

To: Business Committee

From: Jane Davidson AM  
Minister for Education and Lifelong Learning

## EXPLANATORY MEMORANDUM

### EDUCATION, WALES

### THE EDUCATION (VARIATION OF ADMISSION ARRANGEMENTS) (WALES) REGULATIONS 2006

#### Summary

**These Regulations prescribe that the admission authority of a school may vary the admission arrangements they have made for a particular school year by changing the admission number they have previously determined, if such a variation is necessary to implement approved statutory proposals for school re-organisation published under section 28 of the School Standards and Framework Act 1998. (The admission authority of a foundation or voluntary aided school is the governing body; in the case of a community or voluntary controlled school it is the LEA.)**

1. This Memorandum is submitted to the Assembly's Business Committee in relation to the Education (Variation of Admission Arrangements) (Wales) Regulations 2006, in accordance with Standing Order 24.6.
2. A copy of the Instrument is submitted with this Memorandum.

#### Enabling Powers

3. The powers enabling this Instrument to be made are contained in sections 89(8)(e) and (f) and 138(7) of the School Standards and Framework Act 1998. These powers have been transferred to the National Assembly for Wales and, in turn, have been delegated to my portfolio as Minister for Education and Lifelong Learning.

#### Effect

4. There are 180 admission authorities across Wales, comprising 168 governing bodies of voluntary aided and foundation schools and 22 local education authorities. The Regulations provide that an admission authority may vary an admission number (i.e. the number of pupils to be admitted to any school year), which has already been determined where such a variation is necessary to implement a school re-organisation proposal published under section 28 of the 1998 Act. In such circumstances, there is no separate need to refer the matter for the National Assembly for determination or notify those who were consulted during the determination of admission arrangements round. The normal arrangements for consultation, publication, objections and Assembly

determination (where there are objections) of section 28 statutory proposals would apply.

5. Admission authorities can already vary admission arrangements under section 89(5) of the 1998 Act if there is a major change in circumstances at the school, for example a fire which destroys classroom space.
6. Currently the standard number (i.e. the number of pupils to be admitted in any school year) of a school which undergoes a re-organisation is set by being included in the published statutory proposal. The repeal of the provisions for standard numbers means a replacement provision is needed to cater for changes in admissions numbers when such a change is necessary because of proposals for school re-organisation published under section 28 of the 1998 Act. For example, a proposal to enlarge a school or to change the age range may require a new admission number.

### **Target Implementation**

7. It is intended that this Instrument will be made on 31 January 2006 and come into force on 1 February 2006. If the intended dates are not met but the repeal of Schedule 23 to the 1998 Act is commenced there will not be a facility to vary the admission number of a school which is subject to a proposal, as the admission number will no longer be set by inclusion in the published proposal. The repeal of Schedule 23 is included in the Education Act 2002 (Commencement No 8)(Wales) Order 2006, which is due to be made on the 1 February 2006,

### **Financial Implications**

8. It is not anticipated that there are any additional financial implications for the Assembly, local education authorities, schools or others arising from these Regulations.

### **Regulatory Appraisal**

9. A Regulatory Appraisal has been carried out in relation to this Instrument and is attached.

### **Consultation**

#### With Stakeholders

10. In July 2003 the Assembly published a consultation document, 'Changes to School Admissions Procedures', which sought views on general revisions to Admissions policy in Wales. Responses to that consultation were taken into account in drafting these Regulations.
11. Electronic consultation on a new capacity methodology and Regulations relating to school admission arrangements, which included these Regulations and associated regulatory appraisal, took place with all relevant stakeholders between 14 July and 20 October 2005. Consultees included: all Local Education Authorities in Wales; Church Diocesan Authorities; Governors of Voluntary Aided and Foundation Schools;

Estyn; Welsh Language Board; the Children's Commissioner; the Council on Tribunals and Secretaries of Professional Organisations in Wales. The majority of respondents did not comment about the Regulations. Those who expressed an opinion supported the making of the Regulations, as they judged their introduction would result in a simpler, more flexible process. It was therefore not necessary to make amendments to the Regulations as a result of the consultation.

With Subject Committee

12. These Regulations were notified to the Education and Lifelong Learning Committee via the list of forthcoming legislation (ELL (2)02-04 (p.1) Annex B, Item Number: ELL-28-04) at its meeting of 28 January 2004. The Instrument has remained on the list of forthcoming legislation ever since and was not originally identified for detailed scrutiny. However, as there are four inter-related sets of Regulations on changes to the admissions framework and the Committee had expressed an interest in scrutinising two sets of the Regulations, it was advised that all four sets be scrutinised. It was agreed that the scrutiny would take place at the committee meeting scheduled for the 30 November 2005.

