

AGENDA MANAGEMENT SHEET

Decision maker	Portfolio Holders (Child Safeguarding, Early Intervention & Schools)
Date of Decision-Not before	26 August 2011
Report Title	School Admissions Code, and School Admissions Appeals Code
Summary	This report is in response to the new draft Codes for School Admissions and for School Admissions Appeals, published by the DfE on 27 May, with consultation closing on 19 August.
For further information please contact:	Peter Thompson Service Manager, Access & Organisation Learning & Achievement peterthompson@warwickshire.gov.uk
Would the recommended decision be contrary to the Budget and Policy Framework?	No
Background papers	

CONSULTATION ALREADY UNDERTAKEN:-

Details to be specified

Other Committees	<input checked="" type="checkbox"/> Schools Admission Forum
Local Member(s)	<input type="checkbox"/>
Other Elected Members	<input checked="" type="checkbox"/> CYP&F O&S Chair and Vice Chair for information: Cllr June Tandy Cllr John Ross CYP&F O&S Spokespersons for information: Cllr Peter Balaam Cllr Carolyn Robbins
Cabinet Member	<input checked="" type="checkbox"/> Cllr Heather Timms (Decision Maker) Cllr David Wright
Chief Executive	<input type="checkbox"/>
Legal	<input checked="" type="checkbox"/> Fay Ford "no comments"
Finance	<input checked="" type="checkbox"/> John Betts, Head of Finance

- Other Chief Officers
- District Councils
- Health Authority
- Police
- Other Bodies/Individuals

FINAL DECISION **YES**
SUGGESTED NEXT STEPS:

Details to be specified

- Further consideration by this Committee
- To Council
- To Cabinet
- To an O & S Committee
- To an Area Committee
- Further Consultation

Draft School Admissions Code, and Draft School Admission Appeals Code

Recommendation

That the Portfolio Holder agree that the responses set out below be submitted as the County Council's response to the consultation.

1. Background

- 1.1 The DfE published new draft Codes for School Admissions and for School Admissions Appeals on 27 May, with consultation closing on 19 August. It is intended that revised arrangements would be introduced for the admissions round for school entry in September 2013. The draft Codes are far shorter than the current Codes with the declared aim of simplifying and improving the admissions processes and reducing cost and bureaucracy whilst retaining fairness and objectivity. The brevity of these documents however is achieved at least in part by removing some of the detail into four sets of regulations which the DfE has chosen not to consult upon in the same timeframe.
- 1.2 The purpose of the Codes is to ensure that all state funded school places, whether maintained by a Local Authority or Academy, are allocated in an open, consistent and fair way. Admissions authorities are obliged by law to act in accordance with the Codes. Much of the existing Codes will remain in place but the new draft Codes suggest several significant amendments which are outlined below, using the format for response to consultation as published by the DfE.

2. Responses to DfE Draft School Admissions Code and Draft School Admissions Appeal Code

- 2.1 The revised Codes should ensure that all school places can continue to be offered in a fair and lawful way, and that school admission appeals can be administered in a more effective way and at lower cost.

Q1) Do you agree that the new Codes achieve these aims?

The proposed changes to the Codes should be broadly welcomed as they generally promote the aims of ensuring fairness, efficiency, and removing unnecessary bureaucracy. Those areas causing concern or where further clarification is required are set out below.

Q2) Do you agree with the proposals to allow all popular and successful schools to increase their Published Admission Number?

Where appropriate we would support this proposal. While a successful school may wish to expand, the overall responsibility for ensuring sufficient school places still rests with the Local Authority. Independent school expansion has

the potential to undermine local authority strategic planning. With parts of Warwickshire likely to experience substantial growth over the coming 15 year planning period, the ability to plan strategically for expansion will be crucial. Where numbers are not increasing, the expansion of successful schools without regard for existing surplus places may result in poor value for money.

Whilst not all school expansions would require additional capital, where this was necessary such funding decisions would need to be considered in the context of the overall capital programme for the Authority.

This proposal, combined with the raising of national attainment floor targets, may well lead to a significant increase in school closures as some may no longer have sufficient pupil numbers to be considered viable or may not have sufficient numbers of more able pupils to reach the minimum floor standard.

Q3) Do you agree that Academies and Free Schools should be able to give priority to children attracting the Pupil Premium in their admission arrangements?

Any changes to the Codes which help vulnerable groups access appropriate school places should of course be welcomed. However, the proposal only applies to Academies and Free Schools, while the majority of primary schools are currently still under Local Authority control. As a result, this would create a potential imbalance between the arrangements for Academies and Free Schools compared to those maintained by the Local Authority. If enacted, the Local Authority may wish to consider adopting a similar provision for all school admissions rather than operate within a two-tier system.

