

# School Admissions Code

CONSULTATION DOCUMENT



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# The Statutory Basis for the School Admissions Code

1. The School Admissions Code (the Code) comes into force in February 2007 and is made under section 84 of the School Standards and Framework Act 1998 as amended by section 38 of the Education and Inspections Act 2006. 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 the bodies<sup>1</sup> listed at paragraph 7 below. Section 84(3) requires these bodies to act in accordance with the provisions of the Code. References to 'the Code' or 'this Code' include this introduction, the chapters and appendices. The Code has been made following a consultation under section 85(2) of the 1998 Act, as amended by the Education and Inspections Act 2006, and has been approved by Parliament. This Code and related information is available from DfES Publications and on [www.dfes.gov.uk/sa/sacode](http://www.dfes.gov.uk/sa/sacode).
2. The Code refers to other statutory requirements (i.e. imposed by primary or secondary legislation) and itself imposes mandatory requirements, with which those bodies listed at paragraph 7 below must comply. A reference to the relevant statutory provision is provided in the text. Where mandatory requirements are imposed by this Code (or by statutory provisions) it is stated that relevant bodies '**must**' comply with the particular requirement or provision. Where this Code prohibits practices or criteria it is stated that relevant body or bodies '**must not**' use the practice or criteria.
3. The Code also includes guidelines which the relevant bodies should follow unless they can demonstrate, if challenged, that they are justified in not doing so. Where guidelines refer to good practice the Code will state that the relevant bodies '**should**' follow the particular guidelines and where the guidelines refer to a practice or criteria normally regarded as poor practice, but where there may be exceptional circumstances when it may be justified the Code will state that the practice or criteria '**should not**' be used.

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<sup>1</sup> The Courts have held that this means that the body under this duty must take the guidelines into account in their decision making process and if they decide to depart from it, they must give clear reasons for doing so.

4. In this Code the following terms have the meanings:
  - a. 'Admission arrangements' means the overall procedure, practices and criteria to be used in deciding on the allocation of school places.
  - b. 'Admission practice' refers to any device or means used to determine whether a school place should be offered (e.g. supplementary application forms).
  - c. 'Oversubscription criteria' refers to the criteria used to decide on the allocation of places when a school has more applications than places available.
5. Failure by an authority or body included in paragraph 7 to comply with the mandatory requirements in this Code is a breach of that authority's or body's statutory duty to act in accordance with the provisions of this Code. Failure to comply with the mandatory provisions in the Code may result in an objection being made to the Schools Adjudicator or a complaint to the Secretary of State, see paragraph 9.
6. Failure to follow the guidelines in this Code may lead to a challenge and admission authorities will have to be able to demonstrate that they were justified in departing from those guidelines. If they cannot do so an objection may be upheld by the schools Adjudicator.
7. This Code applies to the following bodies:
  - a) Admission Authorities:** local authorities are the admission authorities for community and voluntary controlled schools, unless the function has been delegated to the governing body<sup>2</sup>. For foundation schools (including Trust schools), voluntary-aided schools and Academies<sup>3</sup>, governing bodies are the admission authority.
  - b) Governing Bodies (when not admission authorities)**
  - c) Local Authorities (when not acting as admission authorities)**
  - d) Admission Forums**
  - e) Schools Adjudicators**
  - f) Admission Appeal Panels**

#### *Monitoring compliance with the Code*

8. Admission Forums<sup>4</sup> will monitor compliance with this Code, and the overall impact of an area's admission arrangements on fair access. They have powers under section 39 of the Education and Inspections Act 2006 to produce a report on admission arrangements to the

<sup>2</sup> Section 88(1) of the School Standards and Framework Act 1998

<sup>3</sup> Academies are independent, mixed ability schools, established with sponsors under section 482 of the Education Act 1996 (as substituted by section 65 of the Education Act 2002). The funding agreement between an Academy company and the Secretary of State requires the Academy's admissions policy and arrangements to be consistent with admissions law and the School Admissions Code.

<sup>4</sup> Admission Forums derive their powers from sections 85A and 85B of the School Standards and Framework Act 1998 as inserted by the Education Act 2002 and the Education and Inspections Act 2006 and from Regulations made under those Acts i.e. The Education (Admission Forums) (England) Regulations 2002 (SI 2002 /2900)

local authority and to the Schools Commissioner, covering information on the number of preferences met and the social and ethnic mix of schools compared with the communities they serve or in which they are located. More detailed information on Admission Forums, and their role in monitoring compliance with this Code, can be found in Chapter 4 and Appendix 2.

### *Enforcing the Code*

- 9.** Decisions on objections to admission arrangements are made by the Schools Adjudicator. The local authority, other local schools, and the Admission Forum have important powers under Section 90 of the School Standards and Framework Act 1998 to refer the admission arrangements to the Adjudicator where the admission authority concerned fails to comply with the mandatory provisions of this Code, or where they fail to follow its guidelines.
- 10.** Parents may also refer an objection to the Adjudicator if admission arrangements contain practices or criteria that do not comply with the law and the mandatory provisions of this Code. Faith groups may object to the admission arrangements of schools of their faith.
- 11.** Effective enforcement of this Code by the Adjudicator relies on the proper exercise of these powers. The Adjudicator's determination is final and the parties affected are required to implement that determination. If they do not the Secretary of State may direct them to do so under section 497 of the Education Act 1996. More detailed information on the Schools Adjudicator's role in enforcing this Code can be found in Chapter 4.

# The Law: Equity and Fair Access in School Admission Arrangements

**This chapter:**

- Summarises the key legislative provisions relating to school admissions (1.8 to 1.19);
- Requires admission authorities, local authorities and governing bodies to ensure clear, objective and fair admission arrangements that do not disadvantage one child compared to another (1.20 to 1.24);
- Provides guidelines and imposes requirements about applications for school places and prohibits the use of unnecessary supplementary application forms (1.26 to 1.40);
- Provides guidelines on ensuring equity and fair access in admission arrangements and requires local authorities and admission authorities to act upon any information that indicates that any of their schools' policies are discouraging some parents from applying (1.41 to 1.53).

**1.1** Educational achievement is critical to the life chances of all our children and is at the heart of the Government's *Every Child Matters* strategy<sup>5</sup>. While heavily influenced by factors beyond the school, achievement also has a direct influence on other aspects of children's well-being, for example childhood and adult health, crime, anti-social behaviour and economic competitiveness. Because of this, we must ensure that children from all backgrounds, and of all races and religions, have the same opportunities to go to good quality schools.

**1.2** Teaching, learning and standards in schools are improving. But far too many children fall short of the standards they could – and need to – achieve. Attainment gaps between children of different social backgrounds are not closing and too many of the children facing the greatest disadvantages are also attending the poorest performing schools. We are providing local

5 [www.everychildmatters.gov.uk](http://www.everychildmatters.gov.uk)

authorities with new powers in order to tackle under-performing schools promptly and to ensure that the very worst schools, which fail Ofsted inspections, are turned round more swiftly and decisively. We also need to improve the chances of more disadvantaged children getting into good schools.

- 1.3** This new School Admissions Code underpins the Government’s aim to create a schools system shaped by parents which delivers excellence and equity, developing the talents and potential of every child, regardless of their background; **a system where all parents feel they have the same opportunities to apply for the school they want.**
- 1.4** This chapter briefly sets out the key statutory provisions that underpin school admissions; it also imposes mandatory requirements and provides guidelines on ensuring fair admission arrangements that promote equity. In determining their admission arrangements, admission authorities should read the provisions and guidelines in this chapter in conjunction with the guidelines and requirements set out in Chapters 2 and 3.
- 1.5** A fair system needs to provide parents with access to good information about admissions in order to support those parents who find it hardest to understand the system. Local authorities are under statutory duties to ensure fair access to educational opportunity and to increase opportunities for parental choice<sup>6</sup>. Local authorities **should** arrange independent Choice Advice for those parents who need it. Chapter 3 of this Code provides guidelines on applying fair and straightforward admission arrangements locally: Guidelines on Choice Advice for local authorities can be found in Appendix 5.
- 1.6** Admission authorities have considerable flexibility to develop and implement their own admission arrangements in order to meet local circumstances. However, there are some practices that are unlawful and some groups of children that must be given priority in order to ensure that their needs are met.

### Admissions: key statutory provisions

- 1.7** The key statutory provisions relating to school admissions are shown in paragraphs 1.8 to 1.19. Admission authorities **must** also comply with other legislation relevant to school admissions such as the Race Relations Amendment Act, the Sex Discrimination Act and Equality Act. More detailed guidelines on other relevant legislation are included in Appendix 1.

### *Ensuring fair access*

- 1.8** Local authorities are required by section 13A of the Education Act 1996 (as amended by the Education and Inspections Act 2006) to ensure fair access to educational opportunity and this duty applies to a wide range of education functions: local authorities will have to consider specifically, for example, whether their admission or transport policies, their extended services provision or local funding formulae are in line with the principle of fair access to educational opportunity.

<sup>6</sup> Section 41 of the Education and Inspection Act 2006

- 1.9** Local authorities are also required by Section 14 of the Education Act 1996 (as amended by the Education and Inspections Act 2006) to secure diversity and increase parental choice when planning the provision of school places. Local authorities are expected to be able to show how their strategic planning functions take into account these new statutory duties.

#### *Duty to follow determined admission arrangements and consequences of not doing so*

- 1.10** Every admission authority **must**, before the beginning of each school year (unless an exception applies – see paragraph 3.8 and Appendix 4) determine the admission arrangements which are to apply for that year<sup>7</sup>. Local authorities are required by Section 92 of the School Standards and Framework Act and the Education (School Information) (England) Regulations 2002<sup>8</sup> to publish admission arrangements for all maintained schools in their area. Admission authorities **must** then follow the determined, published admission arrangements. Failure to do so would amount to a breach of the admission authority's statutory duty<sup>9</sup>.
- 1.11** Under section 88(1A) of the School Standards and Framework Act 1998 (as inserted by section 42 of the Education and Inspections Act 2006) it is the duty of a governing body of a community or voluntary controlled school, for which a local authority is the admissions authority, to implement any decision relating to the admission of pupils taken by the admission authority. Similarly, under section 89(3A) of the 1998 Act and regulations, the governing body of a voluntary aided or foundation school **must** implement a decision of the local authority, made under the relevant co-ordinated admission arrangements, whether a child should be granted or refused admission to the school.
- 1.12** Failure to comply with a statutory requirement or any proposal to use unlawful arrangements can be referred to the Secretary of State who may use his powers under section 497 of the Education Act 1996 to make a direction to enforce the statutory requirement or prevent an unlawful act.

#### *Interviewing*

- 1.13** Section 88A of the School Standards and Framework Act 1998 (as inserted by the Education and Inspections Act 2006) prohibits the interviewing of parents and/or children as method for deciding whether a child should be offered a place at a school. This includes both face to face interviews and those using the telephone or other means, for example written questions and answers and essays. Open days and other events for prospective parents and children are not affected, but see paragraph 1.25.
- 1.14** This prohibition does not apply to interviews conducted by boarding schools solely for the purpose of determining a child's suitability for a boarding place (see paragraphs 1.29 to 1.36)

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7 Section 89 of the School Standards and Framework Act 1998

8 The Education (School Information) (England) Regulations 2002 (SI 222/2897).

9 Regulations 8 and Schedule 2 of the above Regulations require the composite prospectus to include oversubscription criteria for all schools in the area and the admission number. For secondary schools, the prospectus must include details of the number of applicants in the previous year.

or to auditions or other oral or practical tests in order to ascertain a child's aptitude in a particular subject at schools with a permitted form of selection by aptitude in accordance with section 99(4) of the School Standards and Framework Act 1998.

### *Selection by ability*

**1.15** The School Standards and Framework Act 1998 made it unlawful for any school to adopt selection by ability as a means for allocating places. Only grammar schools or schools with partially selective arrangements which already had such arrangements in place during the 1997-98 school year are permitted to continue to use selection by ability. Section 38 of the Education and Inspections Act 2006 reaffirms this position; additional guidelines on permitted forms of selection are included in Chapter 2.

### *Faith-based oversubscription criteria*

**1.16** Section 49 of the Equality Act 2006 provides that the use of faith-based oversubscription criteria is only permitted for those schools designated by the Department for Education and Skills as schools with a religious character. It is unlawful for any other school to include such criteria in deciding admissions. Guidelines on acceptable faith-based oversubscription criteria can be found in paragraphs 2.18 to 2.24 of this Code, and more detailed information on the Equality Act is provided in Appendix 1.

### *Home-school agreements*

**1.17** Section 111 of the School Standards and Framework Act 1998 makes it unlawful for admission to a school to be conditional on parents signing a home-school agreement. Home-school agreements are a useful means of promoting greater involvement by parents in their children's education. However, schools **must not** ask parents to sign agreements before they have been offered a place at the school. Further guidance are available in the *'Home-School Agreements: Guidance for schools'*<sup>10</sup>.

### *Statements of Special Educational Needs*

**1.18** Section 324 of the Education Act 1996 requires a school to admit a child with a statement of special educational needs that names the school. More detailed information and guidelines on the law in relation to children with special educational needs are provided in Chapter 3.

### *Looked after children (children in public care)*

**1.19** A looked after child is a child who is in the care of a local authority or provided with accommodation by that authority under section 22 of the Children Act 1989. Admission authorities are required to give highest priority to those children in public care (looked after

10 'Home-Schools Agreements: Guidance for Schools', DfES, 1998 ([www.dfes.gov.uk/hsa](http://www.dfes.gov.uk/hsa))

children)<sup>11</sup> in their admission criteria. More detailed guidelines on looked after children are provided in Chapter 3.

### Ensuring equity and fair access

- 1.20** In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide on the allocation of school places:
- a. are clear in the sense of being free from doubt and easily understood. Arrangements that are vague only lead to uncertainty and this may reduce the ability of parents to make an informed choice for their children. They are also likely to increase the chances of an objection;
  - b. are objective and based on known facts. Admission authorities and governing bodies **must not** make subjective decisions or use subjective criteria;
  - c. are procedurally fair and are also equitable for all groups of children (including those with special educational needs, disabilities, those in public care, or who may be a young carer) and actively promote equity across all social groups and communities;
  - d. enable parents' preferences for the schools of their choice to be met to the maximum extent possible;
  - e. provide parents or carers with easy access to helpful admissions information (Regulations<sup>12</sup> require the local authority to produce a composite prospectus that covers admission arrangements for all schools in their area. See Appendix 4);
  - f. comply with all relevant legislation, including on infant class sizes and on equal opportunities, and have been determined in accordance with the statutory requirements and the provisions of this Code.
- 1.21** Admission authorities **must** consult each other and co-ordinate their arrangements, including over the rapid re-integration, in accordance with local protocols of children who are hard to place, including those who have been excluded from other schools, see Chapter 3.

### Ensuring fairness – implications of wider policies

- 1.22** Admission authorities and governing bodies **must** ensure that their admission arrangements and other school policies are fair and do not disadvantage, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs. Local authorities and schools have duties under Part IV of the Disability Discrimination Act 1995 not to discriminate against disabled pupils and this is an important principle that should underpin all schools' policies, not only for admissions. Admission authorities and governing bodies should develop and implement admission arrangements, practices and oversubscription criteria that actively promote equity, and thus go further than simply ensuring that unfair practices and criteria are excluded.

11 This means a child who is looked after by a local authority in accordance with section 22 of the Children Act 1989.

12 The Education (School Information) (England) Regulations 2002 (SI 2002 /2900)

- 1.23** All governing bodies **must** ensure that their other policies and practices do not disadvantage certain social groups or discourage some groups of parents from seeking a place at the school for their child. Local authorities should work with governing bodies (where the governing body is not also the admission authority) to ensure that admission arrangements which appear fair are not then undermined by other school policies, such as a requirement for expensive school uniform, sportswear or expensive school trips or other activities, unless arrangements are put in place to ensure that parents on low incomes can afford them. Governing bodies of schools which are their own admission authority need to address this too. Guidelines on some of these issues are included below. Local authorities are also under a duty to ensure fair access to educational opportunity, which extends to wider policies such as school transport.
- 1.24** Admission authorities and governing bodies **should** also guard against any conflicts of interest for those who make decisions about applications that could leave them open to challenges, for example declaring personal knowledge of a particular child or friendship with their family.

## Practices and policies that may undermine fair admission arrangements

### *Information about parents, children and families*

- 1.25** The use of interviews in school admission arrangements is unlawful (see paragraph 1.13 and 1.14). Staff and governors are encouraged to meet parents at open evenings and on other occasions, but information gained in this way **must not** play a part in the admission decision-making process. Attendance at an open evening or other meeting at the school **must not** be a condition for the allocation of a place.

### *Applications and application forms*

#### *Prohibition of supplementary forms*

- 1.26** Admission authorities **must not** use supplementary application or information forms that ask:
- for personal details about parents, such as criminal convictions or marital, occupational or financial status;
  - for details about parents' achievement, educational background or whether their first language is English;
  - for details about parents' or children's disabilities, special educational needs or medical conditions unless this is in support of positive action as described in Chapter 3;
  - about parents' or children's interests, hobbies or membership of societies.
- 1.27** Admission authorities **must not** discriminate against children whose parents fall into certain social groups. No personal information about parents is relevant in considering an application for a place at a school and criteria which focus on parents cannot legitimately be included in oversubscription criteria. Collecting such information may suggest that it can be taken into account and therefore be misleading to parents.

- 1.28** Given the potential for discrimination, admission authorities may only use supplementary application/information forms that request additional information when it has a direct bearing on decisions about acceptable oversubscription criteria; for example, asking for a reference from a priest or other religious minister for a faith school.

### *Boarding schools.*

- 1.29** The provisions of this Code apply to all maintained schools including those with boarding places, both in respect of day and boarding places. More detailed guidelines on considering applications for boarding places are provided at paragraphs 2.35 to 2.39 and Appendix 6.
- 1.30** Maintained schools with boarding provision may only use supplementary forms and/or interviews to establish an applicant's suitability for a boarding place. There is no requirement for schools to use interviews and proformas to assess suitability, but where they do, they **must** take account of the guidelines and **must** use the proformas at Appendix 6 of this Code.
- 1.31** Suitability for boarding **must not** be adopted as an oversubscription criterion. Schools with boarding places **must** determine their oversubscription criteria in accordance with the mandatory provisions and guidelines set out in Chapter 2 of this Code. Any boarding school wishing to assess suitability **must** make it clear in its admission arrangements that it will do so for all boarding applicants prior to applying its oversubscription criteria.

### *Suitability for boarding*

- 1.32** Suitability is not about a school seeking to admit those children who best fit its ethos. Suitability includes two different aspects:
- a) whether an applicant child presents a serious health and safety hazard to other boarders; or
  - b) whether an applicant child is developmentally suited to a boarding place.

### *Health and safety risk to other children*

- 1.33** Admission authorities **must not** refuse to admit children who have a history of serious misbehaviour if they have been assessed as suitable for a mainstream school place, unless they have been permanently excluded from a maintained school two or more times. However, it is recognised that a boarding place for such children, in a mainstream environment, is unlikely to be appropriate if a child has a serious proven record (i.e. not based on unsubstantiated accusations) of sexual misconduct, arson, or physical violence. Schools may use the proformas at Appendix 6 and an interview with the child and parent/guardian to obtain information on such risks.

### *Developmental suitability for a boarding place*

- 1.34** Schools may interview and use the proformas at Appendix 6 to obtain information on whether applicant children wish to board and have thought through the implications of a boarding place.

- 1.35** In preparing for and conducting interviews for boarding places schools **must** use the proformas and follow the guidelines at Appendix 6. They **must**:
- a) focus purely on whether the applicant would be able to cope with and benefit from a boarding environment;
  - b) be fair and open. Children and parents **must** be informed of the process in advance, and know what to expect from the interview; and
  - c) give children a chance to state separately from their parents or guardians whether they wish to board.
- 1.36** Admission authorities and schools **must not**:
- a) require or request children to sit any form of written or verbal test of knowledge, ability or attitudes;
  - b) seek to screen out pupils who have a record of low level poor discipline which has not resulted in them being twice permanently excluded. This prohibition includes asking questions which seek to ascertain whether applicants' reactions to conflict situations are conciliatory or confrontational;
  - c) seek to screen out pupils who are not as outgoing or confident as others, or as eloquent;
  - d) seek information about parental background, finances, marital status or religion;
  - e) seek information about home circumstances;
  - f) seek to obtain information about low level misbehaviour, absenteeism, academic ability, sporting, artistic or any other form of achievement or ability; or
  - g) ask questions about whether applicants know any existing boarders.

