3)(d)(i) or (ii).
 

Payments under this subsection may be made on such terms as the Secretary of State may determine.
- (10) For the purposes of this section and sections 106 and 107, in their application in relation to any time falling before the appointed day, a grant-maintained school or a grant-maintained special school within the meaning of the Education Act 1996 shall be taken—
  - (a) to be a school maintained by a local education authority, and
  - (b) to be maintained by the authority in whose area it is situated.
- (11) In this section and section 106 “ballot regulations” means regulations made under this section.

**106 Ballot regulations: eligibility of parents to request or vote in ballot**

- (1) In relation to a ballot under section 105(2)(a), ballot regulations shall provide that, subject to such exceptions as may be prescribed, the parents eligible to request or vote in the ballot are—
  - (a) registered parents of registered pupils at the following schools, namely—
    - (i) where the ballot relates to all grammar schools within the area of a prescribed local education authority, all schools maintained by that authority; or
    - (ii) where the ballot relates to all grammar schools within a prescribed area, all schools maintained by a local education authority which are situated in such area as may be prescribed, together with (if the regulations so provide) all schools maintained by such local education authority as may be prescribed;
  - (b) registered parents of registered pupils at independent schools where—
    - (i) such parents are resident, and
    - (ii) the schools are situated,
 within the area of the prescribed local education authority or (as the case may be) the prescribed area; and
  - (c) parents of children of a prescribed description where such parents—
    - (i) are resident within the area of the prescribed local education authority or (as the case may be) the prescribed area, and
    - (ii) have registered with the designated body in accordance with section 105(4)(a).
- (2) In relation to a ballot under section 105(2)(b) or (c), ballot regulations shall provide that, subject to such exceptions as may be prescribed, the parents eligible to request or vote in the ballot are registered parents of registered pupils at any school from which a prescribed number of pupils have transferred to the grammar school or schools in question—
  - (a) at such age or ages, and
  - (b) during such period,
 as may be determined in accordance with the regulations; and such regulations may provide that where, within that period, any such grammar school has been established in substitution for another school, the schools are to be treated as a single school for the purposes of determining eligibility.
- (3) Ballot regulations shall provide—
  - (a) in relation to a ballot under section 105(2)(a), that a request for such a ballot must be made by a number of eligible parents equal to at least 20 per cent. of all parents falling within subsection (1)(a) or (b) above; and
  - (b) in relation to a ballot under section 105(2)(b) or (c), that a request for such a ballot must be made by at least 20 per cent. of all parents falling within subsection (2) above.
- (4) Ballot regulations may provide for a parent's eligibility for the purposes of—
  - (a) making a request for a ballot,
  - (b) voting in a ballot, or
  - (c) determining the number of parents required to make a request by virtue of subsection (3),

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to be determined by reference to such different times as may be determined in accordance with the regulations.

- (5) Ballot regulations may make provision for determining whether parents are resident in an area for the purposes of subsection (1)(b) or (c).

## **107 Restriction on publication of material etc. relating to ballots**

- (1) An authority or body to whom this section applies shall not incur any expenditure for the purpose of—
- (a) publishing any material which, in whole or in part, appears designed to influence—
    - (i) eligible parents in deciding whether or not to request a ballot under section 105, or
    - (ii) the outcome of such a ballot; or
  - (b) assisting any person to publish any such material; or
  - (c) influencing, or assisting any person to influence, by any other means—
    - (i) eligible parents in deciding whether or not to request such a ballot, or
    - (ii) the outcome of such a ballot.
- (2) This section applies to—
- (a) any local education authority, and
  - (b) the governing body of any school maintained by a local education authority.
- (3) Nothing in subsection (1) shall be taken to prevent an authority or body to whom this section applies from incurring expenditure on publishing or otherwise providing to any person (whether or not in pursuance of any duty to do so)—
- (a) any factual information so far as it is presented fairly; or
  - (b) a fair and reasonable assessment by the authority or body of the likely consequences of the result of a ballot under section 105 being in favour of the schools or school in question ceasing to have selective admission arrangements; or
  - (c) an accurate statement by the authority or body of their intentions or proposals in the event of such a result.
- (4) In determining for the purposes of subsection (3) whether—
- (a) any information is presented fairly, or
  - (b) an assessment is fair and reasonable,
- regard shall be had to any guidance given from time to time by the Secretary of State.
- (5) In this section any reference to expenditure—
- (a) in relation to the governing body of a school which has a delegated budget within the meaning of Part II of this Act (or, in relation to any time before the appointed day, Part II of the Education Act 1996), is a reference to expenditure out of the school's budget share; or
  - (b) in relation to the governing body of a grant-maintained or grant-maintained special school within the meaning of that Act (where this section applies to such a school by virtue of section 105(10)), is a reference to expenditure out of maintenance grants paid under Chapter VI of Part III of that Act.

**108 Implementation of decision that school should cease to have selective admission arrangements**

- (1) Subsection (2) applies where the result of a ballot held under section 105 shows a simple majority of votes cast (by persons eligible to vote in the ballot) in favour of the grammar school or schools to which the ballot related ceasing to have selective admission arrangements.
- (2) The admission authority for a grammar school to which the ballot related shall secure that their admission arrangements are revised (in accordance with sections 89 and 90) so that, as from the beginning of such school year as may be prescribed, the school no longer has selective admission arrangements.
- (3) Where the Secretary of State is satisfied that, in pursuance of subsection (2), a grammar school no longer has selective admission arrangements, he shall revoke the order made by him with respect to the school under section 104.

**109 Proposals by governing body of grammar school to end selective admission arrangements**

- (1) This section has effect for enabling the admission arrangements of a grammar school to be revised (otherwise than in circumstances where section 108(2) applies) so that the school no longer has selective admission arrangements and its admission arrangements instead either—
  - (a) make no provision for selection by ability, or
  - (b) make provision for one or more of the following, namely—
    - (i) any selection by ability authorised by section 101,
    - (ii) any selection by aptitude authorised by section 102, and
    - (iii) any selection by ability such as is mentioned in section 99(2)(c).
- (2) Any such revision of the admission arrangements of a grammar school shall be one of the alterations to a maintained school which are prescribed for the purposes of section 28; but any proposals for any such revision of the admission arrangements of a grammar school which is a community school shall be published under that section by the governing body and not by the local education authority.
- (3) Regulations may provide—
  - (a) that, in their application to any proposals for any such revision of the admission arrangements of a grammar school, any provision of section 28 or Schedule 6 shall have effect with such modifications as may be prescribed;
  - (b) that, in any prescribed circumstances following the making of a request for a ballot to be held under section 105, any such proposals under section 28 shall be of no effect.
- (4) Regulations made under section 105 may make provision, in relation to cases where any such proposals under section 28 have fallen to be implemented under paragraph 5 or 10 of Schedule 6, for requiring the school to which the proposals relate to be disregarded for the purposes of any regulations made under section 105(2).
- (5) Where the Secretary of State is satisfied that, by reason of the implementation of any such proposals, a grammar school no longer has selective admission arrangements, he shall revoke the order made by him with respect to the school under section 104.