Q4) Do you support the proposal to remove the requirement for local authorities to co-ordinate in-year applications?

Ending the requirement on Local Authorities to co-ordinate in-year applications may appear to be a pragmatic response to the growing number of schools which are their own Admission authority. Changes to the Codes, which remove unnecessary bureaucracy and offer an improved service to parents and children are obviously welcome. While the reasoning behind the change is therefore sound, it must be acknowledged that removing this requirement will make it harder to track certain groups of children, often those who are most vulnerable. In-year Fair Access Protocols remain part of the new Codes, but may be much harder to operate if Local Authorities are no longer responsible for in-year admissions generally. Moreover, the apparent requirement for the Local Authority to continue to maintain an accurate list of available places will require an elaborate mechanism whereby each Admission authority will need to supply the Local Authority with 'live' information thereby placing a considerable burden on both Admissions authorities and the Local Authority.

It should also be acknowledged that while the responsibility for in-year admissions remains with Local Authorities, it is easier to ensure a consistent application of oversubscription criteria and associated legislation. The admissions process can be a complex one, and as more schools move away from Local Authority control, it will be difficult to ensure that applications from parents are being treated appropriately.

Q5) Do you support the proposed change to the use of random allocation?

Other than in very rare instances, random allocation has never been used in Warwickshire to offer places. Therefore, restricting the use of random allocation as an oversubscription criterion to individual schools should be seen as a positive step towards fairer oversubscription criteria in general.

Q6) Do you support proposals to add twins (and multiple births) and children of service personnel to the list of excepted pupils?

The importance of ensuring infant classes do not generally exceed 30 students per qualified teacher must be recognised. However, increasing the categories of children who are considered an exception to the infant class size rule seems a sensible measure, as does the removal of the need to take potentially expensive qualifying measures for a very small number of children in subsequent years. The extra flexibility this will give schools should be welcomed.

Q7) Do you agree with the proposal that Admission authorities who are making no change to their arrangements year on year should only be required to consult once every seven years, rather than once every three years?

As the aim of the new codes is to reduce costs and bureaucracy, the proposal seems a sensible one.

Q8) Do you agree with the proposal to allow schools to give priority to applications for children of staff in their over-subscription criteria?

The reasoning behind the proposed changes is unconvincing. If adopted, schools would need to be very clear about what constitutes staff. There is also a risk that in some small primary schools, unless sensible oversubscription criteria are used, a disproportionate number of places could be taken by the children of staff at the expense of local children.

Q9) Do you agree that anyone should be able to raise an objection about the admission arrangements?

Local accountability is clearly important, and the proposals therefore seem sensible.

Q10) Do you agree that the deadline for objections to the Schools Adjudicator should be moved to 30 June from 31 July?

In order that Admission authorities can offer appropriate and timely responses to such objections, this seems a sensible proposal, providing such objections are dealt with in a timely way before the start of the new September term.

Q11) Do you agree with the less prescriptive requirements around the operation, governance and training of appeals panels?

Generally, this proposal is supported, although having knowledgeable and independent Panel members must remain at the heart of the appeals process.

Q12) Do you agree that the proposed appeals timetable will give more certainty to parents and reduce the number of appeals overall?

Increasing the time available to appellants to prepare and lodge an appeal is an improvement, although it is uncertain whether it will lead to a reduction in the number of appeals.

Q13) Do you agree that the proposed new timetable for lodging and hearing appeals will reduce costs and bureaucracy for Admission authorities?

This remains to be seen.

Q14) Do you agree that the new three stage process will provide a more effective process for appeals panels to consider multiple and individual appeals?

Ensuring the lawfulness and correct application of the process in advance of hearing the merits or otherwise of an appeal would appear sensible.

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Head of Service: Mark Gore

Strategic Director: Marion Davis

Portfolio Holder: Cllr Heather Timms

12 August 2011

Draft School Admissions Code

For Consultation Only

The School Admissions Code

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The Statutory Basis for the School Admissions Code

1. The School Admissions Code ('the Code') has been issued under section 84 of the School Standards and Framework Act 1998 ('SSFA 1998')¹. The Code has been made following a consultation under section 85(2) of the SSFA 1998 and after being laid before Parliament for forty days.

2. This Code comes into force on [date] and unless otherwise stated, applies with immediate effect. The Code applies to admissions to all maintained schools in England. It should be read alongside the School Admission Appeals Code and other guidance and law that affect admissions and admission appeals in England².