### ***Faith schools***

- 1.37** At schools designated as having a religious character, the prohibition in paragraphs 1.26 and 1.27 do not prevent the use of a supplementary form that asks parents or children about their membership of or relationship with the church or religious denomination in accordance with paragraphs 2.18 to 2.24 of this Code.

### ***Entry tests, application forms and photographs***

- 1.38** Unless part of approved banding arrangements or aptitude selection, see paragraphs 2.55 to 2.69), tests **must not** be used by non-selective schools as a means of allocating places at the school.
- 1.39** Photographs of children may be used as a security measure where tests are used – to ensure that the child presenting for the test is the child named on the application. However, except for this purpose, photographs **must not** be required with applications for school places.

- 1.40** Applications and any permitted supplementary forms **must** be completed by parents or carers; children **must not** be required to complete application forms for school places.

## Other policies

### *School uniform*

- 1.41** School uniform plays a valuable role in contributing to the ethos and setting the tone of a school, and the Government strongly encourages schools to consider the introduction of uniforms where they do not already have them. Governing bodies can help limit the expense of uniforms so that parents on low incomes do not feel that the prospective cost of the uniform means that they cannot apply for the school they would most like. Governing bodies can ensure that the uniform chosen is widely available in high street shops or on the internet rather than from an expensive sole supplier and can use their own purchasing power to buy in bulk and pass on savings to parents. Governing bodies **should not** seek to raise additional funds through the sale of new school uniforms.
- 1.42** All schools which have a uniform, including sports kit, that is more expensive than the national average, **should** have arrangements in place to ensure that no family feels unable to apply for admission on account of high school uniform costs. Schemes for remission of cost should cover children eligible for free school meals, or whose parents are on higher levels of working tax credit and **should** be administered discreetly so that no parent is embarrassed to ask for help. These schemes should be clearly explained in admissions or other literature provided by the school<sup>13</sup>.

### *Contributions to school fund and contributions to participate in school trips*

- 1.43** Admission authorities and governing bodies **must** make it clear that there is no charge or cost related to the admission of a pupil to a school. Schools **should not** imply that donations and voluntary contributions are expected in their prospectus and in other documents. Parents from low-income families sometimes express concern about the level of voluntary contributions that schools request or require and may be deterred by these from expressing a preference for the school for their child.
- 1.44** School trips are an important part of school life and can contribute to the ethos of the school. However, some parents may not want their children to go away from home or to take part in school trips. Governing bodies **must not** imply that such trips are compulsory and as a result discourage some parents from selecting the school for their child.
- 1.45** Parents may also be concerned about the cost of school trips and other extracurricular activities, fearing that their child may not be able to participate and this may discourage them from applying for a place at the school. Accordingly, schools **should not** describe school trips without making it clear that help is available for those unable to afford the cost. They **should** make it clear that any contribution to school funds and voluntary contributions to trips are not mandatory, and that the expectation is that low income families will contribute a small

13 Further guidance on school uniforms can be accessed at:  
[www.parentscentre.co.uk/educationandlearning/schoollife/schooladministration/uniforms](http://www.parentscentre.co.uk/educationandlearning/schoollife/schooladministration/uniforms)

amount, or nothing. Parents should also be assured that they will not be asked to explain why they prefer not to contribute and that not contributing will in no way disadvantage their child

**1.46** A charge **must not** be made for a school trip<sup>14</sup>:

- a) that is during school hours; or
- b) is outside school hours but it is being undertaken as part of the National Curriculum, or as part of a syllabus for a prescribed public examination.

**1.47** A charge may be made for board and lodging on residential trips but the charge **must not** exceed the actual cost, and children in receipt of free school meals are exempt. Schools may, however, ask for voluntary contributions towards the cost of board and lodging.

### *School transport*

**1.48** The cost and availability of safe, reliable home to school transport is a concern for many parents. Home to school travel arrangements can have a disproportionate impact on low-income families, particularly those with several children. Admission authorities **must** explain clearly whether or not school transport will be available, and if so to which schools and at what cost (if any). Local authorities are required to make information about school travel and transport options<sup>15</sup> available to parents at least six weeks before parents apply for a school place. The Education and Inspections Act 2006 extended rights to free home to school transport for low income families to one of their three nearest schools, where they are between 2 and 6 miles away, to remove the lack of affordable transport as a barrier to choice for these families. Admission authorities should bring this information to the attention of parents. The position is different for primary and secondary schools:

- a) for primary age pupils transport will only be provided to the nearest suitable school, but for those in low income families aged 8–11 free transport **must** be provided if they live more than two miles from school (previous distance three miles).
- b) secondary age pupils from low income families **must** have transport to any one of the three nearest suitable schools, where the distance travelled is between two and six miles.

### *Extended schools*

**1.49** For children and young people to attain their full potential, they and their families need access to a wide range of opportunities to help overcome the barriers which many of them face – especially those of poverty, disadvantage and disability. Many schools are already

14 The Education Act 1996 (Sections 449–462), as amended by the School Standards and Framework Act 1998 and the Education Act 2002, sets out the legislative basis for school charging and remissions policies. Section 200 of the Education Act 2002 amended the legislation that deals with the remission of charges (board and lodgings) for residential school trips, set out in section 457 of the Education Act 1996.

The Education (School Sessions and Charges and Remissions Policies)(Information)(England) Regulations 1999, SI number 2255, places obligations on head teachers, school governing bodies and LEAs to make information available about charging and remissions policies.

15 The Education School Information (England) Regulations 2002, as amended by regulations under the Employment and Inspections Act 2006

offering, or developing, such opportunities. The Government wants to encourage all schools to develop access to the five 'core' services described in *Extended Schools: Access to opportunities and services for all*<sup>16</sup> (varied study support activities; high quality, affordable childcare; swift and easy referral to a wide range of specialist support services; support for parents and carers; and access to schools' resources for local communities, where appropriate). Schools are also free to offer other opportunities as well, where they identify unmet local needs.

- 1.50** However, it is important that schools ensure access to extended activities, where they may be of educational benefit, for children and young people whose families cannot afford them, and therefore do not discourage parents with low incomes from applying for a place at the school for fear that their child may not be able to participate in extended activities. All schools should be able to provide some free study support for children and young people from low-income families through the flexibility in their delegated budgets and their School Standards Grant. Schools may also use their delegated budgets and their School Standards Grant to support access to educational activities which are normally included as part of a childcare offer.

### Being proactive about promoting equity and extending opportunity for all

- 1.51** It is good practice for admission authorities to analyse information on their intakes, and where possible their applicants, to find out whether they attract a wide range of families or whether their school fails to attract all sections of the local community. However, any survey undertaken to gather such information **must not** be connected to decisions about admissions and **should** only be undertaken after children have been admitted.
- 1.52** Admission authorities for all schools **must** act upon this information if any school's or admission authority's policies or practices appear to be at fault. There are many ways in which this might be done; for example, the most popular schools might work with primary schools in more deprived areas to encourage applications from poorer families.
- 1.53** Admission Forums have an important role in monitoring compliance with the provisions of this Code, and the overall impact of an area's admission arrangements on fair access. All Forums will have a power to produce an annual report and send it to the Schools Commissioner. The Education (Schools) (Admission Forum) (Amendment) Regulations set out a full list of matters to be covered but they should include, as a minimum, information on the number of preferences met and the social and ethnic mix of schools compared with the communities they serve. Admission authorities and schools that are found to be using practices or oversubscription criteria that work against fair access are likely to be failing in their duty to act in accordance with the provisions of this Code. The local authority, other local schools, the Admission Forum and parents will be able to refer an objection about the admission arrangements of any maintained school to the Adjudicator if their admission arrangements are in breach of this School Admissions Code.

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16 [www.teachernet.gov.uk/extendedschools](http://www.teachernet.gov.uk/extendedschools)

# Setting Fair Oversubscription Criteria

## This chapter:

- provides guidelines and imposes mandatory requirements on setting fair oversubscription criteria;
- prohibits the use of unfair oversubscription criteria (2.5).

- 2.1** With the exception of grammar schools, all maintained schools, including faith schools, that have enough places available must offer every child who has applied a place<sup>17</sup>. However, many schools will have more applicants than places, and it is therefore essential that the criteria used to allocate places when a school is oversubscribed are fair. **Fair oversubscription criteria are the key to fair admission arrangements.**
- 2.2** This chapter prohibits the use of oversubscription criteria that are unfair and **must not** be used. It also provides guidelines and examples of good practice for admission authorities to help them set criteria that are fair to all children and their families, and that promote social equity rather than working against it.
- 2.3** The most common oversubscription criteria in use are covered in this chapter but it is not possible to create an exhaustive list of what is good practice and what is not. For example, there may be other criteria not mentioned here that are also unfair and should not feature in a school's admission arrangements. It is possible for a criterion to be fair in some circumstances and not in others, as in the case of the sibling criterion (see paragraphs 2.10 to 2.13). It is for admission authorities and Admission Forums, acting in accordance with the provisions and guidelines in this Code, to decide which criteria they will use and in what circumstances. Admission Forums **should** encourage all schools in their area to have arrangements that extend choice to parents whatever their social group.
- 2.4** While they cannot be guaranteed a place at a particular school for their child, parents must be free to express a preference for the school or schools they want for their children whatever

17 Section 86 of the School Standards and Framework Act 1998

their social or financial status. As we make clear in Chapter 1, it is important that schools' other policies, for example on school uniform, do not inadvertently discourage applications from poorer families. Oversubscription criteria that amount to the selection of children by schools, by means that disadvantage some social groups compared to others, deny choice to parents and must be eliminated from the system. Paragraph 2.5 accordingly prohibits the use of those criteria that are clearly unfair and can disadvantage some children and families.

### Prohibition of unfair oversubscription criteria

**2.5** In setting oversubscription criteria admission authorities **must not:**

- a. stipulate conditions that change the priority given to an application;
- b. give priority to children according to the order of other schools named as preferences by their parents, including "first preference first" arrangements, subject to paragraph 2.6 below;
- c. give higher priority to children whose parents are more able or willing to support the ethos of the school or to support the school financially or in some other way;
- d. give higher priority to children according to the occupational or financial status of parents;
- e. give higher priority to children according to the educational or social group or background of their parents;
- f. take account of reports from primary or nursery schools about past behaviour, attitude or achievement;
- g. discriminate against or disadvantage children with special educational needs or disabilities;
- h. allocate places at a school on the basis that a sibling or other relative is a former pupil;
- i. take account of the behaviour of other members of a child's family, whether good or bad, including a good or bad attendance record;
- j. take account of parents' marital status;
- k. give priority to children whose parents are current or former staff or governors or who have another connection to the school, subject to paragraph 2.7 below;
- l. give priority to children who (or whose parents) have particular interests, specialist knowledge or hobbies;
- m. give priority to children based on the order in which applications were received;
- n. in the case of grammar schools, give priority to siblings of current pupils;
- o. expressly exclude applicants from a particular social or religious group or state that only applicants from a particular social or religious group will be considered for admission.

- 2.6** The prohibition in 2.5 (b) does not prevent the use of the first preference first criterion in a coordination scheme where all schools *in an area, where there is no selection by ability or aptitude*, agree to adopt these arrangements in their scheme. However, admission authorities **must** be able to demonstrate that the use of this criterion does not unreasonably constrain the exercise of parental choice, and this criterion **must not** be used in an area where there is any selection by ability or aptitude. This is considered further in Chapter 3.
- 2.7** The prohibition in 2.5(k) does not prevent a school offering a place or places to the children of a new appointee to a post at the school after the 1st March in a year where there is a demonstrable skills shortage for the vacant post in question, even where this will be in excess of the published number, providing that all other relevant law is complied with (see paragraph 3.90 of this Code). Alternatively schools may, in these circumstances, place the children of new appointees at the top of any waiting list for places (see paragraph 3.87).

### Guidelines on setting fair oversubscription criteria

- 2.8** In this section we provide guidelines and impose additional mandatory requirements for admission authorities in setting fair oversubscription criteria. Where a provision is mandatory (either by virtue of the law or this Code) this will be indicated by the words **must** or **must not**. Admission authorities must comply with these provisions in order to satisfy their statutory duty to act in accordance with this Code.
- 2.9** We do not attempt to set out a list of preferred criteria here, but rather to discuss each of those commonly used, and the circumstances in which they may be good practice, acceptable or when they should not be used. It is for admission authorities to decide whether any of these criteria are appropriate in their local circumstances, but where this Code states that, in particular circumstances, a criterion **should not** be used, admission authorities must be prepared to justify their decision to use the criterion if an objection is made to the Schools Adjudicator.

### *Siblings of pupils still at the school*

- 2.10** Giving priority to children who have siblings who will be at the school when they join may support parents of young children. Admission authorities **should** give consideration particularly to the needs of younger children at primary schools, where parents may have problems with transporting children placed at different schools. Admission authorities **should** also consider carefully how twins or triplets or other relatives, including those adopted, living permanently in the household will be treated if a sibling criterion is adopted.
- 2.11** If using a sibling criterion, admission authorities should bear in mind that different ethnic and social groups may understand terms such as “sibling” in different ways. Admission authorities should make clear the position of other children living in the same household and define terms used such as step-children, and once defined **must** use the same definition consistently.

### *Sibling criteria at schools with permitted forms of selection by ability or aptitude*

- 2.12** It is acceptable for schools that select up to 10% of their intake by aptitude in permitted subjects under section 102 of the School Standards and Framework Act 1998 to give priority to children who have a sibling at the school whether that child was admitted by selection or not.
- 2.13** However, a number of schools are still permitted under section 100 of the 1998 Act<sup>18</sup> to use pre-existing partial selection by ability. Giving priority to siblings of children at the school may result in a disproportionately high number of children who live close to the school being denied a place in favour of children who live further away and children from poorer families or certain social groups being given lower priority compared to others. The higher the proportion of children that are admitted by selection the more likely it is that this will be the case, and the greater the potential for unfairness. Accordingly the admission authorities of these schools **should not** give higher priority to the siblings of existing pupils.

### *Social and medical need*

- 2.14** If admission authorities propose to give *higher* priority to children for social or medical reasons they **must** ensure that in doing so they are not failing to comply with paragraph 2.5(g) of this Code, which prohibits the use of oversubscription criteria that discriminate or disadvantage a child because of their special educational needs or disabilities.
- 2.15** Admission authorities **must not** use this criterion to give a child a *lower* priority in obtaining a place at the school, but it may be acceptable to give higher priority to children or families where there is a social or medical need (for example where one or both parents or the child has a disability that may make travel to a school further away more difficult).
- 2.16** If using this criterion, admission authorities **must** give a clear explanation of what supporting evidence will be required – for example a letter from a registered health professional such as a doctor or social worker – and how this will be assessed objectively. It should be made clear that the supporting evidence should set out the particular reasons why the school in question is the most suitable school and the difficulties that would be caused if the child had to attend another school. Admission authorities **must not** give higher priority to children under this criterion if the required documents have not been produced.
- 2.17** This criterion, if used, **must not** relate to particular aptitudes for some subjects such as in sport or music. For example, schools **must not** seek to admit children, under this criterion, on the basis that they ‘need’ to attend the school because of an aptitude or interest in sport and the school has particularly good sports facilities. Selection by aptitude is dealt with in paragraphs 2.57 to 2.61 of this Code and schools wishing to admit a proportion of children on the basis of their aptitude for a particular subject **must** follow the guidelines provided there.

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18 See also Regulation 9 of the Education (Determination of Admission Arrangements) Regulations 1999

### *Faith-based oversubscription criteria*

- 2.18** Schools designated by the Department as having a religious character may give preference in their admission arrangements to members of a particular faith or denomination, providing this does not conflict with other legislation, such as equalities legislation (see Appendix 1) or the mandatory provisions of this Code. As with all other maintained schools faith schools **must not** keep open places if they have insufficient applicants of their own faith and other families have applied for a place at the school.
- 2.19** As with all oversubscription criteria those that are faith-based must be clear, objective and fair. Parents and families must easily be able to understand how the criteria will be satisfied.
- 2.20** Where preference is to be given to members of a particular faith, published admission arrangements **must** make clear how religious affiliation or commitment is to be demonstrated – for example by a simple statement of affiliation, or through a reference signed by the family's priest, minister, or other representative(s) of the church. It should be sufficient to provide evidence that the child and/or the family are practising members of the faith, and this is a position supported by most of the groups representing different faiths. Whatever method is used it **must** be clearly objective and transparent and therefore any reference requested **should** be in writing and consistent with paragraphs 1.26 to 1.28 of this Code.

### *Guidance provided by church or religious authorities*

- 2.21** Church or religious authorities may provide guidance for the admission authorities of schools of their faith that sets out what process and criteria may be used to establish membership of the faith. Such guidance should clearly define the terms used and how membership is to be determined, and **must be** consistent with the provisions and guidelines of this Code. Where such guidance is produced, the admissions authorities for schools of the faith **should** follow it.
- 2.22** Admission authorities for faith schools **should** consider how their particular admission arrangements impact on the local community. Faith schools can contribute to community cohesion by having admission arrangements that are inclusive of other faiths and of all elements of the population of their local area. Some faith schools already achieve inclusiveness by designating a proportion of places for which children of their own faith or denomination will be given priority, and the remainder as community or open places for which local children will be given priority<sup>19</sup>.
- 2.23** In their admission arrangements faith schools **must**, as a minimum requirement, give first priority to looked after children of their faith but **should** go further and give first priority to all looked after children<sup>20</sup>.

<sup>19</sup> This is quite different from 'quotas' which would reserve places solely for particular groups, and would mean leaving places empty if not enough members of those groups apply. Schools designated by the Department as schools with a religious character may not keep places empty if they do not have enough applications from their particular faith or denomination.

<sup>20</sup> The Education (Admission of Looked After Children) (England) Regulations 2005

**2.24** The governing bodies of Church of England schools that are their own admission authorities **must** consult their local Diocesan Board about the admission arrangements they are proposing for their schools before they go out to statutory consultation with other admission authorities<sup>21</sup>, and they **should** follow the Board's advice. Section 89 of the School Standards and Framework Act 1998 requires all admission authorities for maintained schools to consult: the local authority (if the governing body is not the admission authority); the admission authorities of all other maintained schools in the area; and the Admission Forum about their proposed admission arrangements. In addition, faith schools **must** also consult the body representing their religion or religious denomination<sup>22</sup>.

### *Random allocation (lottery)*

**2.25** Random allocation of school places can be good practice particularly for urban areas and secondary schools. However, it may not be suitable in rural areas. It may be used as the means of allocating places or alongside other oversubscription criteria such as a 'tie break'. Random allocation can widen access to schools for those unable to afford to buy houses near to favoured schools and create greater social equity.

**2.26** If admission authorities decide to use random allocation when schools are oversubscribed, they need to set out clearly how this will be operated, and **must** ensure that arrangements are transparent. They **should** undertake a fresh round of random allocation when deciding who should be offered a place from a waiting list, and should not use the results of an earlier round of random allocation, as this would disadvantage those who had applied for a place at the school after the first random allocation was carried out.

**2.27** In order to provide verification that the random allocation process has been carried out fairly, admission authorities **should** ensure that they are supervised by someone independent of the school.

### *Ease of access by public transport*

**2.28** Admission authorities may give priority to children who could reach one school by public transport, but not another, or to children who would have a disproportionately long journey to another school if denied admission to their nearest school.

### *Distance between home and school*

**2.29** Where an admission authority determines to use the distance between home and school as part of oversubscription criteria it **should** explain clearly how distance from home to the school will be measured including the points at the school and the child's home from which distance is to be measured (for example, the main school gate, the front door to the home,

21 Section 51 of the Education Act 2002

22 Section 89(2)(e) of the SSFA 1998, as inserted by Section 44 of the Education and Inspections Act 2006

how flats will be treated) and care should be taken to use a reliable and reasonable system which parents can readily understand.

- 2.30** Where a child lives with parents with shared responsibility, each for part of a week, the oversubscription criteria need to make clear how the 'home' address will be decided in a fair and considered way.

