

EXPLANATORY MEMORANDUM TO
THE EDUCATION (INFANT CLASS SIZES) (AMENDMENT) (ENGLAND)
REGULATIONS 2006

2006 No. 3409

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Description**
 - 2.1 This instrument fulfils two functions:
 - 2.1.1 It enables schools to admit looked after children – as a ‘class size exception’ - outside a normal admission round even if infant classes are up to the 30 limit; and
 - 2.1.2 It requires schools to seek the local authority’s confirmation that it is applicable before applying the infant class size exception relating the admission of an additional child for whom no other school is available within a reasonable distance.
 - 2.2 The instrument is necessary to remove barriers to ensuring that looked after infants obtain a good quality primary school place, even if schools are full, thus improving their life chances. The instrument is also necessary to ensure that schools correctly apply the class size exception relating to children who move into the area outside the normal admission round when no other place is available.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 The instrument is made in exercise of powers conferred upon the Secretary of State by sections 1 and 138(7) of the School Standards and Framework Act 1998.
 - 4.2 Following calls for smaller classes and research which indicated that smaller classes in infant years have an educational and social benefit, the Government legislated in 1998 to limit infant classes to 30.
 - 4.3 Section 1 of the School Standards and Framework Act 1998 imposed a limit of 30 pupils to a qualified teacher in infant classes but allowed the Secretary of State to substitute another number for ‘30’ by regulations.
 - 4.4 Regulations made under sections 1 and 138(7) of the School Standards and Framework Act (the Education (Infant Class Sizes) (England) Regulations 1998) impose a limit on class sizes for infant classes at maintained schools of 30 and set out exceptions (infants who are not counted for the purposes of calculating the number of pupils in an infant class). The exceptions are:
 - stated pupils;
 - a child moving into the area outside the normal admission round where no other place is available within a reasonable distance;

- a child who is initially refused admission erroneously;
- children admitted on appeal;

4.5 In each of the above circumstances the class can only be above 30 for the remainder of the school year. Schools are also allowed to exceed a class size of 30 on occasions when, to help them derive benefit from attending mainstream classes, statemented pupils from a special school or SEN unit attend mainstream infant classes.

4.6 These Regulations add a new category of excepted child, namely children who are looked after by a local authority and are admitted to a school outside the normal admission round. They also amend an existing category, namely children for whom there are no other suitable schools within a reasonable distance from their home, by requiring that the relevant local education authority must first confirm that a child falls within this category before the exception can apply.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy objective of this instrument is to ensure that looked after children can be admitted to schools outside a normal admission round even if there are already 30 children to a teacher within the school's infant classes. The instrument will also prevent schools from misinterpreting the exception relating to the admission of a child for which no other school is available within a reasonable distance.

7.2 It therefore introduces an additional exception to allow for the admission of looked after children to 'full' infant classes, and amends the existing 'no other available school' exception.

7.3 Educational attainment of looked after children is, on average, significantly lower than attainment for children with a stable family background. The Government is therefore undertaking a raft of measures to improve looked after children's outcomes. It is a fact that, because such children frequently move into an area in year they often have to accept vacant places at schools to which other people have chosen not to send their children for whatever reason. This amendment is therefore in line with the policy imperative within the Education (Admission of Looked After Children) (England) Regulations 2006 and section 50 of the Education and Inspections Act 2006 which aim to ensure that looked after children get highest priority for good school places and gives local authorities powers to direct looked after children to a specified school.

7.4 Although infant class sizes have reduced significantly since 1998 the January 2006 Annual Schools Census showed that there were still a small percentage of unlawfully oversized classes (0.7%). Research by officials identified that a significant number of these oversized classes were as a result of schools misinterpreting the exception in paragraph 5 to the schedule to the 1998 regulations (where a child moves into the area outside the normal admission round and no other place is available within a reasonable distance). Some faith schools, for example, thought this applied when no other faith place existed. The

amendment therefore builds in the safeguards mentioned above.

Consultation

7.5 A public consultation took place via the Department for Education and Skills Consultation website on these regulations, alongside the School Admissions Code, between 8 September and 1 December. Members of both Houses were given a copy of the draft regulations at this time as part of a consultation pack called 'School Admissions Consultation 2006'. Local authorities, schools, parent groups, faith groups and other representative organisations were consulted. No consultation responses were received on these regulations.

Consolidation

7.6 The regulations amend the Education (Infant Class Sizes) (England) Regulations 1998. As the amendments are minor it is not intended to consolidate these regulations.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

8.2 There is no impact on the public sector as local authorities and schools are already required to undertake similar functions under the Education (Infant Class Sizes) (England) Regulations 1998 and the Education (Admission of Looked After Children) (England) Regulations 2006.

9. Contact

9.1 Mark Earl at the Department for Education and Skills Tel: 0207 925 5620 or e-mail: mark.earl@dfes.gsi.gov.uk can answer any queries regarding the instrument.