

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

AND

**THE EDUCATION (ADMISSIONS APPEALS ARRANGEMENTS) (ENGLAND)
(AMENDMENT) REGULATIONS 2007**

2007 No. 3206

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 The School Admission Appeals Code (“the Code”) replaces the School Admission Appeals Code of Practice (2003) and is issued under sections 84 and 85 of the School Standards and Framework Act 1998 (“the Act”). Provided that neither House resolves not to approve the draft, the Code will be brought into force on 17th January 2007 by an order under section 85(5) of the Act. By introducing a new, stronger status Code we are aiming to make the admission appeals system as robust and fair for parents as possible.

2.2 The Education (Admissions Appeals Arrangements) (England) (Amendment) Regulations 2007 amend the Education (Admissions Appeals Arrangements) (England) Regulations 2002. The amendments make a small number of changes to the admission appeals process, which are also referred to in the Code.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 This Explanatory Memorandum covers both the Code and the regulations as they deal with the same matters, but only the regulations are for consideration by the JCSI.

4. **Legislative Background**

4.1 The Code will be made under sections 84 and 85 of the Act. Section 84(1), as amended by section 40 of the Education and Inspections Act 2006 (“EIA 2006”), enables 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 local education authorities, governing bodies of maintained schools, admission forums, appeal panels and schools adjudicators. Section 84(2) provides that the Code may impose requirements and may include guidelines setting out aims, objectives and other matters in relation to the discharge of functions by local education authorities and governing bodies of maintained schools. Section 84(3) requires these bodies, as well as admission forums, appeal panels and schools adjudicators to act in accordance with the provisions of the Code. The Code

has been made following a public consultation under section 85(2) of the Act, and must be laid before each House of Parliament under section 85(3) of the Act.

4.2 The Education (Admissions Appeals Arrangements) (England) (Amendment) Regulations 2007 amend the Education (Admissions Appeals Arrangements) (England) Regulations 2002.

5. Territorial Extent and Application

5.1 This Code and these regulations apply to England only.

6. European Convention on Human Rights

As the Code is subject to the equivalent of the negative resolution procedure and does not amend primary legislation, no statement is required.

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

7. Policy background

7.1 This Code will replace the School Admission Appeals Code of Practice (2003). It will apply to appeals in respect of decisions on admission communicated to parents on or after 1st March 2008. The new Code will require relevant bodies to 'act in accordance with' it when discharging their functions in relation to school admission appeals. It imposes mandatory requirements and provides clear guidelines to the relevant bodies. The regulations amend current regulations about admissions appeals arrangements, making a small number of changes to the admission appeals process, which are also referred to in the Code. The policy aim is to make the admission appeals system as robust and fair as possible.

7.2 The most significant changes in the Code from the Code of Practice, some of which are also made in the amended regulations, are:

- a. Changes to who cannot be a panel member, to ensure independence.
- b. Emphasis on the independence of the appeals clerk.
- c. Preventing parents being outnumbered at hearings by recommending that only one person attends to present the case for the school, and that if an additional person attends on behalf of the school, their role should be limited.
- d. Requiring that only trained panel members and clerks can be used. Regulations prescribe what the nature of training for panel members must be.
- e. Clearer timescales within which appeals should be heard.
- f. Ruling out head teachers, of the school to which the appeal applies, from supporting individual parents appeals for their school.
- g. Panels to take greater account of a school's participation in an In-Year Fair Access Protocol (this is an agreement between all schools in an area which sets out how

they will work together to ensure that access to education is secured quickly for children who have no school place, and that all schools admit their fair share of children with challenging behaviour) or of its capacity to admit additional pupils without causing 'prejudice to the efficient provision of education or efficient use of resources'.

- h. Clearer guidance on infant class size appeals, and change to the regulations so that, even if a child has been refused admission because of an error, the panel can decide not to uphold the appeal if it would cause 'serious prejudice' to the school. This is rare, but could happen if a number of appeals for a small primary school were to be upheld. Also, change to the regulations to clarify, following the judgment in *R v Richmond upon Thames London Borough Council, ex p JC* (2000), that one of the grounds on which an infant class size appeal can be upheld is where the decision was not one which a reasonable admission authority 'would have made' at the time the decision was made.
- i. New content on grammar school and Year 12 appeals. This will prevent panels from devising their own methods of determining a child's ability, when they have already been tested or have clear evidence of their ability e.g. GCSEs.
- j. Direction to panels to consider the effect on boarding provision of allowing appeals for day places at boarding schools.
- k. In the regulations, there are changes to enable appeal panel members to claim financial loss allowance if they attend training associated with panel membership. The new training requirements are inserted, and the list of people who are disqualified from panel membership has been amended and consolidated.

7.3 Draft versions of both the Code and the regulations were consulted on between 8th September and 1st December 2006. The majority of respondents agreed that the draft Code was clear and easy to follow, and provided sufficient information and guidelines for the relevant bodies to establish and conduct effective and independent appeal hearings. The majority of the comments received from those responding to the consultation were on technical issues, either asking for a minor change or for clearer guidance on a specific point, such as infant class size appeals. A number of minor changes to the Code were made as a result. The consultation responses particularly highlighted the need for clearer guidance on infant class size appeals (within Chapter 3 of the Code) and this section has been amended accordingly. There was also support for the mandatory training of appeal panel members and clerks. A small number of respondents felt that the appeals process was too costly and burdensome on popular schools which receive a large number of appeals.

7.4 Since the public consultation, we have continued to consult a number of key stakeholders such as local authorities, appeals clerks, the Local Government Ombudsman and the Administrative Justice and Tribunals Council (previously the Council on Tribunals) on details of the changes we have made to the Code and regulations. Some of the changes have been made in order to address issues raised during these discussions, for example, setting out clearer timescales within which appeals should be heard, and including the requirement for panel members to be trained in the regulations as well as in the Code, and specifying in the regulations the nature of training that must be received.

7.5 We will inform schools and local authorities when the Code and regulations are laid before Parliament and explain the implications for them.

8. Impact

8.1 A Regulatory Impact Assessment was carried out when the EIA 2006 was laid in Parliament and any relevant changes to admissions law were covered by this.

8.2 The only additional duty on those bodies organising and administering appeals (local education authorities and governing bodies of maintained schools) is the requirement to arrange and fund training for all appeal panel members, and many of them will be doing this already. Local authorities must allocate reasonable funds to those school governing bodies which organise and administer their own appeals, to meet admission appeal costs.

9. Contact

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