### *Catchment areas*

- 2.31** The 1997 Rotherham<sup>23</sup> Judgment confirmed that there is nothing unlawful in the principle of admission authorities operating catchment areas as part of their oversubscription criteria and thereby giving priority to local children whose parents have expressed a preference for the school. However, admission authorities **must not** guarantee places to parents in a local catchment area, in case the pattern of preferences expressed does not allow this guarantee to be met. In drawing up catchment areas admissions authorities should ensure that they reflect the diversity of the community served by the school. A catchment area does not prevent parents expressing a preference for the school if they do not live in the area.
- 2.32** Local authorities **must not** suggest that parents should express a preference for the school in whose catchment area they live, or that they have been allocated a place at that school before they have expressed a preference. Although they should explain the possible consequences of not doing so, local authorities **must** be clear that parents are allowed to express a preference for any school they choose. Some schools have adopted inner and outer catchment areas and these work well for some specialist schools in particular by extending choice to more parents.
- 2.33** For children of UK Service personnel and other Crown servants admission authorities **must** treat a family returning to their area as meeting the residency criteria for that catchment area even if no house is currently owned in that area once proof of the posting has been provided.
- 2.34** Where catchment areas are used, admission authorities **should** provide a map of the areas, and indicate how far parents within those areas have succeeded in getting places in the past, and whether that is likely to be a guide for the future. Catchment areas **must not** be set after applications have been made.

### **Additional guidelines for boarding schools**

- 2.35** Boarding schools have an important role in providing places for the most vulnerable children and in providing a stable educational environment for those whose parents have jobs or careers which dictate that they often have to work outside the country. Boarding schools **must** therefore, after giving the required priority to looked after children, give next priority in their oversubscription criteria for boarding places to 'children with a boarding need'. Boarding schools **must** ensure that it is clear to parents what is meant by 'boarding need'.

23 R v Rotherham Metropolitan Council ex parte Clark and others [1997] EWCA Civ 2768

### *Boarding need*

- 2.36** Although this is not a comprehensive list, children with a boarding need include:
- a) children at risk;
  - b) children from single parent families;
  - c) children with an unstable home environment;
  - d) children of members of the British forces overseas;
  - e) children of key workers working abroad (e.g. the children of charity workers, people working for voluntary service organisations, the diplomatic service or the European Union, teachers, law enforcement officers and medical staff working abroad) whose work dictates that they spend much of the year overseas.
- 2.37** Those children described at paragraph 2.36 (a) to (c) **should** be given priority regardless of their normal place of residence, and children described in paragraphs 2.36 (d) and (e) **should** be given priority when the normal place of residence is based in the locality or priority area of the school.

### *Interviews*

- 2.38** Boarding schools **must not** use interviews to determine boarding need. They may only interview in order to assess suitability for boarding as described in paragraphs 1.29 to 1.36 of this Code.

### *Supplementary forms*

- 2.39** Boarding schools may only use supplementary forms to obtain information that is not provided on the common application form, but is necessary in order to apply their published oversubscription criteria, and may use the proformas at Appendix 6 only to assess a child's suitability for boarding. All other supplementary forms are prohibited by this Code (paragraph 1.26).

### **Additional guidelines for primary schools**

- 2.40** The law does not require a child to start school until the start of the term following the child's fifth birthday. The date compulsory school age is reached is determined by dates set by the Secretary of State for the autumn, spring and summer terms. These are 31 August, 31 December and 31 March.
- 2.41** Prior to the start of compulsory education, all children, in the nationally prescribed term following their third birthday, are entitled to the minimum free early education entitlement. Parents can take up a place in a private, voluntary or maintained school setting.
- 2.42** Academic selection **must not** be used to decide entry into primary education.

- 2.43** Admission authorities **should** determine and publish admission arrangements for primary schools, including the age at which children are normally admitted to the reception class at the school. They **should** make clear whether and in what circumstances applications from parents of younger children will be considered.
- 2.44** Admission authorities **should** make clear their policy on the admission of twins, triplets or other children from multiple births and take account of the likelihood of parents wanting their children to attend the same school.
- 2.45** When determining the arrangements for primary schools that admit pupils below compulsory school age (often called 'rising fives'), the admission authority **must** make it clear that:
- the arrangements do not apply to those being admitted for nursery education including nursery provision delivered in a co-located children's centre;
  - parents of children who are admitted for nursery education will still need to apply for a place at the school if they want their child to transfer to the reception class;
  - attendance at the nursery or co-located children's centre does not guarantee admission to the school; and
  - parents can request that the date their child is admitted to the school is deferred until later in the school year or until the child reaches compulsory school age in that school year, see paragraph 2.49 below.
- 2.46** Where schools have a nursery class attached, separate admission arrangements **must** be published for entry to the nursery. Published admission arrangements **must** make clear to parents that attendance in the nursery class does not guarantee admission to the school for primary education, and that a separate application must be made for transfer from nursery to primary school (as it must for transfers from infant to junior schools).

#### *Giving priority to children attending the school's nursery or co-located children's centre*

- 2.47** Admission authorities **should not** include attendance at the nursery or the co-located children's centre for nursery education in their oversubscription criteria. Such arrangements can advantage those parents willing to travel a substantial distance to allow their child to attend nursery school so that they will have priority in admission to the primary school over more local parents. Such criteria may also disadvantage families who have recently moved to the area and those who have opted for other providers or who choose to take up the free entitlement at an alternative local provider. It may make some parents feel they have to enrol their child at the school before they consider him or her ready, in order to gain a place at the primary school.
- 2.48** More generally, local authorities **should** encourage schools and school admission authorities to take into account the totality of provision for three and four year olds in their area when making changes to arrangements for admission to full time education. Three year old children

**should not** be admitted to reception classes. If a school wishes to alter its age range to admit a younger age group, it will need to publish statutory proposals<sup>24</sup>.

### *Deferred entry to primary schools*

**2.49** Where the admission authority for a primary school offers places in reception classes to parents before their children are of compulsory school age, they should offer the parents the option of deferring their child's entry until later in the same school year. The effect is that the place is held for that child and is not available to be offered to another child. The parent would not however be able to defer entry beyond the beginning of the term after the child's fifth birthday, nor beyond the academic year for which the original application was accepted. This must be made clear in the admission arrangements for the school.

## **Additional guidelines for secondary schools**

### *Selection by ability*

**2.50** Section 37 of the Education and Inspections Act 2006, which reaffirms section 99 of the School Standards and Framework Act 1998, prohibits the introduction of any new selection by ability, other than for banding, see paragraphs 2.62 to 2.69, or for sixth forms.

### *Feeder primary schools*

**2.51** The use of named feeder schools allows local continuity where there are good curriculum and geographical links between phases in the local area. Admission authorities **must** ensure that such arrangements do not disadvantage children from more deprived areas, for example they **must not** include only feeder primaries that serve more advantaged groups and leave out schools that are a similar distance but serve less advantaged groups.

### *Grammar schools*

**2.52** Grammar schools are permitted to select their pupils on the basis of high academic ability, and to leave places unfilled if they have insufficient applicants of the required standard. Most assess ability by means of a test, but they may apply any fair and objective means of assessing ability they consider appropriate. Admission authorities **should** ensure that parents are aware that meeting the academic requirements for entry to a grammar school is not, in itself, a guarantee of a grammar school place.

**2.53** Methods of allocating places for oversubscribed grammar schools vary. Some admission authorities allocate available places in rank order of performance in the entrance test; others set a pass mark and then apply other oversubscription criteria to determine which of the candidates who have passed should be offered a place.

**2.54** Some admission authorities for grammar schools use a review system to consider whether children who have marginally failed to reach the required standard in the entrance test should

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24 [www.surestart.gov.uk/publications/](http://www.surestart.gov.uk/publications/)

be deemed as being of grammar school ability. This is not a statutory process, and does not replace a parent's formal right of appeal. In view of the need to co-ordinate allocation of places such reviews **must** be completed *before* places are allocated, so that children who are deemed as being of grammar school ability as a result of the review can be considered for allocation of places at the same time as others.

### *Partially selective schools*

- 2.55** Whereas grammar schools are wholly selective by academic ability, partially selective schools select just a proportion of their pupil intake by ability or by aptitude, and partial selection is effectively an oversubscription criterion. For the purposes of the legislation on selection, schools which call themselves "bilateral schools", because they admit some children on the basis of ability and operate a "grammar" stream alongside a "comprehensive" stream, are considered to be partially selective schools.
- 2.56** The School Standards and Framework Act 1998 and supporting regulations allow the following forms of partial selection:
- a) priority for up to 10% of pupils on the basis of aptitude<sup>25</sup> in certain subjects in limited circumstances and where the school has a specialism; however, new selection in design and technology and ICT is prohibited from entry in 2008/09;
  - b) partial selection by ability or priority by aptitude that existed at the beginning of the school year 1997/98 (pre-existing partial selection). This may continue, but only if both the proportion of children selected and the basis for selection has remained unchanged.

### *Partial selection by aptitude*

- 2.57** Selection by aptitude in sport and PE, the visual and performing arts and languages can play an important part in widening access to particular schools. Section 102 of the 1998 Act allows the admission authority for a school with a specialism in one or more prescribed subjects to give priority to up to 10% of pupils who can demonstrate an aptitude in the relevant subject. This flexibility is not restricted to schools in the specialist schools programme, but does require that the school has a particular expertise or facility.
- 2.58** An admission authority **must not** leave places unfilled if there are not enough children to fill the proportion of selective aptitude places; priority by aptitude is, in effect, an oversubscription criterion. Those places **must** be filled by children using the school's non-selective oversubscription criteria.

<sup>25</sup> Aptitude tests must test for the subject aptitude concerned and not test for ability or any other aptitude. See paragraphs A.70 – A. 72 for more information about aptitude.

**2.59** The relevant subjects<sup>26</sup> are:

- a. physical education or sport or one or more sports;
- b. the performing arts or one or more of those arts;
- c. the visual arts or one or more of those arts;
- d. modern foreign languages or any such language;
- e. design and technology and ICT (but from 2008/09 this cannot be introduced). Schools already selecting in those subjects at that time may continue to do so.

**2.60** A child with aptitude is one who is identified as being able to benefit from teaching in a specific subject, or who demonstrates a particular capacity to succeed in that subject. When considering whether the child has an aptitude for a subject the admission authority **must** determine whether a child demonstrates a particular capacity to learn or to develop skills in that subject, and that he or she can benefit from the particular expertise and facilities at that school.

**2.61** The 10% limit is an overall limit, regardless of the number of subjects in which the school specialises. This means that if a school specialises in, for example, the visual arts and sport, 5% of places might be allocated to children who demonstrate an aptitude in the visual arts and 5% to those who demonstrate an aptitude in sport. The proportion allocated in each subject is up to the admission authority to decide, but the total of places allocated on the grounds of aptitude **must not** amount to more than 10%<sup>27</sup>.

## Banding

**2.62** Banding, like other oversubscription criteria, only operates when the number of applications exceeds the number of places. Schools which use banding **must not** apply another test of ability once applicants are allocated to bands; they **must not** give priority within bands according to performance in the test. The admission authority **must** apply its other oversubscription criteria (such as random allocation) to each band to allocate places.

**2.63** Banding is permitted by section 101 of the School Standards and Framework Act 1998 (as amended by section 53 of the Education and Inspections Act 2006). The 2006 Act removed the need for approval of statutory proposals before the introduction of banding arrangements, and this can now be done as part of the annual admissions consultation process.

**2.64** Pupil ability banding is used by some admission authorities to ensure that their intake includes a proportionate spread of children of all abilities, and is, therefore, truly 'comprehensive'. Banding arrangements are good practice and compatible with the comprehensive principle, provided the arrangements are fair, objective and are not used as a means of admitting a disproportionate number of high ability children, which is unlawful.

26 The Education (Aptitude for Particular Subjects) Regulations 1999 as amended by the Education (Aptitude for Particular Subjects) (England) Regulations 2007 (SI 2007/TBA)

27 The Education (Proportion of Selective Admissions ) Regulations 1998 (SI 1998 / 2229)

- 2.65** Banding may be adopted by individual schools, two or more schools operating together, or across a local authority area. Banding arrangements which are already in place may continue unchanged but a school or groups of schools working together may now adopt admission arrangements that band applicants:
- a) to ensure an intake that represents the full range of ability of applicants for the school(s); or
  - b) to produce an intake that is representative of the range of ability of children in the local area; or
  - c) to produce an intake that is representative of the national ability range.
- 2.66** If places become vacant in some bands, for example, because parents accept offers of places at other schools, and no applicants in those bands remain without a place, they should be evenly filled by children falling into the next nearest bands (i.e. the bands on either side, or below or above, if the first child is from the band above then the next should be from the one below).

#### *Banding that existed prior to the 1998 Act*

- 2.67** Banding which it would not be possible to introduce now, for example, because the bands do not represent the full ability range and favour high ability pupils – but which was in place at the beginning of the 1997/98 school year and continuously since then on the same basis many continue. This is allowed as a form of pre-existing partial selection and any admission authorities with such arrangements are required to publish a notice explaining their arrangements in a local newspaper, giving parents the opportunity to object to the Adjudicator about the arrangements.

#### *Partial selection and banding*

- 2.68** Section 101(5) of the School Standards and Framework Act 1998 allows admission authorities which use banding also to admit up to 10% of children in total on the basis of aptitude for one or more of the prescribed subjects (see paragraph 2.59). So, for example, admission authorities will be able to admit the first 10% of children on the basis of aptitude and band the remaining 90%, or band children first and then admit 10% of each band on the basis of the relevant aptitude.

#### *Children with special educational needs*

- 2.69** Children with special educational needs can be included in banding arrangements, that is they can be allocated to the band appropriate to their ability, but schools **must not** refuse to admit a child with a statement that names the school.

## Requirements as to tests

### *Test arrangements for banding and partial selection by aptitude*

- 2.70** It is up to the admission authority to decide which tests should be used to determine the band in which to place an individual child, but they **must** ensure that any test arrangements (including the reasons for testing) are explained clearly to parents and that adequate notice is given on the location and length of tests. Where a number of schools in an area band, they **must** use a common test, such as the results of QCA Year 5 optional tests conducted in primary schools, to ensure that children are not required to take more than one test.
- 2.71** Whatever form of test is used to band, it should be designed to give an accurate reflection of the abilities of all children irrespective of sex, race or disability.
- 2.72** Tests, assessments or auditions used to identify whether a child has an aptitude for a particular subject **must** be objective, have a distinctive subject focus and **must not** discriminate against applicants on the grounds of gender, ethnic origin, disability or family background. And the assessment **must** test only for the subject aptitude concerned and not for ability or any other aptitude or for prior learning or experience in the subject. If there are two or more schools using tests in an area the same aptitude test **should** be used.

### *General provisions relating to all tests*

- 2.73** Tests **should** be at times likely to be convenient to parents with varying working patterns, and admission authorities **should not** automatically assume that weekends are convenient for all parents and families.
- 2.74** It is unlawful to charge a fee for, or in connection with, admission to any maintained school. This includes fees designed to cover the administrative costs of selection arrangements, even if these are refundable to successful candidates. Inviting parents to give voluntary financial support for the school, however conditional, before admission decisions are taken could be seen as a disguised fee and is unlawful.
- 2.75** Tests **must** also be accessible to children with special educational needs and disabilities, for example, it may be appropriate to make available test material in an adapted format, or allow additional time, or a scribe, depending on the individual needs of the child.
- 2.76** Grammar schools and other schools, or their admission authorities, which are permitted to use selection by ability or aptitude, **should** ensure that parents are informed of the outcome of entry tests before they make their applications for other schools.

# Applying Admission Arrangements

This chapter provides guidelines and where appropriate imposes mandatory requirements on:

- ensuring a straightforward and effective co-ordinated admission scheme that simplifies the process for parents;
- establishing arrangements for children who arrive in the area outside the normal admission round (3.35 to 3.36);
- establishing arrangements for the children of UK service personnel and other Crown servants, including diplomats (3.37 to 3.39);
- establishing arrangements for children arriving from overseas (3.40 to 3.51); and
- developing and agreeing protocols for dealing with children who are hard to place (3.70 to 3.77).

## 3.1 Admission arrangements should be clear, objective, fair and equitable for all children.

School admission arrangements that are clear and straightforward, fair and objective can make an important contribution to achieving the aims *Every Child Matters*<sup>28</sup> by ensuring that every child, including those who may need additional or different arrangements, can find a place at an appropriate school and have the support they need to enjoy their experience there and achieve their full potential. This chapter imposes mandatory requirements on and provides guidelines for admission authorities in ensuring that their admission arrangements are fair to all children and families, whatever their background or circumstances, and that are clear, straightforward and easy for parents to understand.

## 3.2 Parents must be able to make informed decisions when applying for a school place for their children. They should have all relevant information to hand before they apply and it is easier

28 The Courts have held that this means that the body under this duty must take the guidelines into account in their decision making process and if they decide to depart from it, they must give clear reasons for doing so.

for parents to understand local admissions systems that are clear, objective and fair. Above all, parents need to be able to understand whether they have a realistic chance of being offered a place for their child at any particular school. Detailed guidance on the statutory requirements on publishing information about school admission arrangements is provided at Appendix 4 of this Code.

- 3.3** Parents have a right to express a preference for a place in any maintained school, City Technology College or Academy, but the admissions system can appear very complex and admission authorities should make every effort to ensure that parents are able to understand the process and in particular how oversubscription criteria will be applied. It should be clear what arrangements will be made for those children who have particular needs, are hard to place or simply arrive in the area outside of the normal admission round.

### **Duties to increase opportunities for parental choice and respond to parental representations**

- 3.4** Local authorities have a statutory duty under section 14(3A) of the Education Act 1996 (as amended by the Education and Inspections Act 2006) to secure diversity and increase opportunities for parental choice – and are under a further duty to provide advice and assistance to parents in expressing a preference for a school for their child (section 86(1) of the 1998 Act, as amended by the Education and Inspections Act 2006). The duty to provide advice and assistance applies to parents of children of all ages. In order to support local authorities in discharging this duty in the case of transition from primary to secondary school, funding has been made available to enable them to establish a Choice Advice service. This service will target practical support and advice at those parents who are most likely to need extra help in navigating the admissions system. Choice Advice can be delivered flexibly using a range of models to best meet local circumstances but local authorities should be creative about using a range of media to reach these parents, for example, through targeted communications, admissions fairs, and group or one-to-one sessions as appropriate. Guidelines on the provision of Choice Advice are provided at Appendix 5.
- 3.5** Local authorities **must** consider parental representations about the provision of schools in their areas and respond setting out any action which the authority proposes to take, or where the authority believes no action is necessary, their reasons behind that opinion. Local authorities **must** determine how to carry out these new duties in the light of their local circumstances and in accordance with guidance issued by the Secretary of State under section 14A of the Education Act 1996.
- 3.6** Where parents are unsuccessful in applying for a school place for their child, they **must** be given reasons and informed in writing of their right to an independent appeal against the decision.

## Consultation

- 3.7** It is important that local authorities and admission authorities work together to ensure that school admission arrangements meet the needs of all parents and children and, therefore, consultation is an important part of the process in formulating and determining arrangements. All admission authorities are required by law<sup>29</sup> to consult each year on the admission arrangements for those schools for which they are responsible and, where appropriate, on their proposed co-ordinated admission schemes. The governing bodies of Academies are required by their funding agreements to consult about their admission arrangements. It is good practice for local authorities to co-ordinate consultation in their areas.
- 3.8** In limited circumstances, governing bodies may qualify for a 1 year suspension from the duty to consult. For an individual governing body to qualify for a 1 year suspension of the duty to consult:
- a) all admission authorities in the area **must** have consulted in the previous year (and the local authority **must** notify the Secretary of State of this);
  - b) the particular governing body must not be changing its admission arrangements; and
  - c) it should not have had an objection to its arrangements in the previous 5 years.
- 3.9** Consultation **should** cover the full details of proposed admission arrangements, which **must** be consistent with the co-ordinated scheme operating in the area and **should** include:
- a) admission numbers for any years to which it is intended to admit children;
  - b) application procedures;
  - c) the oversubscription criteria to be used in accordance with the provisions of Chapters 1 and 2 of this Code, and the order in which they will be applied to allocate places if the school is oversubscribed;
  - d) information about any tests for permitted selection by aptitude or ability;
  - e) any separate entry requirements and oversubscription criteria for Year 12 or nursery places, if applicable;
  - f) information about whether a waiting list will be maintained and for how long after 1 September; and
  - g) information about how late applications can be made and will be handled, see paragraph 3.35.
- 3.10** More detailed guidelines on the statutory requirements relating to consultation are included in Appendix 4.

