

EXPLANATORY MEMORANDUM TO
THE EDUCATION (DETERMINATION OF ADMISSION ARRANGEMENTS)
(AMENDMENT NO. 2) (ENGLAND) REGULATIONS 2007

2007 No. 3009

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

2. Description

2.1 This instrument amends the Education (Determination of Admission Arrangements) Regulations 1999 and contains provision made as a result of amendments made to section 89 of the School Standards and Framework Act 1998 by the Education and Inspections Act 2006.

2.2 The admission authority of a maintained school is the body which sets the admission arrangements for that school. This will either be the school's local education authority or its governing body. Admission arrangements are the arrangements for deciding how places at the school will be allocated to applicants, if there are more applicants than places.

2.3 As a result of the amendments set out in 2.1, admission authorities for maintained schools which have been designated by Regulations as having a religious character ("faith schools") must consult a body or person representing their religion or religious denomination as prescribed in regulations when preparing their admission arrangements each year. The body or person to be consulted for each religion or denomination is prescribed in these regulations. The bodies or persons can also refer an objection to the Schools Adjudicator about the determined (final) admission arrangements of those faith schools which are required to consult them.

2.4 These regulations will first apply to admission arrangements for entry to faith schools in the 2009/10 academic year. Admission authorities must have completed consultation on those arrangements by 1 March 2008 and must make a final determination on them by 15 April 2008.

2.5 These regulations also revoke the Education (Determining School Admission Arrangements for the Initial Year) Regulations 1998(a) in relation to England as they have now lapsed.

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

3.1 None

4. Legislative Background

4.1 The instrument results from amendments to the School Standards and Framework Act 1998 made by section 45 of the Education and Inspections Act 2006. The 2006 Act inserted a new subsection (2)(e) into section 89 of the 1998 Act, which relates to the

determination of admission arrangements. Section 89(2) provides that admission authorities must consult certain persons and bodies about their proposed admission arrangements. Section 89(2)(e) requires admission authorities of faith schools to consult such person or body representing the school's religion or religious denomination as may be prescribed in regulations.

4.2 These regulations are made under section 89(2)(e) of the School Standards and Framework Act 1998.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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 regulations implement changes made by the Education and Inspections Act 2006 ("the 2006 Act"). The policy aim of these changes is to enable representatives of the religions / religious denominations which have maintained schools ("religious authorities") to advocate fair admission arrangements at those schools, by giving them the opportunity to comment on the schools' admission arrangements and, in particular, to consider whether any faith-related criteria and assessments used are reasonable. The 2006 Act also enables these religious authorities to challenge any of their schools which operate unfair practices, by giving them the right to object to the independent Schools Adjudicator if they consider that any aspect of the schools' admission arrangements are unfair or unlawful.

7.2 This is part of the wider policy aim to make the school admissions process fairer, by ensuring that the admission authorities of all schools operate in a fair way that promotes social equity and community cohesion. To achieve this aim, changes to legislation were made by the 2006 Act, such as the prohibition of interviewing as a means of allocating school places. A new statutory School Admissions Code ("the Code") was brought in to force in February 2007 which all admission authorities must act in accordance with.

7.3 In addition to the changes made by the 2006 Act, the Code also requires the admission authorities of faith schools to have regard to guidance from their religious authorities (to the extent that this is consistent with the Code) on 'what objective processes and criteria may be used to establish whether a child is a member of, or whether they practice, the faith'. This is intended to bring greater consistency, objectivity and transparency into that part of the admissions process.

7.4 Prior to the 2006 Act, the admission authorities of Church of England schools were already required to consult their diocese about their proposed admission arrangements. But there was no right of objection for the diocese if schools disregarded their advice. Nor was there similar provision for any other faith. The Catholic Education Service asked for this inconsistency to be remedied.

7.5 An early version of these regulations (which did not list the particular bodies/persons to be prescribed) was consulted on alongside the draft School Admissions Code between 8 September and 1 December 2006. No comments were made in response to this aspect of the consultation. We have subsequently consulted organisations representing the religions and religious denominations which have maintained schools, to determine the religious authority for schools of their faith or denomination to be prescribed in the regulations.

7.6 A small number of maintained faith schools (35 out of nearly 7,000) are not covered by the regulations at present as we have been unable to identify a religious authority for their faith/denomination. If a religious authority can be identified for these schools in future the regulations will be amended accordingly. In the meantime, these schools are still subject to the same statutory consultation requirements as secular schools (ie they must consult other bodies about their admission arrangements, such as their own and neighbouring local authorities, and other admission authorities in the local area) and must comply with the School Admissions Code and legislation.

7.7 We will be writing to the admission authorities of all maintained faith schools to inform them that these regulations will be coming into force and to explain the implications for them. The requirement for them to consult such body or person representing their religion/denomination as may be prescribed in these regulations is already highlighted in the School Admissions Code, which they should all be familiar with.

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 As each admission authority must already consult annually on its proposed admission arrangements; many already include their religious authority in this process; and it is normally carried out by email; we do not anticipate this placing any significant additional burdens on schools.

9. Contact

Helen Noakes at the Department for Children, Schools and Families Tel: 020 7925 6303 or e-mail: helen.noakes@dcsh.gov.uk can answer any queries regarding the instrument.