**Recommended Procedure**

13. Subject to the views of the Business Committee, I recommend that this Instrument proceeds to Plenary under the Standard Procedure to give Members the opportunity to further debate these Regulations.

**Compliance**

14. The proposed legislation will (as far as applicable):
- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 section 120);
  - be compatible with the Assembly's scheme for sustainable development (section 121);
  - be compatible with Community law (section 106);
  - be compatible with the Assembly's human rights legislation (section 107);and
  - be compatible with any international obligations binding the UK Government and the Assembly (section 108).
15. The information in this memorandum has been cleared with the Directorate of Legal Services (DLS) and the Assembly Compliance Office. (ACO)
16. Policy division contact: Kathryn Massey Ext 1013
17. Head of Division: Elizabeth Taylor, Ext 6087
18. Drafting Lawyer: Helen Roberts, DLS Ext 5617

**JANE DAVIDSON AM**

**NOVEMBER 2005**

**MINISTER FOR EDUCATION AND LIFELONG LEARNING**

## Regulatory Appraisal

### Education, wales

#### The Education (Variation of Admission Arrangements) (Wales) Regulations 2006

##### Purpose and intended effect of the measure

1. Admission authorities consult on and determine their admission arrangements in the “determination year” which begins two years before the year to which the admission arrangements will apply. (The admission authority of a foundation or voluntary aided school is the governing body; in the case of a community or voluntary controlled school it is the LEA.) The final arrangements must be determined by 15 April in the determination year. Following determination the arrangements can currently only be varied if there is a major change of circumstances (e.g. a fire, which destroys classroom space). If an authority wishes to vary arrangements in view of a major change of circumstance they must notify the bodies which were consulted about the admission arrangements and refer the request for variation to the National Assembly for consideration.
2. At present, where a statutory proposal for an alteration to a school, such as an enlargement, necessitates a change in the school's standard number, this is brought into effect by the published statutory notice and implemented at the same time as the alteration to the school. (The standard number is the number of pupil places available in any school year.) When section 89A of the School Standards and Framework Act 1998, as amended by the Education Act 2002, is commenced and related guidance is introduced, admission numbers will replace standard numbers and will be set as part of the determination of admission arrangements. (Admission numbers are also the number of pupil places available but are based on the capacity of the school not the number of pupils who were admitted in the past.) It is therefore necessary to put in place an alternative statutory arrangement to ensure that schools which are altered following a statutory proposal can operate with an appropriate admission number from the date the change is implemented.
3. These Regulations provide that an admission authority may vary an admission number which has already been determined where such a variation is necessary to implement a school re-organisation proposal published under section 28 of the School Standards and Framework Act 1998. In such circumstances, there is no separate need to refer the matter for the National Assembly for determination or notify those who were consulted during the determination of admission arrangements round - the normal arrangements for consultation, publication, objections and Assembly determination (where there are objections) of section 28 statutory proposals would apply.

##### Risk assessment

4. The Regulations will ensure that no additional procedural burdens are placed on admission authorities when admission numbers replace standard numbers. In addition, this change to procedure will avoid an increase in the administrative burden on the National Assembly.

##### Options

Option 1: Do Nothing

5. If these Regulations were not made the admission authority would not be able to vary an admission number where necessary to reflect changes to the capacity of a school following the implementation of statutory proposals.

#### Option 2: Make the Legislation

6. The Regulations will give admission authorities the facility to vary an admission number where it is necessary to reflect changes to school provision implemented as a result of school re-organisation proposals.

#### Benefits

7. The Regulations will ensure that the administrative burden on admission authorities is kept to a minimum following the introduction of admission numbers and changes to the process for determining admission arrangements.

#### Cost

8. It is not anticipated that there are any additional financial implications for the Assembly, local education authorities, schools or others arising from these Regulations.

#### Consultation

##### With Stakeholders

9. In July 2003 the Assembly published a consultation document, 'Changes to School Admissions Procedures', which sought views on general revisions to Admissions policy in Wales. Responses to that consultation were taken into account in drafting these Regulations.
10. Electronic consultation on a new capacity methodology and Regulations relating to school admission arrangements, which included these Regulations and associated regulatory appraisal, took place with all relevant stakeholders between 14 July and 20 October 2005. Consultees included: all Local Education Authorities (LEAs) in Wales; Church Diocesan Authorities; Governors of Voluntary Aided and Foundation Schools; Estyn; Welsh Language Board; Children's Commissioner; Council on Tribunals and Secretaries of Professional Organisations in Wales. The majority of respondents did not comment about the Regulations. Those who expressed an opinion supported the making of the Regulations, as they judged their introduction would result in a simpler, more flexible process. It was therefore not necessary to make amendments to the Regulations as a result of the consultation.