<sup>29</sup> School Standards and Framework Act 1998, section 89(2)

## Considering applications for school places

- 3.11** All admission authorities **must** consider and decide on applications for school places in accordance with their published arrangements. If a school is undersubscribed then all applications **must** be accepted.
- 3.12** If a school is oversubscribed then the admission authority **must** consider all applicants against its published oversubscription criteria, but it must not normally admit above the admission number in the normal round. However, as it is very important that children who may be hard to place or who arrive in the area outside of the normal admission round are not disadvantaged, there are exceptions to this and these are described in this chapter.

## Co-ordinated admission schemes

- 3.13** To simplify the admission process for parents and reduce the likelihood of a child being left without a school place, all local authorities are required by regulations made under section 89B of the School Standards and Framework Act 1998 to formulate for each school year a scheme for co-ordinating admission arrangements for all maintained schools, except special schools and nursery schools, but including boarding schools, within their area.
- 3.14** Co-ordinated schemes are intended to establish mechanisms that ensure that, as far as is practical, every child living in the local authority area who has applied in the normal admissions round receives an offer of one, and only one, school place on the same day. For secondary schools this is 1 March. Co-ordinated schemes do not affect the rights and duties of the governing bodies of voluntary aided and foundation schools to set and apply their own admission arrangements and oversubscription criteria. While all admission arrangements in an area should be compatible with the co-ordinated scheme, admission authorities do not have to have the same or similar oversubscription criteria, but they **must** ensure that their admission arrangements do not undermine the scheme. Full details of how the co-ordinated scheme works should be included in the local authority's composite prospectus, see Appendix 4.
- 3.15** Academies are required to participate in co-ordinated schemes by their funding agreements and local authorities **must** consult them, as well as other admission authorities, in order to agree the scheme. Local authorities **should** also invite City Technology Colleges to participate in the scheme.
- 3.16** If a local authority does not notify the Secretary of State that it has adopted a co-ordinated scheme by 15 April each year he may impose one<sup>30</sup>.

## *Complying with parental preference*

- 3.17** The statutory duty under section 86 of the School Standards and Framework Act 1998 to comply with parental preferences is not affected by co-ordinated admission arrangements, except where more than one place could be offered. Where this is the case the duty to

30 Education (Co-ordination of Admission Arrangements) (Secondary Schools) (England) Regulations 2002 and Education (Co-ordination of Admission Arrangements) ((Primary Schools) (England) Regulations 2002.

comply applies to the single offer that should be made in accordance with the arrangements in the co-ordinated scheme, and not to the other possible offers. Schools **must not** inform parents of possible offers – only the local authority can convey the single offer.

- 3.18** Co-ordinated schemes **must** state the mechanism to be used to decide which place will be offered in the event that offers could be made at two or more schools. Schemes **should** stipulate that wherever possible parents will receive the highest available preference. If none of the parent's preferences is available the scheme **must** say clearly how a place at another school will be allocated. Another school **must** be allocated unless there are insufficient places remaining in the local authority; in this case, all remaining places **must** be allocated so that a minimum number of children are without the offer of a school place. Schemes should also set out how late applications, and arrangements for admissions outside the normal admission round will be handled.
- 3.19** More detailed guidelines on the statutory basis of co-ordinated admission schemes including the key obligations placed on local authorities by the regulations are set out in Appendix 3 together with a timetable for a model co-ordinated scheme for secondary school admissions.
- 3.20** Once parents have made their preferences, local authorities must not allow them to be changed without a genuine reason for doing so, for example, if the families have recently moved address.

### Achieving good practice in co-ordinated schemes

#### *Common application forms*

- 3.21** Local authorities **must** invite applications on a common application form which the local authorities should provide and make available to all parents resident in its area; and be available on the authority's web-site.
- 3.22** The common application form **must** comply with the mandatory provisions and requirements of this Code and enable parents to:
- a) express their preferences, i.e. name the schools they are applying to, including outside the local authority area;
  - b) give the reasons for applying to their preferred schools;
  - c) rank those preferences. All preferences **must** be ranked, even if admission authorities in the area do not take account of the order of preferences when applying their individual oversubscription criteria.
- 3.23** The local authority should inform any other admission authority, Academy or City Technology College (or, in the case of applications for secondary schools outside the local authority's area, the other local authority concerned) of any application made on the common application form for their school, and pass on any relevant supporting information, such as proof of practising membership of a church, see paragraph 2.20. The parents' order of preference **should** only be shared with those who need to know it, such as another local authority which uses rank order in its co-ordinated scheme.

### *Supplementary application forms*

- 3.24** Supplementary application forms **must** only be used in the limited circumstances permitted by this Code (paragraphs 1.26 to 1.37). Where a supplementary form is used it **must not** replace the common application form. These supplementary forms **should** be included in the statutory consultation on admission arrangements and **must** only collect information that is not covered in the common application form and that is needed to apply the school's published oversubscription criteria.
- 3.25** Admission authorities **must** ensure that a common application form has been completed for any supplementary forms they receive. If a common application form has been completed, but not a supplementary form, the preference is still valid and **must** be considered. If it is not possible to consider the preference fully without the supplementary information, the applicant should be ranked lower than those applicants who met the criteria fully. However, admission authorities requiring supplementary forms should follow up any that have not been received. The local authority and admission authorities **should** share information on the common application forms and supplementary forms each has received in order to facilitate this process.

### *Consideration of preferences*

- 3.26** Each preference **must** be considered by the admission authority for the school concerned unless the local authority operates a 'first preference first' co-ordinated scheme as described in paragraph 3.27 below.
- 3.27** In a 'first preference first' co-ordinated scheme local authorities initially send out all first preference applications. Any schools that still have places available after consideration of first preference applications are then sent details of second preference applicants without places and then lower ranked preferences until all places are filled.
- 3.28** Governing bodies that are the admission authority for a school **should**, by the date specified in their local authority's scheme, provide the local authority with a list of all children who applied for places at their school. These **should** show each child ranked in their order of priority under the admission arrangements, showing which criteria apply to which child. However, where applications greatly exceed the admission number, it may not be necessary to rank individually the children in the lowest priority group(s) according to the oversubscription criteria, because there is no likelihood of a place becoming available for them even if quite a few higher-priority applicants leave the rankings as potential multiple offers are eliminated.

### *'First preference first' co-ordinated schemes*

- 3.29** 'First preference first' co-ordination schemes adopted in accordance with paragraph 2.6 of this Code are acceptable providing that all admission authorities agree to give priority to the first preference made by parents and the scheme provides for them to consider applications in rank order (i.e. first preferences, then second preferences if places are still available, and so on).

- 3.30** However, local authorities and admission authorities **must not** establish ‘first preference first’ co-ordinated schemes in an area where there is an element of selection by ability or aptitude (see paragraph 2.6). If such a scheme is adopted, schools which are their own admission authority **must not** set aside first preference applications in favour of second preference applicants who better meet their oversubscription criteria.

### *Equal preference co-ordinated schemes*

- 3.31** In an “equal preference” or “blind preference” scheme, admission authorities consider all applications against published admission criteria, but without any reference to how the school applied for has been ranked by parents. If a child can be offered a place at more than one school the local authority then refers to the parent’s original ranking, and offers a place at the one of those available that they ranked highest.
- 3.32** Equal preference schemes are good practice as they usually result in more parents getting one of the schools they want. However, a school or schools within an agreed equal preference scheme **must not** give priority to those parents who make the school their first preference.

### **Ensuring that all children are treated fairly in school admissions**

- 3.33** So far this chapter has stressed the importance of having clear co-ordinated admission schemes which are straightforward for parents and ensure, as far as practical, that all children receive a place at a school, and that these arrangements **must** contain robust and effective arrangements to deal with children who arrive outside the normal round, who have special educational needs, or are hard to place.
- 3.34** Paragraphs 3.35 to 3.77 offer guidelines for admission authorities on establishing procedures that take account of the needs of families and children who may need additional or different arrangements according to their circumstances.

### **Children and families making late applications or arriving in an area outside the normal admission round**

#### *Late applications*

- 3.35** Local authorities and other admission authorities need to agree how they will handle late applications in their co-ordinated admission schemes. They **should** accept applications which are received late for a good reason, for example, when a single parent has been ill for some time, or a family has just moved into the area, or is returning from abroad – if applications are received before offers of places are made. In the co-ordinating process local authorities and governing bodies **should** accept as on time applications from parents who meet their home local authority’s closing date even where this is later than their own. Arrangements **should** also be in place for children of Gypsy, Roma and Traveller pupils to be quickly registered at a school whether residing permanently or temporarily in the area. Children with statements of

special educational needs that name a specific school **must** be admitted regardless of when their application was received (see paragraph 3.52) and children with special educational needs but without statements or with disabilities **must** be treated as fairly as other children.

**3.36** Admission authorities **must not** adopt procedures or criteria that disadvantage children who arrive in their area outside the normal admission round. This section includes guidelines on dealing with the children of UK service personnel and other Crown servants and children from overseas.

### **Children of UK Service personnel and other Crown servants (including Diplomats)**

**3.37** Families of UK Service personnel and other Crown servants are subject to frequent movement within the UK and from abroad, often at relatively short notice. School places should be allocated to children and their families in advance of the approaching school year if accompanied by an official MOD, FCO or GCHQ letter declaring a return date.

**3.38** Local authorities and admission authorities **must:**

- a) ensure that the needs of the children of these families are taken into account;
- b) allocate a school place in advance, if the applicant would meet the criteria when they return to the UK;
- c) invite a Service representative or representatives of other significant concentrations of Crown servants (e.g. GCHQ personnel) to join the Admission Forum; and
- d) accept a Unit postal address for applications from service personnel in the absence of a new home postal address.

**3.39** Admission authorities **must not:**

- a) reserve places for blocks of these children; or
- b) refuse a place to such a child because the family do not currently live in the local authority area.

### **Children from overseas**

**3.40** This section provides guidelines for admission authorities on the admission of children from overseas, including children whose parents still live abroad and those living here with their parents.

#### *Accompanied children*

**3.41** Parents who are living in the UK may express a preference for their children to attend a maintained school under the normal admission arrangements described in this Code. This includes the children of asylum seekers; parents who have limited leave to enter or remain in the UK; and teachers coming to the UK with their children on a teacher exchange scheme (see paragraphs 3.47–3.48).

### *British citizens and lone children with right of abode*

**3.42** There are no restrictions on entry to the UK for children (whether or not accompanied by their parents) who hold full British Citizen passports (but not British Dependent Territories or British Overseas passports) or children from countries whose passports have been endorsed to show that they have the right of abode in this country. Such children will be permitted to enter this country irrespective of their purpose in doing so and are entitled to apply for a place at a maintained school.

### *EEA nationals*

**3.43** Under European Community law, and where the provisions of the Immigration (European Economic Area) Regulations 2000 are satisfied, nationals of the European Economic Area (which comprises the 25 member states of the European Union together with Iceland, Norway and Liechtenstein) and their children of any age, who come to the UK for the purposes of work or for certain other economic purposes are entitled to remain in the UK indefinitely. They enjoy the same rights to education as British citizens. This applies equally to lone EEA national children who come to the UK as students, who are not accompanied by their parents. Non-EEA children of EEA parents who are not accompanied by their parents do not have this right.

### *Non-EEA nationals*

**3.44** Non-EEA children who apply for leave to enter or remain in the UK to study on their own will only be granted leave to enter or remain if the child satisfies the requirements specified in paragraph 57 of the Immigration Rules<sup>31</sup>. If the child is less than 16 years old, he or she must produce proof of acceptance for a course of study at an independent fee-paying school outside the maintained sector or a bona fide private educational institution. The child will not be allowed to enter to attend a maintained school, except as part of an exchange programme. If such a child is found to attend a maintained school they will infringe the conditions of their leave to enter and action could be taken against them by the Immigration and Nationality Directorate of the Home Office.

**3.45** However, whilst non-EEA overseas students are not, in general, admitted to this country to attend maintained schools, these students can be admitted to attend a maintained school under the auspices of a student exchange scheme, or if they are participants in the EU Lifelong Learning Programme. A student participating in such schemes will not be permitted to stay in this country for more than one year. Such schemes **must** include a genuine exchange of students between partner schools at the same time or a later date and **should not** involve fees, if they are not part of the EU programme. Where a child on roll at a UK maintained school participates in a student exchange scheme that child **should** remain on roll for the duration of the exchange and be treated as on an “approved educational activity”.

31 The Immigration Rules can be viewed on [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk)

### *Other applicants*

- 3.46** Holders of passports describing them as British Dependent Territories Citizens or British Overseas Citizens have no automatic right of abode in the UK, nor do other non-EEA nationals. They and their dependent children are in the same position as those described in paragraphs 3.44 and 3.45.

### *Teacher exchange schemes*

- 3.47** Where a child goes abroad to accompany his or her parent on a teacher exchange scheme, the school **should** ensure that the child is able to take up his or her place on return. The child should remain on roll and time away may be treated as an “approved educational activity”.
- 3.48** The local authority has a duty to find a place for a child who will become resident in their area as a result of his or her parent’s participation in a teacher exchange scheme. Local authorities **should** plan in advance for the needs of these children to ensure that they can take up a suitable school place for the duration of the exchange, wherever this is practicable.

### *Maintained boarding schools*

- 3.49** The same immigration and school admission rules apply as regards admission to a maintained boarding school. Such schools may charge boarding fees but they cannot charge tuition fees. Children without the right of abode will not be allowed to enter the country to attend maintained boarding schools (see paragraph 3.44).

### *Transfers from the independent sector*

- 3.50** As noted above, lone children may be admitted to the UK if they can show that they have a place at an independent, fee-paying school. Where a child has been given leave to enter on that basis, the Home Office will not normally grant an extension of stay, or amend the child’s conditions of entry, if the child transfers to a community, voluntary or foundation school. Local authorities and governing bodies may wish to bear this in mind when considering a request for a transfer in respect of a child from overseas who has been previously attending a fee-paying school.

### *Applications made in the UK for children living abroad*

- 3.51** Admission authorities may receive an application from parents overseas for a school place for a child who is not yet resident in the UK. The admission authority will not necessarily know when the child is expected to be resident in the UK, or whether the parents’ application for leave to enter the UK has been or will be successful, or if it has been, on what terms entry has been granted. These are all considerations that an admission authority may reasonably wish to take into account when considering the parents’ application.

## Arrangements for vulnerable children, those with special educational needs or who are hard to place in a school

### *Children with special educational needs with statements*

- 3.52** In general, the admission of children with statements of special educational needs is covered by sections 312 to 349 of, and Schedules 26 and 27 to, the Education Act 1996. Guidance on the admission of children with statements is provided in the Special Educational Needs Code of Practice. Consequently the admissions provisions in the 1998 Act do not generally apply to children with statements of special educational needs. Section 324 of the Education Act 1996 requires a maintained school that is named in a statement of special educational needs to admit the child. Schools, including Academies, cannot refuse to admit even if by doing so they would exceed their admission number.
- 3.53** If a local authority has provided a statement for a child with special educational needs they are responsible for ensuring that the special educational provision is made for the child. The local authority may identify a particular school which it considers to be suitable for the child's needs, and name the school in the statement. If the parent of a child with a statement of special educational needs wishes to appeal against the school named in the statement, or the fact that no school has been named, the appeal is to the Special Educational Needs and Disability Tribunal, not to the admission appeal panel.

### *Children with special educational needs without statements*

- 3.54** Children with special educational needs but without statements **must** be treated as fairly as other applicants. Admission authorities **must not** refuse to admit a child because they consider themselves unable to cater for his or her special educational needs. Admission authorities **must** consider applications from children who have special educational needs but no statement, on the basis of the school's published admission criteria. They **must not** refuse to admit a child on the grounds that he or she does not have a statement of special educational needs, or is currently being assessed for one. Where admission authorities give some priority to children with special educational needs but without a statement, their published admission arrangements **should** explain what evidence of special educational needs is required to qualify under the criterion.

### *Children with disabilities*

- 3.55** Children have rights under the Disability Discrimination Act 1995. A child has a disability if he or she has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities. This would include those with physical disabilities and those with sensory impairments (such as those affecting sight or hearing), and learning difficulties.

- 3.56** Under the Disability Discrimination Act 1995, schools **must not** treat disabled children less favourably than other children and **must** make reasonable adjustments to ensure that children with disabilities are not placed at a substantial disadvantage. The duty is anticipatory and applies in respect of potential pupils so schools **must** think ahead, anticipate barriers to disabled pupils and remove or minimise them.
- 3.57** Under the Disability Discrimination Act 1995 schools **must** also publish accessibility plans showing how they are increasing access for disabled pupils to the premises, the curriculum and written information.
- 3.58** Schools **should** provide information to parents and prospective parents about the reasonable adjustments they have in place for disabled pupils and about the accessibility of the school to disabled pupils to show they welcome applications from parents of disabled children.
- 3.59** It is vital that when a school knows that a pupil with disabilities is to be admitted, they make every effort to find out about their needs and disabilities so that they can plan the provision to be made, including any reasonable adjustments that may need to be made under the Disability Discrimination Act. A proactive approach will help schools in promoting equality of opportunity for all their pupils.
- 3.60** The Disability Rights Commission Code of Practice provides practical guidance on the duties owed to disabled children. All local authorities and schools have been sent a copy and it can also be accessed on the Commission's website at [www.drc.org](http://www.drc.org).
- 3.61** Local authorities are required to monitor the admission of children with special educational needs<sup>32</sup>, both with and without statements, across all maintained schools in their areas and should do this for disabled pupils to provide a basis for local discussions designed to ensure the equal treatment of such children.

#### *Looked after children (Children in Public Care)*

- 3.62** Regulations<sup>33</sup> made under the School Standards and Framework Act 1998 require admission authorities to give children in public care highest priority in their admission arrangements.

#### *Power to direct admission*

- 3.63** Local authorities may direct an admission authority for any maintained school for which it is not the admission authority to admit a child looked after by them to the school best suited to his or her needs<sup>34</sup>. Before giving a direction the local authority **must** consult the admission authority for the school they propose to specify in the direction. The admission authority then has seven days to inform the local authority if it is willing to admit the child without being directed to do so.

32 Special Educational Needs (Provision of Information by Local Education Authorities)(England)(Regulations) 2001.

33 The Education (Admission of Looked After Children) (England) Regulations 2005.

34 Section 96 of the School Standards and Framework Act 1998 as amended by schedule 4 of the Education Act 2002.

- 3.64** If, following the consultation, the local authority decides to issue the direction it **must** first inform the admission authority, the governing body (if it is not the admission authority), the head teacher and, if the school is in another local authority area, the maintaining local authority. If it considers that admission would seriously prejudice the provision of efficient education or efficient use of resources, the admission authority (or governing body of a voluntary controlled or community school, in the case of a twice excluded looked after child) then has seven days in which to refer the case to the Adjudicator. The Adjudicator may either uphold the direction, or, if the local authority that looks after the child agrees, determine that another school in England **must** admit the child. The Adjudicator's decision is binding. The Adjudicator may not direct an alternative school to admit a child when the child has already been excluded from that school or when admission would seriously prejudice the provision of efficient education or efficient use of resources.
- 3.65** Local authorities are not able to direct Academies to admit looked after children. Where local authorities believe that the Academy will best meet the needs of the child, they will be able to ask them to admit that child even when the Academy is full. A consensus should be reached locally in the large majority of cases, but should the Academy disagree with the local authority's reasoning and refuse to admit the child, the case can be referred to the Secretary of State. In such cases the Secretary of State may direct an Academy to admit a looked after child, and will seek advice from the Adjudicator in reaching his decision. In providing such advice the Adjudicator will consider the case in the same way as for maintained schools<sup>35</sup>.

### *Twice-excluded pupils*

- 3.66** Where a child has been permanently excluded from two or more schools, its parents can still express a preference for a school place, but the requirement to comply with that preference is removed for a period of two years from the date on which the latest exclusion took place<sup>36</sup>. This does not apply to: children with statements of special educational needs; children who were below compulsory school age when excluded; children who were reinstated following a permanent exclusion; and children who would have been reinstated following a permanent exclusion had it been practicable to do so. A permanent exclusion is regarded as taking effect from the first school day the head teacher has told the child not to attend school. The admission authority for the school may refuse admission, or in the case of a community or voluntary controlled school, the governing body may appeal against the decision of the local authority as the admission authority to admit the child (see the School Admission Appeals Code for information on these appeals). Local authorities are still responsible for providing suitable full-time education for these children and may need to use their powers of direction or provide a place in a Pupil Referral Unit.

