

Explanatory Memorandum to the Education (Admission of Looked After Children) (Wales) Regulations 2009

This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

Description

These Regulations give children looked after by a Welsh local authority priority for school admissions both during and after the timetabled admissions process.

Matters of special interest to the Subordinate Legislation Committee

None.

Legislative Background

The power enabling this instrument to be made is contained in Sections 97D, 138(7) and 138(8) of the School Standards and Framework Act 1998 (as added by Section 52(1) of the Education and Inspections Act 2006). The legislation follows the negative resolution procedure.

Purpose and intended effect of the legislation

The Regulations are intended to ensure that children looked after by a Welsh local authority will have priority for in school admissions arrangements.

All admission authorities must give looked after children priority in their arrangements, subject to the following exceptions:

- Schools designated as having a religious character must give higher priority to looked after children of the faith of the school over other children of that faith. They must also give higher priority to relevant looked after children not of that faith than to other children not of the faith.
- Schools which have provision for selection by ability must give higher priority to looked after children who have been selected by ability over other children who have been selected by ability. Looked after children who have not been allocated a place on the basis of ability must be given priority over other children who have not been allocated a place on that basis.
- Schools which make provision for selection by banding must give priority to relevant looked after children within each band over another child who is eligible for a school place within that band.

The Regulations require admissions authorities of maintained schools in Wales to admit a looked after child to that school outside the normal admission round. The Regulations require that the applicant authority must consult with the admission authority in a manner prescribed in the Code for School Admissions. The admission authority cannot refuse to admit the child unless doing so would seriously prejudice the efficient education or the efficient use of resources. If the admission authority wishes to refuse admission it must make a reference to the Welsh Ministers for determination within seven days in the manner prescribed in the Code for School Admissions.

The Regulations also disapply Section 95(2) of the School Standards and Framework Act 1998 in relation to Welsh looked after children to whom Section 87 of the School Standards and Framework Act 1998 applies (no requirement to admit children permanently excluded from two or more schools). However, the governing body of a community or voluntary controlled school may refer the matter to the Welsh Minister within a period of seven days. A referral to the Welsh Ministers may only be made on the grounds that the admission of the child would seriously prejudice the provision of efficient education or the efficient use of resources.

Implementation

It is intended that the Regulations will come into force on 22 April 2009.

Consultation

These Regulations were consulted on together with the Codes on School Admissions, School Admission Appeals, amendments to the Infant Class Sizes and Admission Appeals Arrangements Regulations. Further details are included in the Regulatory Impact Assessment below.

Regulatory Impact Assessment

Options

Option 1 - Do Nothing

It was not considered appropriate to do nothing as children in care are among the most vulnerable children in society and it is of paramount importance that a school place that is in the best interests of the child is found as quickly as possible.

Option 2 - Safeguard the interests of looked after children during the normal admissions round

As a minimum we considered giving looked after children top priority in oversubscription criteria for all schools. However as such children often have to move school during the academic year it was necessary to safeguard their interests when making applications outside of the normal admissions round.

Option 3 - Safeguard the interests of looked after children throughout the school year

This was the preferred option as it is important that we take every possible action to ensure the interests of these most vulnerable children are protected. Children who are in public care (looked after children) will be given top priority in the oversubscription criteria for all schools and because these children often have to move school during the school year, the Regulations require that they are admitted to a maintained school in Wales at all times.

Benefits

Looked after children will in future have a better chance of securing a place at an appropriate school within a reasonable timescale.

Costs

Governing bodies of voluntary aided or foundation schools may object to the Welsh Assembly Government about the direction to admit a looked after child where they consider that the admission would cause serious prejudice. This may cause them to incur some administrative costs. However, a similar right of appeal has existed in England for over a year and as yet there have not been any appeals to the Adjudicator who is responsible for considering such cases.

There are no additional financial implications for the Welsh Assembly Government arising from the Regulations. They should not increase the administrative burden on local authorities and the governing bodies of foundation and voluntary aided schools except if an admission authority considers it appropriate to appeal to the Welsh Assembly Government.

Competition Assessment

The proposed legislation will not affect business, charities or the voluntary sector.

Consultation

Consultation on this set of Regulations was included in a consultation document "School admissions, school admission appeals and associated regulations" which was issued to: all admission authorities in Wales; Church Diocesan Authorities; a 10% sample of community schools in Wales; Estyn; Administrative Justice and Tribunals Council; and Secretaries of Professional Organisations in Wales, in electronic format in October 2008. for a period of 12 weeks.

The document can be viewed at:

<http://wales.gov.uk/consultations/closedconsultations/?lang=en>

Consultees were asked to respond to the consultation by providing comments on the draft Regulations. The majority of consultees had no comment to make on these Regulations. Those who commented expressed their satisfaction in respect of the interests of the most vulnerable children being safeguarded as far as possible. Concerns about the position of looked after children from English authorities were raised but the Regulations could not be revised to address this issue as Welsh Ministers' Regulation-making powers are restricted to looked after children in the care of Welsh local authorities.

Post implementation review

No review will be required but should a particular case arise it will be monitored to ensure that admission authorities have complied with the new Regulations.

Summary

The proposed Regulations are the most effective way of ensuring that looked after children are admitted to a school of the corporate parent's choice. They will ensure consistency of treatment for some of society's most vulnerable children. There are no significant costs associated with the Regulations.