##### With Subject Committee

11. These Regulations were notified to the Education and Lifelong Learning Committee via the list of forthcoming legislation (ELL(2)02-04 (p.1) Annex B, Item Number: ELL-28-04) at its meeting of 28 January 2004. The Instrument has remained on the list of forthcoming legislation since that date and was not originally identified for detailed scrutiny. However, as there are four inter-related sets of Regulations on changes to the admissions framework and the Committee had expressed an interest in scrutinising two sets of the Regulations, it was advised that all four sets be scrutinised. It was agreed that the scrutiny would take place at the committee meeting scheduled for the 30 November 2005.

#### Review

12. Officials from Schools Management Division will write to admission authorities within two years of these Regulations coming into force to review the impact of the changes to schools admissions legislation.

**Summary**

- 13 The Education (Variation of Admission Arrangements) (Wales) Regulations will mainly affect LEAs and schools which are their own admission authorities, namely voluntary aided and foundation schools. The main impact of the Regulations is to permit variation of a school's admission number where necessary to implement statutory proposals which have been determined either by the promoters or approved by the National Assembly.

**NATIONAL ASSEMBLY FOR WALES**

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**S T A T U T O R Y   I N S T R U M E N T S**

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**2006 No. (W. )****EDUCATION, WALES****Education (Variation of Admission  
Arrangements) (Wales) Regulations  
2006****EXPLANATORY NOTE***(This note is not part of the Regulations)*

These Regulations prescribe the circumstances in which an admission authority may (in addition to the circumstances set out in section 89(5) of the School Standards and Framework Act 1998 (the 1998 Act)) vary the admission arrangements they have determined for a particular school year. Regulation 3 provides that an admission authority may, without further procedures or approval from the National Assembly, vary the admission number they have determined for any relevant age group where such a variation is necessary to implement approved statutory proposals published under section 28 of the 1998 Act, and a variation of the admission number is necessary to implement those proposals. In those circumstances, the procedures for changing admission arrangements in section 89(5) to (7) of the 1998 Act do not apply.

2006 No. (W. )

**EDUCATION, WALES**

Education (Variation of Admission Arrangements) (Wales) Regulations 2006

*Made* [ ] 2006

*Coming into force* 1 February 2006

In exercise of the powers conferred upon the Secretary of State by sections 89(8)(e) and (f), and 138(7) of the School Standards and Framework Act 1998<sup>(1)</sup> now vested in the National Assembly for Wales<sup>(2)</sup>, the National Assembly for Wales makes the following Regulations:

**Title, commencement and application**

1. —1. The title of these Regulations is the Education (Variation of Admission Arrangements) (Wales) Regulations 2006 and they come into force on 1 February 2006.

(1) These Regulations apply in relation to Wales.

**Interpretation**

2. —(2) In these Regulations —  
“the Act” (“*y Ddeddf*”) means the School Standards and Framework Act 1998;  
“admission number” (“*nifer a dderbynir*”) means the number of pupils in any relevant age group intended to be admitted in any school year as determined or, where the context requires, proposed to be determined, by an admission authority in accordance with section 89A(1);  
“National Assembly” (“*Cynulliad Cenedlaethol*”) means the National Assembly for Wales;

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<sup>(1)</sup> 1998 c.31. For the meaning of “prescribed” and “regulations” see section 142 of the 1998 Act.

<sup>(2)</sup> See the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).



“statutory proposals” (“*cynigion statudol*”) means proposals published under section 28.

(3) Any reference in these Regulations to a numbered section or Schedule is a reference to that section of, or Schedule to, the Act.

### **Variation of admission arrangements**

3. —(4) This regulation prescribes for the purposes of section 89(8)(e) the circumstances in which an admission authority, having determined the admission arrangements which are to apply for a particular school year, may (in addition to the circumstances set out in section 89(5)) vary those arrangements.

(5) An admission authority may vary an admission number where such variation is necessary to implement statutory proposals where —

- (a) the proposals have been approved under paragraph 8 of Schedule 6; or
- (b) the body or promoters who published the proposals have determined under paragraph 9 of that Schedule to implement the proposals.

(6) The requirements of section 89(5) to (7) (proposed variation of admission arrangements in view of a major change of circumstances) do not apply to a proposed variation under paragraph (2).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(3).

Date

The Presiding Officer of the National Assembly

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(3) 1998 c.38.