35 Section 25 (3A) of the 1998 Act (as amended by the Education and Inspections Act 2006).

36 Section 98(7) of the School Standards and Framework Act 1998

### *Children with challenging behaviour*

- 3.67** Admission authorities **should not** refuse to admit a child on the basis of their behaviour elsewhere, unless paragraph 3.66 applies. Schools also **should not** refuse to admit a child thought to be potentially disruptive, or to exhibit challenging behaviour, on the grounds that the child ought first to be assessed for special educational needs. The law disapples the normal principle that parents' preferences should be complied with, only in the 'twice excluded' situation described in paragraph 3.66. If, following admission, a child is found to be seriously and persistently disruptive, then the school may consider disciplinary action, including temporary and, ultimately, permanent exclusion procedures. A child with challenging behaviour may also be disabled as defined in the Disability Discrimination Act 1995 and require reasonable adjustments to be made for them in the school or require particular support for any special educational needs.
- 3.68** Some undersubscribed schools may find that they have been required to admit an undue proportion of children with a recent history of challenging behaviour, which may have led to a permanent exclusion from another school. Admission Forums **should** discuss how local admission arrangements might allow all schools to admit a more even share of such children, including children excluded from other schools, and to agree protocols for the admission of hard to place children. Admission authorities **must** have regard to their Admission Forum's advice.
- 3.69** Exceptionally, outside the normal year of entry, admission authorities for certain schools, or Academies, may decide to refuse to admit a child with challenging behaviour where there are places available, on the grounds that admission would prejudice the provision of efficient education or the efficient use of resources. This will normally only be appropriate where a school has a particularly high concentration of children with challenging behaviour or previously excluded children, or the child is particularly challenging, and one or more of the following exceptional circumstances exist namely that the school:
- a) required special measures or has recently come out of them (within the last two years);
  - b) is subject to a formal warning notice;
  - c) is a Fresh Start school or Academy open for less than two years; or
  - d) is a secondary school, less than 25% of whose pupils are achieving 5 or more GCSEs at grades A\*–C.

### **Hard to Place Children**

- 3.70** All admission authorities and Admission Forums **should** have protocols in place for admitting children they consider hard to place. All need to play their part in ensuring that these children, especially the most vulnerable, are admitted to a suitable school as quickly as possible. This includes admitting children to schools that are already full.

- 3.71** There is a balance to be struck between finding a place quickly, in an undersubscribed school or one facing challenging circumstances, and finding a school place that is appropriate for the child. The protocol **should** therefore ensure that no school, including those with places available, is asked to take an excessive or unreasonable number of children who have been excluded from other schools. All schools, local authorities and Admission Forums **should** follow the guidance on protocols issued in November 2004, which can be found at [www.dfes.gov.uk/sacode](http://www.dfes.gov.uk/sacode).
- 3.72** Protocols may include all children who arrive outside the normal admissions round who may have difficulty securing a place. Children with special educational needs but without statements should be treated in the same way as all applicants, but protocols should include arrangements for ensuring that, where there is prior knowledge of a need for particular SEN support, such children are placed quickly. Children with statements of SEN that name a school and who arrive outside the normal admission round **must** be admitted to the school even if the school is full. Similarly, where a local authority as corporate parent directs an admission authority to admit a looked after child the child **must** be admitted to the school at any time during the year, even if the school is full, unless the Adjudicator upholds an appeal from the admission authority.
- 3.73** Once these protocols have been agreed Admission Forums are required to monitor how well they are working<sup>37</sup>, how quickly the children are found places, and the contribution every school in the area is making.
- 3.74** If schools do not comply with a locally agreed protocol, the local authority may direct a foundation or voluntary aided school under section 96 of the 1998 Act or refer the matter to the Secretary of State under section 496 of the Education Act 1996.
- 3.75** Protocols for sharing hard to place children are also key to the development of effective school partnerships to improve behaviour and tackle persistent truancy. All secondary schools **should** be in such partnerships by September 2007 and, along with devolved funding and responsibility for alternative provision, an agreed protocol encourages schools to work together to cope with challenging behaviour and develop preventative strategies which reduce the need for exclusions.

#### *Local authority powers of direction*

- 3.76** Local authorities have important powers to direct the governing body of a school that is the admission authority to admit a child, where a child has been refused admission to, or permanently excluded<sup>38</sup> from, every school which is both a reasonable distance from his home and provides suitable education. This is provided that the school which the local authority directs is a reasonable distance from the child's home and not one from which he/she has been permanently excluded (see section 96 of the 1998 Act, as amended by

37 Education (Admissions Forums)(England) Regulations 2002

38 Section 96 of the School Standards and Framework Act 1998

Schedule 4 of the Education Act 2002). The governing body of the school whom the local authority intend to direct may, within 15 days of receiving notice to that effect from the local authority, refer the matter to the Schools Adjudicator for determination. A local authority may not make a direction under that section where the admission of the child concerned would result in class size-related 'prejudice'.

- 3.77** If the governing body of a community or voluntary controlled school refuses to comply with the decision of the local authority (as the admission authority for the school) to admit a child, the local authority can refer the matter to the Secretary of State to make a direction under section 496 of the Education Act 1996. Governing bodies are required by section 88(1A) of the 1998 Act to implement any decision of the local authority relating to admission of pupils.

## Other information relevant to school admission arrangements

### *Infant classes*

- 3.78** Infant classes<sup>39</sup>, where the majority of children will reach the age of 5, 6, or 7 during the school year may not contain more than 30 pupils<sup>40</sup> with a single school teacher<sup>41</sup>. While admission can be refused on normal prejudice grounds once an admission number of lower than 30 (or multiples of 30) has been reached, admissions **must** be refused on "infant class-size prejudice" grounds where the published admission number allows for classes of 30, and the school would have to take 'qualifying' measures to keep to the statutory class size limit if more children were admitted e.g. employ another teacher.
- 3.79** The class size legislation makes allowance for the entry of an additional child in very limited circumstances where not to admit the child would be prejudicial to his or her interests ("excepted pupils"). However, every effort **must** be made to keep over large classes to a minimum. These circumstances are where:
- a child moves into an area outside the normal admissions round and no other school would provide suitable education within a reasonable distance of their home. Before admitting children under this exception, governing bodies **must** consult their local authority who are in a position to advise whether these conditions apply;
  - the school is named on a child's statement of special educational needs, when that child has either been assessed or moved into the area outside the normal admissions round;
  - a looked after child is admitted outside the normal admissions round as a result of a direction by a local authority acting as corporate parent;
  - a child wins an appeal having initially been refused entry as a result of an error in implementing the school's admission arrangements, or because the decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case;

39 Further information can be found at [www.teachernet.gov.uk/educationoverview/briefing/currentstrategy/infantclasssizes/](http://www.teachernet.gov.uk/educationoverview/briefing/currentstrategy/infantclasssizes/)

40 The Education (Infant Class Sizes) (England) Regulations 1998 (SI 1998 /1973)

41 A person who is qualified under the Education (School Teachers' Qualifications) (England) Regulations 2003

e) a child normally educated in a special school or special educational needs unit attached to a mainstream school attends an infant class in the mainstream school, where this has been deemed as beneficial to the child. This also applies to those children registered both at special and mainstream schools.

**3.80** In the first four of these cases, the class may only be above 30 for that school year or the remainder of that school year. Qualifying measures must be taken for the following year, or the class will be unlawfully large.

#### *Applications for Year 12 entry and transfer from Year 11*

**3.81** Where the admission authority intends to admit children from outside the school to Year 12 (the Sixth Form), the admission arrangements **should** indicate an admission number for those being admitted to the school for the first time, together with details of any entry requirements (such as minimum entry qualifications) and oversubscription criteria. As with admissions at compulsory school age, parental preference **must** be met (where possible) and the admission authority **must** act in accordance with this Code and take account of the advice of the admission forum. Applicants refused admission are entitled to appeal to an independent appeal panel.

**3.82** It is not necessary for pupils already in the school to apply formally for places in Year 12, but they **must** be informed of the objective criteria to be met, which can include a level of attainment at GCSE and should be the same as the criteria for external applicants. Children **must not** be interviewed for entry to Year 12, and entry **must not** be dependent on their attendance or behaviour record. Children refused a place in Year 12 in their own school are entitled to an appeal before an independent appeal panel.

#### *Admission outside the normal age group*

**3.83** Although most children will be admitted to a school with their own age group, from time to time parents seek places outside their normal age group for gifted and talented children, or those who have experienced problems or missed part of a year, often due to ill health. While it would not normally be appropriate for a child to be placed in a year group that is not concurrent with their chronological age, admission authorities **should** consider these requests carefully and make decisions on the basis of the circumstances of each case. If it is decided that there are grounds to consider an 'out of year' application, parents refused an application for a place at a school have a statutory right of appeal. However, there is no right of appeal if a place has been offered but not in the desired year group.

#### *Admission to new schools*

**3.84** The New School (Admissions) (England) Regulations 2003 ('the 2003 Regulations') outline who has the responsibility for setting the admission arrangements for new schools for the first two years in which the school will admit children, and the process and timescale for setting those

arrangements. The process for consulting on, and determining, the admission arrangements for the third school year will be that set out at sections in 89 and 90 of the 1998 Act, the 2003 Regulations made under these sections and in this Code.

- 3.85** The 2003 regulations outline who has responsibility for settling admission arrangements for new community, foundation and voluntary schools for the first two years in which children are or it is intended children will be admitted to the school. The 2003 regulations provide that the local authority sets the admission arrangements of new community and voluntary controlled schools, unless it delegates authority for this to the school's temporary governing body, and that the admission arrangements of new foundation or voluntary aided schools are set by the temporary governing body or, where that has not been constituted, the promoters of the school.
- 3.86** The admission authority for a new school **must** consult on and determine the admission arrangements of the new school not less than 6 months before the school opening date. The consultation **must** be carried out in accordance with the 2003 regulations<sup>42</sup>, except where a new school is established in connection with proposals involving the discontinuance of another school maintained by the local authority, and the admission authority determines that the initial admission arrangements will be the same as those of the school which has been discontinued. In this case, the admission authority is not required to consult. The consultation **should** be completed as part of the consultation on the statutory proposals for the establishment of the new school, so that consultees can consider the proposals for the new school in conjunction with its proposed admission arrangements. Once the admission arrangements have been determined the admission authority **must** notify them to the bodies that were consulted; any of those bodies will be able to refer an objection to the Adjudicator about those arrangements within 6 weeks of being notified.

### *Waiting lists*

- 3.87** Admission authorities are not required to maintain waiting lists for oversubscribed schools but where they intend to do so, it **must** be included in the school's published admission arrangements, making clear that children will be ranked in the same order as the published oversubscription criteria. Waiting lists **must** be clear, fair and objective and **must not** give priority to children based on the date the application was added to a list. For example, if a child moves to an area outside the normal admissions round and has higher priority under the oversubscription criteria, they must be ranked above those with lower priority already on the list. Admission authorities **should** notify parents of where their child has been placed on a waiting list but **must not** give any indication of the likelihood of being offered a place.
- 3.88** Where school places become vacant before admission appeals are heard, admission authorities **must** fill these vacancies from any waiting list. Placing a child's name on a waiting list does not affect the parent's right of appeal against an unsuccessful application.

42 The New School (Admissions) (England) Regulations 2003 (SI 2003 1041)

### *Admission numbers*

- 3.89** A school **must** have an admission number for each ‘relevant age group’. A relevant age group is defined in law as “an age group in which pupils are or will normally be admitted to the school in question”. It may be necessary for some schools to have more than one admission number. Where a secondary school operates a sixth form and admits pupils from other schools at age 16, for instance, an admission number will be required for year 12 as well as for the main year or years in which children join the lower school. Admission numbers **must** refer in each case to pupils to be admitted to the school for the first time. They **must not** include pupils transferring from earlier age groups, except where in the case of a primary school making nursery provision, the admission number will be the number of all children to be admitted to the reception year, including children who may have attended the nursery (whose parents must make separate applications for places in reception). Maintained boarding schools may set separate admission numbers for day pupils and boarding pupils, for each year that they intend to admit pupils.
- 3.90** Admission authorities **should** set admission numbers with regard to the capacity assessment for the school. Admission authorities may fix an admission number for a relevant age group that is lower than the capacity assessment, but if they do so they **must** publish this information for parents who may object to the admission number. They can also set a higher admission number than that indicated by the capacity assessment. In relation to admission numbers applicable to infant classes, the admission number **must** be compatible with the duty to comply with the infant class size limit. Admission authorities are required to consult before setting or amending a published admission number. Once an admission number has been set, the admission authority **must** respect that number. Pupils **should not** be admitted above the published number unless exceptional circumstances apply or as part of a hard to place protocol or in accordance with paragraph 2.7 of this Code.
- 3.91** Section 98 of the 1998 Act clarifies that children with statements of special educational needs admitted during a normal admission round to a relevant age group have to be taken into account when determining and applying a school’s admission number. Accordingly children with statements already admitted to a school **must** be counted towards the admission number when considering whether there is still a place available for another child without a statement.
- 3.92** In a normal year of entry, a child may not be refused admission to a school on the grounds of prejudice to efficient education or the efficient use of resources except where the number of applications for admission exceeds the admission number, see section 86(5) of the 1998 Act.

### *Withdrawing offers of places*

- 3.93** Once an admission authority has made an offer of a school place, it may only lawfully withdraw that offer in very limited circumstances. These may include when the admission authority offered the place on the basis of a fraudulent or intentionally misleading application

from a parent (for example, a false claim to residence in a catchment area) which effectively denied a place to a child with a stronger claim or where a place was offered by the local authority, not the admission authority, in error. If a parent has not responded to the offer of a place within a reasonable time (such as 21 days), and the admission authority is considering withdrawing a place, they **should** remind the parent of the need to respond and point out that the place may be withdrawn if they do not.

- 3.94** A school place **must not** be withdrawn once a child has started at the school, except where that place was fraudulently obtained. In deciding whether to withdraw the place, the length of time that the child had been at the school **must** be taken into account. Where a place is withdrawn on the basis of misleading information, the application **must** be considered afresh, and a right of appeal offered if a place is refused.
- 3.95** A decision to refuse admission **must not** be made by one individual in a school. Where the school is its own admission authority the whole governing body, or the admissions committee established by the governing body, should make such decisions<sup>43</sup>. Head teachers or other school officials **should not** give parents an expectation that their application will be successful, or tell them that their child has been given a place at the school, before an offer of a place has been made formally. Case law has established that where there is evidence that parents have been told by a head teacher, or other school official, that their child will be given a place at a school, they can reasonably expect that the person making the offer had authority to do so. In these circumstances the admission authority **should** normally honour the offer, even though in fact it may not have authorised that person to make it.

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43 The School Governance (Procedures) (England) Regulations 2003 (SI 2003/1377) as amended

# Ensuring a Fair Admissions System

This chapter provides guidelines on the role, responsibilities and powers of:

- admission authorities;
- local authorities;
- Admission Forums;
- Parents and Members of Parliament; and
- the Schools Adjudicator

in monitoring compliance with this Code and ensuring a fair admissions system.

- 4.1** We have, so far, described the importance of ensuring clear, objective and fair admission arrangements that are easily understood and that contain robust arrangements for ensuring that all children have an equal opportunity to achieve their full potential and to enjoy their time at school. If we are to achieve these aims it is important that the mandatory requirements imposed by the law and by this Code are complied with and the guidelines it provides are followed. **Ensuring a fair admission system is the responsibility of all those who have a duty to act in accordance with the Code.**
- 4.2** This chapter describes the important role that local authorities, Admission Forums, parents and the Schools Adjudicator have in ensuring that school admission arrangements are fair and comply with admission law and the requirements of this Code. In order to ensure that admission arrangements serve the interests of all parents and children in local communities, local authorities and Admission Forums **should** object to the Adjudicator where those arrangements include practices that this Code either prohibits or states that they **should not** be used, or in the case of Admission Forums where their advice has been disregarded by admission authorities.

## Admission Authorities

**4.3** As we make clear in Chapter 1 all school admission authorities **must** ensure that in determining their admission arrangements they promote social equity, comply with admissions law and that they act in accordance with the provisions of this Code. Governing bodies that are their own admission authorities are encouraged to ensure that they are represented on the Admission Forum for their area, which will give them the opportunity to contribute to ensuring a fair admissions system. Admission authorities **should** use their power to refer an objection to the Schools Adjudicator if the admission arrangements at other schools appear to them to contravene admissions law or do not comply with the mandatory provisions of this Code or where those arrangements fail to follow its guidelines without justification.

## Local Authorities

**4.4** Local authorities have a duty under section 13A of the Education Act 1996 (as amended by the Education and Inspections Act 2006) to ensure fair access to educational opportunity and have a key role in ensuring that school admission arrangements are lawful and comply with the mandatory provisions of this Code. They **should** ensure that admission arrangements for schools in their area that are their own admission authority are clear, objective and fair, and promote social equity.

**4.5** In order that parents may exercise their right to object (see paragraph 4.12), local authorities **must** publish a notice in a newspaper circulating in the local area the fact that admission arrangements have been determined for schools in the authority's area and that the arrangements are available for inspection at the local authority's offices and such other places as the local authority may decide<sup>44</sup>.

**4.6** Where a local authority considers that the admission arrangements proposed by other admission authorities are unfair, unclear or subjective or may encourage social segregation, they should use their powers to refer an objection to the Schools Adjudicator. If admission arrangements appear to them to be unlawful or contravene the mandatory provisions of this Code they **must** refer the matter to the Schools Adjudicator.

**4.7** Local authorities **should** also consider carefully any representations they receive from parents about the admission arrangements for schools for which they are not the admission authority and whether they should use their power to make a referral to the Adjudicator.

**4.8** Local authorities may be held to account by the Local Government Ombudsman if, being aware of unfair admission arrangements, they do not object to admission arrangements that may be unfair or do not comply with the provisions of this Code.

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44 The Education (Determination of Admission Arrangements) (Amendment) Regulations 2006.

## Admission Forums

- 4.9** Section 85A of the School Standards and Framework Act 1998 requires all local authorities to establish an Admission Forum<sup>45</sup>. Admission Forums provide a vehicle for admission authorities and other key interested parties to discuss the effectiveness of local admission arrangements, consider how to deal with difficult admission issues and advise admission authorities on ways in which their arrangements can be improved. Admission authorities of all maintained schools and Academies **must** have regard to any advice from the Forum in the exercise of their functions. Regulations made under that Act allow local authorities to establish a joint forum with one or more other local authorities to consider and advise on admissions in more than one authority area. More information on the membership and procedures of Admission Forums is set out in Appendix 2.
- 4.10** Admission Forums have a key role in ensuring a fair admissions system that promotes social equity, and are required by section 84 of the School Standards and Framework Act 1998 to act in accordance with this Code. Admission Forums **must** act in accordance with the provisions of this Code and **should**:
- a) consider existing and proposed admission arrangements in their area;
  - b) consider and provide advice on the effectiveness of the proposed co-ordinated admission scheme in their area;
  - c) assess how well the admission arrangements serve the interests of local parents and children collectively, and try to promote agreement on admissions issues;
  - d) consider how admission processes might be improved and monitor how admissions relate to published admission numbers;
  - e) refer an objection to the Schools Adjudicator where it identifies policy, practice or oversubscription criteria that may be unfair or that do not comply with the mandatory provisions of this Code;
  - f) review the comprehensiveness and accessibility of guidance for parents and the composite prospectus produced by the local authority, see Appendix 4 of this Code, and the effectiveness of Choice Advice to parents provided by the local authority. See Appendix 5; and
  - g) agree, promote and monitor protocols for potentially vulnerable children, including those previously excluded from school, those who have special educational needs, disabilities or those who are looked after and those other children who are hard to place or arrive in the area outside the normal admissions round.

<sup>45</sup> The Education (Admission Forums ) (England) Regulations 2002.

### *Reports on effectiveness of local admission arrangements*

**4.11** The Education and Inspections Act 2006 amends the School Standards and Framework Act 1998 to give Admission Forums an important power to publish a report on how well admission arrangements are working locally, including whether admission arrangements are working fairly for all members of the community. In preparing their report Forums should also consider the effect that the arrangements are having on ethnic and social segregation and the admission of vulnerable children and whether this changes over time. These reports are a valuable tool in ensuring an open and fair admission system, and will be of use to the Schools Commissioner in drawing up his two yearly national review of fair access. The Admission Forum (England) Regulations 2002 as amended by the Admission Forum (England) (Amendment) Regulations 2006 set out what these reports **must** cover. All Admission Forums **should** produce a report on an annual basis.

### **Objections by Parents**

**4.12** Throughout this Code we have stressed the importance of admission arrangements that are clear and easily understood by parents; this is essential if all parents are to feel able to express a preference for a school for their child. The Education and Inspections Act 2006 extends the rights of parents to make an objection to the Adjudicator, and the circumstances in which objections may be made are listed in paragraph 4.15 below.

### *Members of Parliament*

**4.13** Parents may seek support and advice in making an objection from a variety of sources (e.g. local authority admission teams, Citizen Advice Bureaux) but they may also seek the support, advice and assistance of their Member of Parliament. It is for MPs to decide how they may best support their constituents, but they may assist with the completion of objections using a proforma available from the Adjudicator's office. They may endorse or comment on the objection and provide evidence of the local context, and the Adjudicator may take account of this in reaching his determination. Where a group of parents wish to make an objection about the same issue the MP may facilitate the process to make the task easier for parents.

### **The Schools Adjudicator**

**4.14** The Schools Adjudicator also has a key role in ensuring a fair admissions system by enforcing the requirements of this Code and considering whether any departure from its guidelines has been justified. Once an objection has been received the Adjudicator may consider the admission arrangements as a whole, not just the specific aspect objected to, for any maintained school.

**4.15** The Adjudicator may consider the following categories and forms of objections<sup>46</sup>:

- a) from admission authorities (including local authorities) on any aspect of the admission arrangements for a school of which they are not the admission authority;
- b) from Admission Forums on any aspect of the admission arrangements for schools in the area which they cover;
- c) from parents who live in the area to pre-existing partially selective admission arrangements, including any partial selection by ability (below the sixth form); any selection by aptitude other than for up to 10% of places in a prescribed or formerly prescribed subject; and any form of banding which does not meet the 1998 Act's definition of "fair" banding;
- d) from parents who consider that an admission authority is using or proposing to use practices or oversubscription criteria that are unlawful or that are prohibited by this Code;
- e) from parents who live in the area to the determination of an admission number which is lower than the one indicated by the net capacity formula<sup>47</sup>;
- f) from governing bodies of community and voluntary controlled schools to any admission number determined by the local authority for their own school but not to any other aspects of the admission arrangements for their school;
- g) from admission authorities (including local authorities) which appeal within seven days against a local authority direction to admit a looked after child on the grounds that admission would seriously prejudice the provision of efficient education or the efficient use of resources;
- h) from governing bodies of community and voluntary controlled schools to the admission arrangements of other schools within the relevant area, although they may not object to the admission arrangements for other community and voluntary controlled schools whose admission arrangements have been determined by the local authority;
- i) from local authorities or governing bodies of any school to all partially selective admission arrangements. Complaints may be made to the Adjudicator about tests that are not objective, or which appear to test for ability or another aptitude, even where selection for a proportion of places by aptitude is accepted; and
- j) from faith groups about admission arrangements at schools designated as of their faith.

**4.16** Adjudicators **must** consider each objection on its individual merits, taking account of the reasons for disagreement at local level and in the light of the legislation and the mandatory provisions and guidelines set out in this Code.

46 The Education (Objections to Admission Arrangements) Regulations 1999 (SI 1999/125) as amended by The Education (Objection to Admission Arrangements) (Amendment) (England) Regulations 2002 (SI 2002/2901)

47 The Education (Determination of Admission Arrangements) Regulations 1999 (SI 1999/126) as amended by The Education (Determination of Admission Arrangements) (Amendment) Regulations 2002 (SI 2002/2896)

- 4.17** The Adjudicator’s determination is binding. If an admission authority or other party do not implement the determination, the Secretary of State may direct them to do so using his powers under section 497 of the Education Act 1996.
- 4.18** Objections **should** be made within six weeks of the date on which the admission authority published its determined arrangements. Adjudicators have discretion to consider late objections, but will need to be persuaded that it was not practicable to submit them earlier.
- 4.19** Adjudicators are not able to consider objections about aspects of admission arrangements for which other statutory procedures are required. For example, the Adjudicator may consider objections to the admission arrangements of grammar schools, but not about the principle that a grammar school selects its pupils on the basis of high academic ability.
- 4.20** Adjudicators may uphold, reject or partially uphold objections.

#### *Variation to determined admission arrangements*

- 4.21** Once admission arrangements have been determined for a particular academic year they cannot be revised except in the very limited circumstances described in paragraphs 4.22 and 4.23 below. However, regulations<sup>48</sup> permit a referral of the proposed variations to the Adjudicator if there is a major change in circumstance and the admission authority consider that the admission arrangements should be varied. The admission authority **must** also notify all the bodies which should have been consulted before the arrangements were determined. There is no statutory definition of a major change of circumstance, but it is considered to be a serious and unexpected event affecting the provision of education at the school.
- 4.22** Admission authorities **should** consider very carefully before referring a variation to the Adjudicator and **must not** do so once parents have been asked to make their decisions, unless a major change in circumstances makes this unavoidable. A request to the Adjudicator for a variation is not always necessary. Changes that would not require a referral include, for example:
- a) where a misprint occurred in the published admission arrangements;
  - b) where a variation to an admission number is necessary to implement statutory proposals for a prescribed alteration to a school under Section 19 of the Education and Inspections Act 2006, irrespective of whether such a variation constitutes a major change. Where such a variation is approved – either by the local authority<sup>49</sup>, without modification, or by the Adjudicator – an admission authority is not required to refer the variation to the

48 The Education (Variation of Admission Arrangements) Regulations 2002 (SI 2002/2898) as amended by The Education (Variation of Admission Arrangements (England) (Amendment) Regulations 2005 (SI 2005/873)

49 Following the commencement of Part 2 of the Education and Inspections Act 2006, School Organisation Committees will be abolished and local authorities will assume responsibility for deciding most statutory proposals. References to local authorities in the paragraph should be construed as references to the School Organisation Committee in relation to proposals approved under the provisions of the Schools Standards and Framework Act 1998 before the commencement of Part 2 of the 2006 Act.

Adjudicator under section 89(5) of the School Standards and Framework Act 1998.

However, where the local authority has modified the admission number, which forms part of the proposals, the variation **must** be referred to the Adjudicator under section 89(5); and

- c) where (as provided in regulations) admission arrangements are changed to accommodate a locally agreed protocol for the sharing of pupils outside the normal admissions round.

**4.23** Regulations<sup>50</sup> provide for an admission authority to revise its admission arrangements where it believes this is necessary to achieve consistency with a decision made in relation to a local school by the Adjudicator, or the Secretary of State, to uphold an objection to another admission authority's admission arrangements. If an admission authority wishes to seek such a revision to admission arrangements, it **must** do so within two months of the decision being made, and **must** notify each of the admission authorities which it was required to consult about the arrangements which it is seeking to revise.

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50 Regulation 10 of The Education (Objections to Admission Arrangement ) Regulations 1999 (SI 1999/125) as amended by The Education (Objection to Admission Arrangements) Regulations 2002 (SI 2002/2901).

# Other Relevant Legislation

1. This appendix sets out the primary legislation and regulations most relevant to admissions decisions. Admission authorities, adjudicators, appeal panels, local authorities and schools must comply with the relevant law as well as acting in accordance with the provisions of this Code and following its guidelines. The information here aims to signpost the relevant law; it does not aim to provide definitive guidance on interpreting the law: that is for the courts.

## Sex Discrimination Act

2. Under the Sex Discrimination Act 1975, admission authorities **must not** discriminate between boys and girls in the way they admit them to a school except where the school in question is a single sex school. Admission arrangements for a co-educational school may not be used to achieve a fixed proportion of boys or girls at the school, as this may breach the Act, which requires that at any time a female applicant has the same chance of success as a male applicant, and vice versa.

## Race Relations Act

3. The Race Relations Act 1976 makes it unlawful for admission authorities to discriminate against applicants on the basis of race, colour, nationality or national or ethnic origin. That Act, as amended by the Race Relations (Amendment) Act 2000, imposes on public bodies, including local authorities and schools, a duty to promote racial equality. They **must** have regard to the need to eliminate unlawful racial discrimination; promote equality of opportunity; and promote good relations between people of different racial groups. The governing bodies of schools have specific duties under Articles 3(1), 3(2), 3(3), and 3(5) of the Race Relations Act 1976 (Statutory Duties) Order 2001. Governing bodies **should** have a written statement of their policy for promoting race equality. Local authorities **must** also publish a race equality scheme, which includes similar duties to assess and monitor the effects of their policies, including monitoring admissions to schools. Local authorities are encouraged to use any co-ordinated scheme for allocating school places, for this monitoring purpose.

## Human Rights Act

4. The Human Rights Act 1998 confers a right of access to education. This right does not extend to securing a place at a particular school. Admission authorities, however, do need to consider parents' reasons for expressing a preference when they make decisions about the allocation of school places, to take account of the rights of parents under the Act, though this may not necessarily result in the allocation of a place. These might include, for example, the parents' right to ensure that their child's education conforms to their own religious or philosophical convictions (so far as is compatible with the provision of efficient instruction and the avoidance of unreasonable public expenditure).

## Disability Discrimination Acts 1995 and 2005

5. Under the Disability Discrimination Act 1995 admission authorities have a duty not to discriminate against disabled children and prospective pupils in their access to education. Three distinct aspects of admission are specifically covered by the new legislation. Admission authorities **must not** discriminate against a disabled child:
  - a) in the arrangements they make for determining pupil admission to the school; or
  - b) in the terms on which they offer to admit a disabled child to the school; and
  - c) by refusing or deliberately omitting to accept an application for admission.
6. Further guidance on this is given in the Disability Rights Commission Code of Practice.
7. Under the Disability Discrimination Act 2005 public authorities, including schools and local authorities, have a duty when carrying out their functions to have due regard to the need to:
  - promote equality of opportunity for disabled people;
  - eliminate unlawful discrimination;
  - eliminate disability related harassment;
  - promote positive attitudes towards disabled people;
  - encourage disabled peoples' participation in public life; and
  - take account of disabled peoples' disabilities even where that involves more favourable treatment.

Local authorities and schools **must** produce and publish a Disability Equality Scheme showing how they will promote equality of opportunity for disabled pupils, staff and those for whom they provide services and an annual Action Plan showing how they are carrying out their scheme. The duty applies to secondary schools and local authorities from December 2006 and to primary schools and special schools from 3 December 2007.

A Disability Equality Scheme **should** show:

- a) how disabled people with an interest in the Scheme have been involved in its development;

- b) the methods for assessing the impact of policies and practices on equality for disabled persons;
- c) the steps that will be taken to promote equality of opportunity for disabled people;
- d) the arrangements for gathering information on the effect of policies and practices on disabled people, including information on recruitment, development and retention of disabled employees; educational opportunities for and achievements of disabled pupils; and
- e) the arrangements for making use of this information to help promote equality of opportunity.

The Disability Equality Scheme covers all the activities of an authority or school and is therefore relevant to admissions.

### Equality Act 2006

**8.** Section 49 of the Equality Act 2006 sets out provisions in relation to schools. It is unlawful in general for maintained schools, independent schools and non-maintained special schools to discriminate against a person on the grounds of that person's religion or belief in the following ways:

- a) in the terms on which it offers to admit him/her as a pupil;
- b) by refusing to accept an application to admit him/her as a pupil; or
- c) where he/she is a pupil of the establishment:
  - (i) in the way in which it affords him/her access to any benefit, facility or service;
  - (ii) by refusing him/her access to a benefit, facility or service;
  - (iii) by excluding him/her from the establishment; or
  - (iv) by subjecting him/her to any other detriment.

A "pupil" means any person who receives education at the establishment in question.

**9.** However, education is a unique area in which to legislate, especially in such areas as discrimination on grounds of religion or belief, both because of the long tradition in this country of schools with a religious character, and because of the requirements on all schools to provide religious education, sex education, and a daily act of worship of a broadly Christian character. Taken alone, the prohibition of discrimination on grounds of religion or belief would create certain difficulties for schools. Certain limited exceptions have therefore been written into the Act to permit important aspects of education in this country to continue to be delivered. The exceptions for faith schools are:

- a) the content of the curriculum; or
- b) acts of worship or other religious observance organised by or on behalf of an educational establishment (whether or not forming part of the curriculum).

10. In this context the terms “religion” means any religion and “belief” means any religious or philosophical belief. References to religion or belief do, however, also include a reference to a lack of religion or belief.
11. The body responsible for ensuring that no discrimination takes place depends on the type of school. For maintained schools, it will be the local authority or the governing body, depending on who took the decision or action complained of; whereas for independent schools and special schools not maintained by the local authority, the responsible body will be the proprietor of the school.
12. Many schools will already have in place fair, non-discriminatory policies for dealing with pupils and their parents. They may not need to make any change to these in order to comply with the Act. Indeed, schools often lead the way in our multicultural and multi-faith society, in practising and teaching about equality, inclusion and recognising diversity.
13. However, all schools need to be aware of their obligations and to review their policies and practices to make sure these meet the requirements of the Act, even if they believe that they are already operating in a non-discriminatory way.
14. The relevant provisions essentially set out that schools (except those designated as having a religious character) will not be allowed to admit or refuse to admit pupils on the basis of religion or belief (or lack of it), must treat pupils equally irrespective of their or their parents’ religion including in relation to providing access to benefits, facilities or services on the same grounds. They also set out that pupils cannot be excluded or subjected to any detriment on the basis of their or their parents’ religion or belief (or lack of it).

### Admission appeals

15. Section 94 of the School Standards and Framework Act 1998 provides that parents may appeal against decisions “as to the school at which education is to be provided for the child in the exercise of the authority’s functions”. Admission authorities are required to inform parents, through the local authority, of their right of appeal, and also to establish panels to which parents can appeal against decisions to refuse admission to preferred schools.
16. The Education (Admission Appeals) Regulations 2002<sup>51</sup> set out the constitution of admission appeal panels. The School Admissions Appeals Code imposes mandatory requirements and provides guidelines on how panels should be set up and how they should conduct their hearings.
17. Admission authorities **must** admit a child whose parents have won an appeal. If the admission authority wants to challenge the decision of the appeal panel, it may seek judicial review. The Secretary of State has no jurisdiction over the decisions of appeal panels.

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51 The Education (Admission Appeals) Regulations 2002 (SI 2002 /2899)

## APPENDIX 2

# Admission Forums

1. Admission Forums have a key role in ensuring a fair admissions system that promotes social equity, does not disadvantage one child compared to another and which is straightforward and easy for parents to understand. Forums are responsible for monitoring compliance with this Code and have important powers to publish a report on the effectiveness of local admission arrangements and to refer an objection to the Schools Adjudicator where they consider admission arrangements to be unfair or not in accordance with this Code.
2. The role and responsibilities of Admission Forums are described in Chapter 4. This appendix provides information and guidelines on Forum membership, tenure, procedures at meetings and how they can promulgate advice. These guidelines should be read in conjunction with the Education (Admission Forums) (England) Regulations 2002.

### *Membership*

3. The core membership of Admission Forums is set out in the 2002 regulations and is shown in the table below:

<b>Members nominated by</b>	<b>Number</b>
Local authority – any representative of the authority	1 to 5
Schools – community and voluntary controlled	1 to 3
Schools – foundation	1 to 3
Schools – voluntary aided	1 to 3
Diocesan Board Church of England representatives	1 to 3
Roman Catholic Diocese representatives	1 to 3
Parent Governor representatives	1 to 3
Representatives of the local community	up to 3
Academies	1 per Academy
City Technology Colleges	1 per City Technology College

4. Within this statutory framework the local authority decides the overall size of the forum. However the core membership of each forum may ask the local authority to appoint anyone it considers to represent significant interests in the local community, and in accordance with paragraph 3.38 of this Code **must** invite a UK service representative or representatives of other significant concentrations of Crown servants (e.g. GCHQ personnel) to join.
5. Admission Forums **should** include representatives of neighbouring local authorities where, for example, there are significant cross-border issues or they have a contribution to make. These representatives would be in addition to those of the home local authority.
6. Each representative of a school **should** be a head teacher, or a governor (other than one appointed to the school by the local authority who is also a member of the authority).
7. Academies are required by their funding agreements to nominate a representative to be a member of the Admission Forum and to notify the local authority of that nomination. City Technology Colleges are encouraged to take part and to have regard to the advice of the forum. Local authorities **should** invite each CTC in their area to nominate a member.
8. Local authorities **should** also consider appointing representatives from faith groups other than the Church of England or Roman Catholic Church and ethnic minority groups, particularly in areas where the local population includes a significant proportion from that group.
9. If the Forum considers that it would be useful to appoint additional members to represent the interests of any section of the local community it may ask the local authority to appoint such members. For example, where the Forum is considering issues relating to the admission of looked after children, it **should** ask the local authority to appoint local authority officers with expertise in children's social care. In addition, the Forum may invite other key groups or bodies to attend meetings of the forum on an ad hoc basis if they have an interest in the topic being discussed. It may therefore wish to consider whether representatives of special educational needs or disability organisations, early years or other groups should also be invited to become members for the meetings in which they are likely to have a key interest.
10. Where there is a particular issue that needs investigation and more detailed consideration, it is good practice to create a working group (which does not need to consist of Forum members) to carry out this work and report-back to the Forum. This could be a group drawn from the Forum, a group of local authority officials acting on behalf of the forum, or a mixture of officials and Forum members.

### *Tenure*

11. Core members of the forum are appointed for a period not exceeding 4 years, after which they are eligible for reappointment. Other members of the forum are appointed on the terms determined by the core members, including whether or not they are to be eligible for

reappointment at the end of their term. It is good practice for the membership of the Forum to be reviewed in September each year.

12. The local authority may also establish sub-committees to help the Forum in the performance of its functions. Sub-committees might be appropriate for considering primary and secondary issues separately, or, if the relevant area is large and has areas with distinct admissions patterns, separate sub-committees might consider issues in each area, before bringing them back to the main Forum for discussion.

#### *Procedure for meetings and appointment of officers*

13. Regulations require Forums to meet at least twice a year, but the procedure for the meetings is regulated by the core members themselves. All members of the Forum **should** be given at least 7 working days notice of the date of the meeting and to be given any documents relevant to that meeting 7 days in advance. While all schools in an area will be members of their Forum, it will not be necessary for them to actively take part in all the work of the Forum and attend all its meetings. The core members should think carefully about how to structure their work in future and the extent to which it needs to be dealt with by committees or on a regional or phase basis. They should also think about how best to ensure that the views of all members of the Forum are properly represented.
14. The forum **should** appoint a Chair and Vice Chair, who may or may not be members of the Forum, and a Secretary to convene its meetings.

#### *Promulgating advice and making objections*

15. Admission Forums **should** seek to achieve a consensus among the whole membership rather than secure a majority opinion and **should** only promulgate advice that represents the agreed views of the Forum as a whole. However where the Forum is considering a proposal to make an objection to the Schools Adjudicator they **must** secure a simple majority of those voting.
16. The local authority **should**, as a minimum, publish the Forum's advice on the school admissions section of their website and send copies to all admission authorities in the area. The advice should also be included in the composite prospectus published by the local authority each year for parents.

# Statutory Requirement of Co-ordinated Admission schemes and model for admission cycle

1. Co-ordinated admission schemes simplify the admission process for parents and establish mechanisms by ensuring, so far as reasonably practicable, that every parent of a child living in the local authority area who has applied for a school place in the 'normal admission round' receives an offer of one, and only one, school place on the same day. Guidelines on good practice in establishing co-ordinated schemes are provided in Chapter 3. This appendix sets out the key statutory requirements and obligations placed on local authorities and admission authorities in formulating and establishing schemes. A timetable for a model secondary scheme is also included.
2. There are separate regulations for secondary schools<sup>52</sup> (defined as schools admitting children at age 11 or later) and for primary schools<sup>53</sup> (those schools admitting at ages below 11, which also includes, for this purpose, middle schools<sup>54</sup>). The key obligations placed on local authorities by these regulations are set out in paragraphs 3.4 to 3.20.

## *Agreeing schemes for admission to secondary schools*

3. Once local authorities have formulated a scheme for their areas, they must pass the scheme for review to the Admission Forum, who may suggest amendments. The local authority **must** then consult all other admission authorities in the area whom it proposes should adopt the scheme, and secure their agreement to it. Academies are required to participate in

52 The Education (Co-ordination of Admission Arrangements) (Secondary Schools)(England) Regulations 2002 (SI 2002/2904) as amended by the Education (Co-ordination of Admission Arrangements) (Secondary Schools)(England)(Amendment) Regulations 2004 (SI 2004/1516)

53 The Education (Co-ordination of Admission Arrangements) (Primary Schools) (England) Regulations 2002 (SI 2002/2903) as amended by the Education (Co-ordination of Admission Arrangements) (Primary Schools) (England) (Amendment) Regulations 2004 (SI 2004/1515)

54 Primary, secondary and middle schools are defined in section 5 of the Education Act 1996 and further guidance on middle schools is contained in the Education (Middle School) (England ) Regulations 2002 (SI 2002/1983)

co-ordinated admission arrangements by their funding agreements. Local authorities **should** seek the views of Academies in their area on the proposed scheme, and their agreement to it.

4. Local authorities are required to formulate a scheme by 1 January each year in the calendar year before the admission year, and are required to notify the Secretary of State that a scheme has been adopted by 15 April of that same year, providing him with a copy of the scheme for information.

#### *Schemes imposed by the Secretary of State*

5. If a local authority does not notify the Secretary of State by 15 April that a scheme has been adopted, he may impose a scheme; or where an imposed scheme was in place for the previous year, he may notify the local authority that the scheme will continue for a further year.
6. Where the Secretary of State has imposed a scheme and not revoked it a local authority and its schools may decide to adopt the scheme in a subsequent year. If the local authority subsequently adopts a scheme agreed with other admission authorities, in accordance with the regulations, they **must** notify the Secretary of State so that the imposed scheme can be revoked. Where a scheme from a previous year is being adopted, or has been imposed in relation to the previous year (and all admissions authorities have agreed to adopt it for a further year), confirmation **must** be sent to the Secretary of State by 15th April. It will not be necessary to send a copy of the scheme.
7. Schemes **must** state the mechanism to be used to decide which place will be offered in the event that offers could be made at two or more schools. Schemes should stipulate that, wherever possible, parents will receive the highest available preference. If none of the parents' preferences are available the scheme **must** say clearly how a place at another school will be allocated. Another school **must** be allocated unless there are insufficient places remaining in the local authority; in this case, all remaining places **must** be allocated so that a minimum number of children are without the offer of a school place. Schemes **should** also set out how late applications, and arrangements for admissions outside the 'normal admission round' will be handled.

#### *Academies and City Technology Colleges*

8. In order to create the most practical, simplified and straightforward admission system for parents all maintained schools (except nursery and special schools) **should** participate. Accordingly Academies are required to participate by their funding agreements and local authorities **must** consult them, as well as other admission authorities, in order to agree the scheme. Local authorities **should** also invite City Technology Colleges to participate in the scheme. Full details of the co-ordinated scheme **should** be included in the local authority's composite prospectus.

*Duty to comply with parental preference*

9. The statutory duty to comply with parental preferences is not affected by co-ordinated admission arrangements, except where more than one place could be offered. Then the duty to comply applies to the single offer that should be made in accordance with the arrangements in the co-ordinated scheme, and not to the other possible offers. Schools **must not** inform parents of possible offers – only the local authority can convey the single offer.

*Main obligations imposed by regulations*

10. The main obligations on local authorities and other admission authorities within schemes are:

For secondary schools:

- a) The common application form **must** allow parents to express at least 3 preferences which may be for schools within or beyond their home local authority area.
- b) Local authorities and admission authorities in the area **must** exchange information on applications made and potential offers by the dates specified in the scheme.
- c) Local authorities **must** pass information on applications to other local authorities about applications to schools<sup>55</sup> in their area. The maintaining local authority **must** inform the home local authority if it intends to offer a place, by the dates specified in the scheme.
- d) The maintaining local authority **must** tell the home local authority if it could offer a place. The home local authority may take account of this in deciding whether or not to offer the parent a place at a school in its own area, but should explain its intentions clearly to parents in its composite prospectus.
- e) Places **must** be offered on 1 March in the year during which a child will be admitted to school by the home local authority.
- f) Parents who cannot be offered one of their preferred schools should, if there are places available, be offered a place at another school.
- g) While there is no requirement to co-ordinate fully across borders. It is good practice for local authorities to eliminate multiple offers of places across borders and many local authorities are already co-ordinating in this way. Regulations provide that where a place can potentially be offered at schools in two or more local authority areas, and the local authorities concerned agree, only one offer of a place is made. Where they do so, schemes **must** specify which local authority will make the offer of a single place. However, it is still possible that some parents who have applied for schools within their own local authority and elsewhere may receive an offer from each local authority.
- h) It is good practice for schemes to continue after 1 March to ensure that places which become available are reallocated effectively.

55 It is also good practice to include Academies or CTCs.

For primary schools:

- i) The common application form **must** allow parents to apply for any primary school in their home local authority area. If parents apply direct to a school, the governing body **must** inform the local authority.
- j) Parents resident in one local authority who wish to apply for a place at a school maintained by another local authority **must** apply through the common application form for the local authority which maintains the school they wish to apply to.
- k) Local authorities and admission authorities in the area **must** exchange information on applications made and potential offers by the dates specified in the scheme.
- l) Places **must** be offered on the date designated in the scheme. Where admission authorities normally admit children to primary school two or three times a year and do not make all offers at the same time, additional offer dates may be designated. (It is not possible, however, to reserve places for allocation in later admission rounds in the same year and if there are sufficient applications all places may be allocated in the first round. Local authorities that operate more than one point of entry may wish to consider whether to run one admissions round each year even though some children may start school at a later point in the year. Places allocated to children whose parents have deferred their entry are not considered as “reserved” places because the place cannot be offered to another child, unless the parent withdraws acceptance of the place.)
- m) A maintaining local authority **must** inform the home local authority if it intends to offer a place at one of its schools to a parent living in a different local authority area. Local authorities should exchange information on applications across their borders and seek to eliminate multiple offers across local authority borders wherever possible.

#### *Applications to schools with a different age of transfer*

- 12. The Education (Middle School) (England) Regulations 2002 (SI 2002/1983) defines Middle schools and whether they are classified as primary or secondary schools depends on the age range of the pupils. For the purposes of co-ordination middle schools with an entry age before 11 should be treated in the same way as primary schools; upper schools (with an entry age after 11) should be treated as secondary schools.
- 13. For middle deemed primary schools, the maintaining local authorities **must** make an application form available and make the offer. For middle deemed secondary schools, the home local authority **must** make an application form available to any parent in the area who wishes to apply to a school in a neighbouring area which operates a different age of transfer. The home local authority should accept applications in the same way as it would for its own normal admissions round. It should, if preferred schools are in another area, pass forms to neighbouring authorities, who should apply their co-ordinated scheme. The maintaining local authority should inform the home local authority if a place is to be offered in one of its

schools. The maintaining local authority will inform the parent of the outcome of the application.

### Offers

- 14.** Only a local authority may make an offer of a place during the normal admission round. For secondary schemes, offers **must** be sent out on 1 March. Where a school's governing body is the admission authority, it **should not** communicate direct with parents to offer or refuse a place before the local authority sends out offers on 1 March (for secondary) or the date specified in the scheme (for primary).

### Model timetable for a secondary admission scheme

- 15.** A model secondary co-ordinated admission scheme is offered below. Dates are given for each step of the admissions cycle, but only those dates in **bold** lettering are a statutory requirement. The dates given in the second part of the table are those suggested for secondary school co-ordinated admissions.
- 16.** This model is not an exact description of any individual local authority's system. Any co-ordinated scheme **must** have been agreed between all admission authorities in a local authority's area to which it is intended to apply. Failing such agreement it could be imposed – after due process – by the Secretary of State. The model includes Academies, although they are not maintained schools to which sections 89B and 89C of the 1998 Act apply. However, Academies' funding agreements require them to follow admissions law for maintained schools and local authorities are expected to consult them, as well as other admission authorities, in order to agree the scheme. Local authorities with City Technology Colleges in their area **should** invite and encourage them to join co-ordinated schemes.
- 17.** Every scheme needs to have a means for deciding between potential offers from more than one secondary school in the local authority area in which a parent resides (home local authority). The provisions of the scheme **should** be applied equally to applications for the local authority's schools from parents living in other local authorities – these applications will need to come via the local authority in which those parents reside.

### Model co-ordinated scheme

- 18.** In this example, the home local authority operates the **model scheme**. At least 3 preferences are invited. All are treated as equal initially, and will normally be sent out as equal to other admission authorities. But if more than one school place can potentially be offered, the single offer is for the school the parent ranked highest.
- 19.** The home local authority's form invites all parents resident in the area to name three or more preferred schools, in order of preference, by 24 October. It is made clear that parents should name all schools at which they wish their child to be considered for a place, including any foundation or voluntary aided schools, Academies, and/or any outside the home local

authority's area. By 14 November, the home local authority sends other admission authorities/local authority's details of applicants for their schools. The home local authority does not reveal the order of preference unless other admission authorities need the information to apply their own over-subscription criteria.

20. The school admission authorities then apply their admission criteria, including any selection tests, and send their own local authority a list indicating the order in which all children for whom application to the school has been made have priority by reference to the over-subscription criteria. As explained in Chapter 2, although all applications need to be assessed and grouped against the criteria, admission authorities of seriously oversubscribed schools need not give individual rankings to applicants in the lowest priority groups for admission, if there is no likelihood of being able to offer them a place after elimination of multiple offers. The local authority draws up a similar list for any school for which it is the admission authority. After other admission authorities have sent their ranked lists to the local authority in whose area they are located, each local authority should have a list for each of its maintained schools and any Academies.
21. Each local authority compares the lists from all schools in its area. When a child qualifies for a place at more than one school, the local authority provisionally allocates a place at the school indicated by the terms of its co-ordinated scheme. It also adjusts the list for any other school for which a preference was expressed by that parent, moving another child who was previously not eligible to be allocated a potential place up the list to the provisional place which has been vacated.
22. By 15 February, the home local authority will also have received similar notifications from other local authorities of any places which those local authorities or schools in their areas can offer in response to any preference expressed by one of their residents. There will be, at most, one such offer from each other local authority. Clearly, if no preferred school in the home local authority can be offered, the home local authority need not look for an alternative place if it knows that another local authority will be making an offer. If on exchanging information it transpires that both the home and another local authority intend to make an offer, either both can do so, leaving the parent to choose between them, or either local authority can hold back its offer in favour of the other offering a place at the higher ranked of the available schools. However, this second alternative **should** only be chosen if the two local authorities have made an agreement to that effect, and explained it to parents in their composite prospectuses. If any child looks like remaining unplaced, the home local authority considers how to place them in schools within its area, having regard to any reasons expressed by the parent for their (unsuccessful) preferences. Each local authority then sends the schools which it maintains, and any Academies, the final lists of pupils to be allocated places, and on 1 March – the 'national offer day' for secondary schools – it writes to every resident parent who filled in its secondary application form, to tell them of their allocated school place. Where the school

in question is its own admission authority or an Academy, the local authority **must** state that the offer is being communicated on behalf of that school or Academy's governing body.

### *Possible variants*

- 23.** It is possible for a local authority's co-ordinated scheme for schools in its area to involve consideration of all first preferences ahead of any second or lower preferences in accordance with paragraph 2.6 of this Code. In that case each admission authority will need to know each application's preference ranking. Their provisional offer lists will show all first preferences in order of 'fit' with their oversubscription criteria; then all second preferences, in order of 'fit'; then all third preferences in order of 'fit' etc. Compared to the model scheme, this variant is likely to result in a higher number of parents getting children into their first preference schools. But those parents who do not (because those schools are over-subscribed with first preferences and others fit the oversubscription criteria better) will be less likely to get an offer from their second or third preference schools (because they may already have been filled with higher preferences) and so have to consider taking a place at a less acceptable school.
- 24.** This variant may therefore lead to less parental satisfaction overall, where there is significant variability in schools' popularity and/or quality. Because – compared to the model scheme – it gives more weight to preference order and less to oversubscription criteria, it is also less likely to be agreed by admission authorities who would wish to apply criteria such as partial selection by ability or aptitude, or religious or denominational commitment equally to all applicants – it would mean, for example, that a Catholic school giving priority to Catholic pupils would have to put a first preference non-Catholic applicant ahead of a second preference Catholic applicant. Also, this variant could lead to less parental satisfaction where parents cannot be sure at the time of expressing preferences whether their children will meet the admissions criteria for schools they might wish to put as first preference. An example would be a selective area, where parents do not know whether their own children will pass the 11-plus. This can also make it difficult for local authorities to co-ordinate across boundaries.
- 25.** It is for each local authority to decide the scheme that best suits its residents and its schools. Local authorities **should** however ensure that they:
- a) comply with law and regulations, including all the process requirements (common application form allowing at least 3 preferences, information-sharing with other local authorities, sending out not more than one offer to all seeking secondary places at its maintained schools or Academies on the same day, i.e. 1 March for secondary school places); and
  - b) do not disadvantage applicants to their schools resident in other local authorities (which would be contrary to the Greenwich judgement<sup>56</sup>).

56 R v Greenwich London Borough Council, ex parte John Ball Primary School (1989) 88 LGR 589 [1990] Fam Law 469

Timescale	Action
By <b>1 January</b> in Yr A	Local authorities formulate a co-ordinated admissions scheme and refer it to the Admissions Forum – taking account of the Forum’s advice/recommendations.
Between <b>1 January</b> and <b>31 March</b> in Yr A	Local authority consults admission authorities and neighbouring local authorities on the scheme seeking agreement.
Complete by <b>1 March</b> in Yr A (Allow at least 1 month for consultation)	Admission authorities consult others (Local authority, schools, diocese etc) on individual school’s admission arrangements.
By <b>15 April</b> in Yr A	Local authorities notify the Secretary of State on whether all admission authorities in their area have agreed a scheme.
By <b>15 April</b> in Yr A	Admission authorities consider consultation responses and determine their admission arrangements.
Within 14 days of determining arrangements	Admission authorities notify others of determined admission arrangements. (Where an admission authority determines an admission number lower than that indicated by the capacity assessment, and/or where partial selection by academic ability is continuing details <b>must</b> be published in a local newspaper so that parents may object).
Within 6 weeks of notification of arrangements	Schools, admission authorities and parents refer any objections to admission arrangements to the Schools Adjudicator.
By <b>end of July</b> in Yr A	Imposition of co-ordinated schemes by the Secretary of State, in those local authority areas where local agreement cannot be reached.
By <b>1 September</b> Yr A or no later than 6 weeks before date by which parents may express a preference	Local authority to publish composite prospectus for parents.
September/October Yr A	Applications invited from parents.

## Suggested Timetable for Secondary Co-ordinated Admissions

Timescale	Action
<b>24 October</b> in Yr A or nearest working day	Closing date for applications.
<b>14 November</b> in Yr A	Home local authority sends applications for schools in other local authorities to those local authorities.
By date specified in scheme	Local authorities send applications to foundation and aided schools.
By date specified in scheme	Foundation and aided schools send lists of pupils to be offered places to local authorities in which situated.
<b>15 February</b> in Yr B	Local authority applies agreed scheme for own schools, informing other local authorities of offers to be made to their residents.
By date specified in scheme	Schools informed by own local authority of the final results, which may include offers to pupils living in other local authorities.
On <b>1 March</b> in Yr B	Offers sent out to parents by local authorities, including offers to parents living in other local authorities.
Either for an additional month, or until the start of the school year	Re-offer places not accepted, and deal with late applications etc, in accordance with the terms of the scheme.
By end of April	Appeals.

# Consultation and Publication

1. Appendix 4 provides guidance on consulting on, and the publication of, admission arrangements, and should be read in conjunction with chapters 1 to 3 of this Code.

## *Consultation*

2. Except in the circumstances described in paragraph 3 below, all admission authorities are required by law to consult each year on the admission arrangements for those schools for which they are responsible and, where appropriate, on their proposed co-ordinated admission schemes.
3. If the local authority has notified the Secretary of State that all admission authorities in the area have consulted each other and the admission authority is not proposing to change the admission arrangements which it had determined in the preceding year and no objection has been made to the Schools Adjudicator about those arrangements in any of the five preceding years, then admission authorities in that area (other than the local authority) need not consult in the following year and alternate years thereafter.
4. The governing bodies of Academies are also required by their funding agreements to consult about their admission arrangements.
5. Admission authorities should consult on full details of admission arrangements they propose to determine, which **must** be consistent with the co-ordinated scheme operating in the area in the year in question, and **should** include:
  - a) admission numbers for any years to which it is intended to admit pupils;
  - b) application procedures;
  - c) the oversubscription criteria to be used in accordance with the provisions of chapters 1 and 2 of this Code, and the order in which they will be applied, to allocate places if the school receives more applications than there are places available;
  - d) information about any tests for aptitude or ability if allowed;

- e) any separate entry requirements and oversubscription criteria for Year 12 or nursery places, if applicable;
- f) information about whether a waiting list will be maintained and for how long after 1 September;
- g) information about how late applications can be made and will be handled as agreed in the co-ordination scheme.

### *Informing parents: publication of admission arrangements*

6. Parents need to be able to make informed decisions when applying for a school place for their children. They should have all relevant information to hand before they apply. It is easier for parents to understand local admissions systems that are clear, fair and objective. Above all, they need to be able to understand whether they have a realistic chance of being offered a place for their child at any particular school.
7. Local authorities and school governing bodies **must** publish information about their admission arrangements in accordance with the Education (School Information) (England) Regulations 2002. Local authorities are under a specific duty to publish information about admission arrangements for all the maintained mainstream schools in their area. There is much existing good practice for admission authorities to draw on when bringing together and publishing information. Parents find it helpful to have information on all primary schools in their area in one booklet; similarly for secondary schools including (in accordance with good practice) Academies. It is also good practice to publish this information fully on the local authority's website. Admission Forums **should** consider the information made available to parents and advise local authorities on what more is needed to raise the standard to that of the best.
8. Local authorities are required by the Education (School Information) (England) Regulations 2002 to publish a composite prospectus annually with information about admissions arrangements in their area.
9. Published admissions information:
  - a) **should** offer clear guidance in plain English and in commonly used community languages to steer parents through the procedure;
  - b) **must** set out clearly the timescale for each stage of the admissions process, in particular the deadline for the receipt of applications (including on-line applications) (Education (School Information) (England) Regulations 2002) and should include the date on which parents will be sent the outcome as agreed in the co-ordinated scheme (locally agreed date for primary; 1 March for secondary).

- c) **must** explain the admission arrangements of all maintained schools and Academies in the area, including how co-ordinated schemes work in the local authority's area and neighbouring areas (where appropriate);
  - d) **should** explain what tests will be used and when (where appropriate);
  - e) **must** give information on the number of applications for places at each school the previous year, the number which were successful (Education (School Information) (England) Regulations 2002) and should give the criteria under which they were accepted (with an indication of whether this reflects the pattern of recent years). Parents should be made aware that they need to consider whether they meet the oversubscription criteria carefully;
  - f) **should** explain what is expected from parents, and what the parent can expect from the school and the local authority, at each stage;
  - g) **must** make clear how parents can express their preferences for a school, when parents will know whether or not their applications have been successful, and how to take up their statutory right of appeal (Education (School Information) (England) Regulations 2002);
  - h) **should** include explanations to help parents assess realistically their likelihood of getting a place at any preferred school;
  - i) **should** set out the details of the agreed protocol for the sharing of hard to place children outside the normal admissions round with a clear explanation of how it works;
  - j) **must** give a name and details of a contact point for further information (Education (School Information) (England) Regulations 2002).
- 10.** Published admission arrangements **must** include the oversubscription criteria that will be used to allocate places if there are more applicants than places at a particular school in accordance with the provisions of Chapters 1 and 2 of this Code (Education (School Information) (England) Regulations 2002).
- 11.** In addition to the published information, it is good practice for local authorities to work with schools and other partners to offer targeted Choice Advice to parents who are unable or unsure about how to use the information on school admissions. Choice Advice may be delivered in or out of school and **should** take the form of group or 1:1 sessions for those needing additional support. The aim of these sessions should be to ensure that every parent has the right information to make the optimum choice possible for their child. Detail of how Choice Advice might operate is contained in Appendix 5.

# Choice Advice – Guidelines for Local Authorities

## *Introduction and background to choice advice*

- 1.** All children of all backgrounds, race or religion must have the same degree of access to good quality schools, but it is parents and carers who make the choice of school for their children. If we are to ensure that all children have the best chance in life then we must ensure that their parents have the support they need to make informed decisions about schools. Children must not be disadvantaged because their parents have difficulty in accessing the information they need to make a choice of school or if their parents do not, for whatever reason, engage with the process of applying for a school.
- 2.** The transition between primary and secondary school can be one of the most difficult times for families and children. Most parents and carers recognise the critical importance of getting a place in a secondary school that will meet their children’s academic and developmental needs, is easy to travel to, and where their children will be happy and want to attend. The majority of families, armed with information about local schools, navigate the system successfully and get a school place that meets their needs.
- 3.** Admission arrangements often appear complex and this Code makes clear the importance of straightforward procedures that are easily understood in ensuring that all families can access and navigate the system. However, there are a number of families who will still find the system difficult to understand and difficult to operate. There are also a small number of parents who, for one reason or another, are unable or unwilling to engage with the process. This tends to happen more frequently in the most deprived communities and puts the children affected at a significant disadvantage.

## *Statutory duty to provide support for parents*

- 4.** Section 40 of the Education and Inspections Act 2006 amends section 81 of the School Standards and Framework Act 1998 to place a duty on local authorities to provide advice and assistance to the parents of children in their area when they are in the process of deciding which school they want to send their children to. Choice advice is one way that local authorities might discharge this duty for more disadvantaged parents at the secondary school transfer stage.

### Choice advisers

5. To help these families make the best of the options available to them the Government is introducing a network of Choice Advisers who will target those parents who need the most help during the admissions round. The Government has provided funding for local authorities to enable them to establish Choice Advice in their areas. These guidelines are intended to help local authorities develop their own approach to Choice Advice. More detailed guidance on establishing an independent Choice Advice service and on appropriate training and accreditation together with an outline person-specification and job-description are available on the *Every Child Matters* website<sup>57</sup>.
6. Choice Advice is about helping and supporting families to make the best and most realistic choice of secondary school, but it is for parents to make the decision about which schools to apply for. The adviser will not take decisions for parents and cannot guarantee a place at a particular school.
7. Choice advisers **should** help families optimise their choices using all the information to hand (including over-subscription criteria), plus use of local knowledge of what individual schools have to offer, to ensure parents are more likely to get the best place for their child. Where appropriate, this will include information about schools which might be in different local authority areas with additional advice covering local authority school admission regimes and individual schools' admission criteria.
8. Local authorities **should** make Choice Advice available to families living within their boundary irrespective of where the children attend primary school. The difficulty arises when a family requiring support is identified at a primary school in one local-authority area and they reside in another. This is very likely to be the case in large conurbations covered by a number of authorities. In these cases local authorities should work together to ensure that the family receives Choice Advice from the most appropriate source.
9. The first priority for Choice Advisers **should** be to ensure that all parents in need of such advice are able to access it, and some parents have expressed concerns about ensuring the advice they receive is independent and in the best interests of the child. Local authorities should ensure that choice advisers are independent of those who work in admissions or at schools in the area.

### Targeting Choice Advice

10. Nationally, research shows that around 6% of parents of children transferring to secondary school are not interested in choosing a school. This often means that there is a small group of children who do not have a secondary school place when they leave primary school. Traditionally these children are at the greatest risk of slipping through the net and

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57 [www.everychildmatters.gov.uk/resources-and-practice/cm00021](http://www.everychildmatters.gov.uk/resources-and-practice/cm00021)

disappearing from the system. These are the families that Choice Advisers will focus on and they **should**, where appropriate, receive one-to-one support.

11. Choice advisers **should** also support disadvantaged families in maximising the likelihood of their successfully securing a place in the school that will best meet their children's needs.
12. The service **must** be made available to all members of the family who have responsibility for the child, including fathers and mothers and those who are not normally resident with the child, as well as any adults with caring responsibility. Wherever possible the child **should** be included and provided with appropriate advice so that they are able to express an informed view about a choice of school.

### *Quality Assurance and Independence*

13. Parents must have confidence in the advice they receive and will need to know that it is unaffected by any potential political or administrative considerations at play in the local authority or local schools.
14. There are measures in place to secure the independence of the choice advisers, in particular through:
  - a. a clear status as an independent professional, accredited through the Support and Quality Assurance network;
  - b. an online forum where choice advisers can access support and advice about issues and share best practice;
  - c. evaluation of the impact of the service, including analysis of parental satisfaction data.

# Guidelines for boarding schools

## Purpose

1. This Appendix sets out responsibilities of admission authorities for state maintained boarding schools in relation to participation in co-ordinated admission arrangements; the prohibition on interviewing, except to assess suitability for boarding; and the use of references. It provides guidelines on how interviews may be conducted and information gathered to assess suitability for boarding provision without breaching legislation or this School Admissions Code, with which all maintained schools **must** act in accordance. These guidelines should be read in conjunction with paragraphs 1.29 to 1.36 and 2.35 to 2.39 of this Code.

## Admission Procedures

2. As maintained schools, boarding schools **must** adopt a set of published admission criteria for both day and boarding places which comply with education and equality legislation and with the provisions of this Code.
3. Boarding schools may adopt separate admission numbers and, if they wish, separate oversubscription criteria for day and boarding places.

## *Co-ordination of admission arrangements*

4. All maintained schools, including those with boarding provision, **must** comply with sections 89B and 89C of the School Standards and Framework Act 1998 and the Education (Co-ordination of Admission Arrangements) (Secondary Schools) (England) Regulations 2002 (as amended).
5. This means that all applications for day and boarding places, made by parents of children residing in England, for admission at the normal point of entry **must** be processed through the co-ordinated admissions process.

6. All applications received during the period covered by co-ordinated admission arrangements (for both boarding and day places) **must** be ranked in order of priority against a school's oversubscription criteria, and the ranked list **must** be returned to the school's home local authority by the date agreed in the area's co-ordinated 'scheme' (see Chapter 3). Offers of places will then be sent out by the local authority on 1 March.
7. Any applicants residing in England who approach the school directly during this period **must** be told to apply on their home local authority's common application form, although admission authorities may still undertake 'boarding suitability' arrangements as soon as they are aware of interest (in accordance with paragraphs 1.29 to 1.36 of this Code). The same applies to those who apply well in advance of the closing date for the submission of the common application form.
8. Other applications received at this time (from overseas – including British forces overseas, including Scottish, Welsh based parents) are not directly included in the co-ordination process, but their priority ranking will affect those who are, so they **must** be included in the ranked list sent back to the school's home local authority.
9. After offers are made by the local authority on 1 March, the admission authority may deal with all other applicants who come to them without going through the co-ordinated process (unless other arrangements are agreed with the home local authority).
10. The school will need to agree with the local authority, as part of the annual consultation on the area's co-ordinated scheme, how applications made after the scheme's official closing date for applications, but before the offer date, are to be handled.
11. It is the responsibility of the admission authority to ensure that processes to ascertain suitability for boarding are carried out in line with the dates agreed within the local co-ordination scheme for the exchange of information. It **should** give adequate notice of the deadline by which any information will be required. But it **must not** determine that a candidate is unsuitable to board simply because information cannot be made available to them by that deadline.
12. Applications for year groups other than the normal point of entry do not have to be part of the co-ordinated admissions process.
13. Where an admission authority for a boarding school requires proformas to be completed to assess suitability for boarding to be completed by schools and local authorities, it will need to ensure that both are given sufficient time to complete and return the forms so that the process is completed before the agreed date for the return of ranked lists of pupils to the school's home local authority as part of the co-ordinated admissions process.

## Assessing suitability for boarding

14. Section 43 of the Education and Inspections Act 2006 prohibits the use of interviews to determine admission to a maintained school, except where an interview is used solely to assess the suitability of an applicant for a boarding place.
15. In accordance with paragraphs 1.29 to 1.36 of this Code the assessment of suitability for boarding **must not** be adopted within a school's oversubscription criteria but **must** be undertaken **prior** to the school applying its oversubscription criteria.
16. An 'interview' in this context means face-to-face or telephone interviews or meetings with the candidate or any proformas, used to determine suitability for boarding. These may include proformas completed by the applicant's parents or guardian and/or the candidate's previous or current school(s), and those completed by local authorities which can be used to determine whether the child presents any serious child safety or protection risks.
17. There is no requirement for boarding school admission authorities to undertake interviews or use proformas as part of the admission process. But, where they do, their processes **must** comply with legislation and the guidelines provided in this Code including guidelines on the conduct of the interview and general suitability assessment exercise. They **must** also use the proformas and interview review sheets in this appendix and state clearly within published admission arrangements that the school will additionally carry out a process to establish suitability for boarding which will involve an interview and/or using information proformas (if admission authorities for boarding schools decide they wish to use interviews and proformas).
18. In order to determine the suitability of an applicant to board, an admission authority **may** therefore have regard to:
  - a) The outcome of an interview with the applicant carried out for that sole purpose;
  - b) Information provided by the applicant's current school or – if he or she is currently out of school – previous school, requested and provided for the same purpose;
  - c) Information provided by the home local authority on safeguarding issues.
19. Admission authorities for boarding schools **must not** use any other processes to determine suitability.
20. Where there are more applicants who are suitable to board than there are boarding places available, the admission authority **must** apply the oversubscription criteria set out in its published admission arrangements. These criteria **must** be set in accordance with the provisions of this Code and legal requirements (such as, for instance, giving top priority to looked after children) and **must not** amount to any form of selection by aptitude or ability, except where otherwise permitted. The oversubscription criteria **must not** include criteria for deciding which pupils are most suitable to board. Interviews and any other information used to judge suitability **must not** be used to determine admission to day places. Setting fair, clear

and objective admission criteria should ensure that admission authorities can clearly demonstrate to parents and carers how places have been allocated.

21. Suitability is discussed in paragraphs 1.29 to 1.36 of this Code as an assessment of whether an applicant child presents a serious health and safety hazard to other boarders; or whether an applicant child is developmentally suited to a boarding place.

### The Process of Assessing Suitability for Boarding

22. The following paragraphs set out the procedures which admission authorities for boarding schools **must** follow in determining admissions for boarding places if they decide to adopt a process, prior to the application of the school's admission criteria, to determine whether a candidate is suitable to board.

#### *General principles*

23. For boarding places, the admission authorities for mainstream schools are entitled to take the view that a history of major behavioural difficulties such as sexual misconduct, arson or extreme physical violence is likely to render an applicant unsuitable to board. Low level misbehaviour would not do so.
24. Schools **must not** ask for or consider information on religious background (unless this is relevant to assessment against published admission arrangements), home circumstances, academic ability, sporting or artistic ability, academic interests or other extraneous matters such as low level misbehaviour. If any such information is provided it **must** be disregarded.
25. If an admission authority determines that an applicant is not suitable for boarding, it **must** inform the parents/carers in writing of the reasons for the determination and, as with other refusals of admission (i.e. for a day place), the right of appeal and who to contact to lodge an appeal.

### Interviews to establish Suitability for Boarding

26. An admission authority may only interview an applicant as part of a process to determine whether or not he/she is suitable to board. Admission authorities which use interviews **must** focus purely on whether the applicant would be able to cope with and benefit from a boarding environment. It **must not** interview on any of the issues described in paragraph 25 above.
27. Questions **must** be restricted to the following areas, although schools are free to develop their own sets of questions within these areas. Admission authorities should note that these areas are merely to enable them to draw up a complete picture of developmental suitability for boarding. An inadequate response in any particular area would not necessarily mean that a child was not suitable overall to board:

- a) Experience of staying away from his/her parents/carers or reliance staying away from home.
- b) Experience of sharing a room with other children/communal living and whether the applicant shows an understanding that in a boarding environment he/she would be expected to take into account the needs of others and to compromise.
- c) Has the applicant thought about the implications of boarding (e.g what he/she would like most about boarding school and what he/she would miss most about home)?
- d) Whether a boarding place is what the child wants and is not just the wishes of a parent/carer.
- e) Is there any medical reason why boarding would not be appropriate which could not be met by reasonable adjustment to the boarding accommodation, routine and practice within the school's responsibilities under the Disability Discrimination Act and other responsibilities?

### Proforma: Information from Schools

28. Admission authorities **must not** use references from schools as any part of an admissions process other than the proforma to assist in the determination of an applicant's suitability for boarding. Schools may be asked to comment on boarding need as supplementary information. The absence of any comments from the school under this section would not mean that the child could not be considered as having a boarding need as the child's parent or carer **must** be allowed to make the case for need with his/her application.
29. On receipt of an application or expression of interest, an admission authority may seek information in support of the applicant's suitability for boarding from their current or former school (if the pupil doesn't have a current school). It **must** be sought on the proforma at the end of this appendix to the Code. The reference **must not** focus on religious background, home circumstances, academic ability, sporting or artistic ability, academic interests or other extraneous matters such as low level misbehaviour
30. Information from schools in support of a candidate's suitability for boarding **must**, if used, focus on the issues set out in paragraph 28 and any safeguarding concerns as set out in paragraph 1.33 of this Code

### Proforma: Information from Local Authorities

31. On receipt of an application (or query), an admission authority may also seek information from the child's home local authority to ascertain whether an applicant may present a safeguarding risk such that their admission would put him/herself or other children at serious risk.
32. The information **must** be sought on the proforma at the end of this appendix which focuses solely on major behavioural issues such as sexual misconduct, arson, or extreme physical violence.

### An example of how the system might work

**33.** School 'A' has 50 boarding places. It traditionally takes in boarders who apply both from within England and from other countries.

**34.** It has 3 criteria for entry. In order:

- a) Looked after children (LAC)
- b) Children with a boarding need
- c) Other children by distance.

A 'distance' tie break is also applied to the first two priority criteria to enable the school to rank applicants in strict priority order.

**35.** The school uses a suitability test prior to applying its admission arrangements.

**36.** The local co-ordinated scheme has a closing date for applications of 13 October and requires that ranked lists are sent back to the school's home local authority by 18 January. Prior to 13 October 50 applications are made on the common application form from English based applicants and 50 are made from other applicants, including overseas applicants, prior to 4 January (NB. a school will need to publish a closing date, such as this, for overseas applicants which will enable it to send a ranked list back to its home local authority having carried out a 'suitability' test and having applied its oversubscription criteria) in accordance with the law and provisions of this Code.

**37.** Of these applicants 30 English based applicants and 30 overseas applicants are deemed by the school as suitable for boarding. Of these 5 home applicants were looked after children and so were ranked as highest priority. From the applications another 5 home based applicants and 10 overseas applicants were found to have a boarding 'need' and so these are ranked as next highest priority for admission. The remaining 40 applicants deemed suitable for boarding are ranked in order according to the distance they live from the school.

**38.** This list of 60 applicants is then sent back to the school's home local authority with those applicants who are outside the scope of the co-ordinated scheme (i.e. the overseas pupils) highlighted. However, the home authority then finds that 10 of the highest ranked home applicants have expressed a higher preference for another school which can be met. This moves all the other applicants for boarding places up 10 places. The local authority therefore informs the school and sends out offers to the 20 English based applicants (who all reside in its own area) on 1 March. The school then also sends out offers to the 30 suitable overseas applicants within a few days.

**39.** If any pupils made an offer subsequently refuse that offer, the school can fill any vacant places from casual, in-year applicants when they express a preference, but **must** apply its published oversubscription criteria if the school has, say, 1 vacancy and 2 in-year applicants.

## Interviews to Assess Suitability For Boarding Provision

1. Boarding schools may, if they wish, use an interview as part of the evidence to determine whether or not an applicant is suitable to board. Interviews **must not** be used for any other reason e.g. to select candidates on the basis of academic ability or aptitude.
2. Consideration **must not** be given to any matters which are extraneous to the determination of suitability.
3. The purpose of the interview is not to “catch out” the applicant with unexpected questions or overly insistent questioning. However, interviewers may wish to invite candidates to elaborate on answers which appear to be simplistic or rehearsed.
4. It is good practice to brief applicants and their parents/carers carefully about the purpose and structure of the interview beforehand. Applicants should be put at their ease during the interview, and interviewers must make every reasonable effort to accommodate the needs of those with special needs or a disability (e.g. hearing impairment or speech difficulty). In some circumstances, it may be necessary for interviews to be conducted through an interpreter.
5. It is advisable to organise interviews to allow for the possibility that interviewers may take longer to form an impression of some applicants than of others. Careful consideration should also be given to the location of interviews and the arrangement of the interview room.
6. Exemplar questions are given overleaf and a proforma to record the results of interviews and the information provided on the various proformas follows the exemplar questions. Interviewers are at liberty to word questions differently or to use different questions, especially taking into account the age and other circumstances of the applicant. However, questions should be limited to the areas set out in paragraph 28 of this appendix to the Code and must be recorded.

## Exemplar Questions

### 1. Evidence of the applicant's resilience away from home

Tell me about a time you stayed away from home without your parent/carer.

What did you like about that experience?

Did you miss anything about home when you were away?

Would you like to stay away from home again?

Do you think you would enjoy staying away from home again more or less than last time?

### 2. Evidence of experience of sharing with others and evidence of the applicant's self reliance and adaptability to communal living.

Tell me about your room at home (or a special place that you like to go to alone).

Do you share your room with anyone else?

Have you ever shared a room with someone else?

What is good about sharing a room and what is good about having a room on your own?

Which do you prefer?

If you had a spare hour this afternoon, what would you do with it?

Have you ever had to make a very hard decision? How did you decide what to do?

How do you and your friends decide what games to play in the playground?

What would be the most important thing that you would bring from home if you came to board here?

### 3. Evidence of the applicant having considered the implications of boarding

Do you know anyone else who goes to this school/a boarding school?

What have they told you about being at boarding school?

Have you read any books/seen any films or TV shows about being at boarding school?

Do you think it would be like that if you came here as a boarder?

What do you think you would like most about being a boarder?

What would you miss most about home?

You've looked round the boarding house – what would you want to change about it?

### 4. Evidence of the applicant wanting to board

Whose idea was it to come to this school?

What did you think when they said "how about going to boarding school?"

# Suitability for Boarding Interview and Proforma Review Sheet

**Name of Applicant:** 
**Date of Birth:** 
**Interviewer:** 
**Date:**

	Low				High	Comments
	1	2	3	4	5	
Resilience away from home						
Adaptability to communal living						
Child has considered implications of boarding						
Does child want to board	N/A	N/A	N/A	N/A	N/A	

Are there any issues relating to the safeguarding of this child or of other children of which you are aware?	
Any other comments regarding this applicant's suitability to board?	

## Admission to State Maintained Boarding Schools

### Suitability for Boarding and Supporting Evidence for Boarding Need

### Previous School Proforma

State Maintained Boarding Schools may, if they wish, use references from an applicant's present school (or previous school) as part of the evidence to determine whether or not an applicant is suitable to board. They must not be used to select candidates on the basis of academic ability or aptitude and those completing references must ensure that they do not make reference to any other matters which are extraneous to this decision. These include religious affiliation, sporting or artistic ability or academic interests or any low level disciplinary matters.

#### **Evidence of the applicant's resilience away from home.**

To your knowledge, has the applicant had experience of staying away from home without his/her parent/carer either as a boarder or on a school residential, camp or other activity?

Did the applicant appear to enjoy the experience? Did he/she show resilience in an unfamiliar setting without his/her parent/carer?

#### **Evidence of the applicant's adaptability to communal living and self reliance.**

How well does the applicant relate to others, including children who are older and younger than him/her?

Is the applicant able to amuse him/herself without the support of adults?

Will he/she play or work on his own or does he/she always seek the company of others?

**Evidence of the applicant wanting to board and having considered its implications**

Has the applicant or his/her parent/carer discussed this application with you or anyone else at your school? Have you formed an impression as to whether or not the applicant him/herself wishes to attend a boarding school?

**Safeguarding children issues**

Does the applicant have a record of serious misbehaviour, for example arson, serious physical violence, inappropriate sexual behaviour or serious intimidation of other children? If yes, please provide details.

**Boarding need**

Are you aware of any reasons why a place at a boarding school may be particularly suitable for the applicant? If yes, please provide details.

## Admission to State Maintained Boarding Schools

### Suitability for Boarding

### Local Authority Proforma

State Maintained Boarding Schools may use references from an applicant's local authority (or another competent authority outside the UK) as part of the evidence to determine whether or not an applicant is suitable to attend a school as a boarder.

**(1) Are there any particular reasons why admission of this child would endanger other boarders?**

Focus on serious misbehaviour, for example arson, serious physical violence, inappropriate sexual behaviour, serious theft or serious intimidation of other children.

**(2) Is there any other reason why the applicant may pose a risk to him/herself, to other children or to staff in a boarding environment?**

Please append a brief note of any concerns that there may be about the applicant's suitability to board for these reasons.

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