3. This Code imposes mandatory requirements and includes guidelines setting out aims, objectives and other matters in relation to the discharge of functions relating to admissions by the bodies listed below:

a) **Admission authorities of maintained schools** as defined in section 88(1) (a) and (b) of the SSFA 1998³

b) **Governing bodies and local authorities (when not admission authorities)**

c) **Schools Adjudicators**

d) **Admission Appeal Panels.**

These bodies have a statutory duty to act in accordance with the relevant provisions of the Code.

Application of the Code to Academies

4. Academies, by which we mean Academy Schools⁴, Free Schools, University Technical Colleges and Studio Schools, are state-funded, non fee-paying independent schools set up under a Funding Agreement between the Secretary of State and the proprietor of an Academy (most commonly, and hereafter, referred to as an Academy Trust). Academy Funding Agreements require them to comply with the Code and the law relating to admissions, though the Secretary of State has the power to vary this requirement where there is demonstrable need.

¹ Where statutory provisions have been amended, any references to them are references to them as amended.

² Throughout this draft consultation version of the Code, references to regulations are to the current admissions regulations. These will be consolidated and streamlined to bring them into line with the new Code and so these references will be updated in the final version of the Code.

³ For community and voluntary controlled schools the admission authority is usually the local authority, but it may be the governing body if the local authority with the governing body's agreement has delegated responsibility to it for determining admission arrangements. Governing bodies are the admission authorities for foundation schools (including Trust schools) and voluntary aided schools.

⁴ Subject to the Education Bill receiving Royal Assent, Clause 52 introduces three types of Academies: Academy Schools, 16-19 Academies, and Alternative Provision Academies.

Compliance with the Code

5. It is the responsibility of admission authorities to ensure that admission arrangements⁵ are compliant with this Code. Where a school is the admission authority, this responsibility falls to the governing body or Academy Trust.
6. The Code requires local authorities to produce and publish an annual report on School Admissions in their area. Minimum requirements for that report are set out at paragraph 3.20 of this Code and include an assessment of the effectiveness of Fair Access Protocols and co-ordination in their area, how admission arrangements affect the interests of looked after children and the number and percentage of lodged and upheld parental appeals.⁶ The Schools Adjudicator will report annually to the Secretary of State on Fair Access, based on the issues referred throughout the year.
7. Objections to the admission arrangements of both maintained schools and Academies⁷ can be made to the Schools Adjudicator whose decisions are binding and enforceable.
8. The Secretary of State may refer the admission arrangements of any school to the Schools Adjudicator at any time if he considers that they may not comply with the requirements of this Code.
9. The Schools Adjudicator may investigate the admission arrangements of any school that he considers does not or may not comply with the mandatory requirements of this Code or the law.
10. Any decision of the Adjudicator will be binding on the admission authority. It will be for the admission authority to implement those decisions without delay⁸. Where maintained schools fail to implement decisions of the Adjudicator the Secretary of State may direct them to do so under section 496 or 497 of the Education Act 1996. In the case of Academies, the Secretary of State has powers under the funding agreement to direct the Academy to comply with decisions of the Adjudicator.

The table on page 5 sets out the appropriate admission authority for each type of school in England.

⁵ Admission arrangements means the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.

⁶ Subject to the Education Bill receiving Royal Assent: clause 34 provides that local authorities no longer have to report to the Schools Adjudicator and the requirements for the report will be set out in the Code.

⁷ Subject to the Education Bill receiving Royal Assent: clause 62. Currently objections in relation to Academies are dealt with by the Young People's Learning Agency on behalf of the Secretary of State.

⁸ Subject to the Education Bill receiving Royal Assent: clause 34 removes the power of the Adjudicator to modify admission arrangements of a school.

Type of School	Who is the admission authority?	Who deals with complaints about arrangements?	Who is responsible for arranging/providing for an appeal against refusal of a place at a school?
Academies	Academy Trust	Schools Adjudicator	Academy Trust
Community Schools	Local Authority	Schools Adjudicator	Local Authority
Foundation Schools	Governing body	Schools Adjudicator	Governing body
Voluntary aided schools	Governing body	Schools Adjudicator	Governing body
Voluntary controlled schools	Local Authority	Schools Adjudicator	Local Authority

Introduction

Purpose of this Code

The purpose of the Code is to ensure that all school places for maintained schools (excluding maintained special schools⁹) and Academies are allocated and offered in an open and fair way. The Code has the force of law, and where the words '**must**' or '**must not**' are used, these represent a mandatory requirement.

Admission authorities and local authorities **must** also comply with the regulations and legislation set out in the Appendix.

Overall principles behind setting arrangements

In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.

How admissions work

In summary, the process operates as follows:

- All schools **must** have admission arrangements that clearly set out how children will be admitted, including what criteria will be applied if there are more applications than places at the school. Admission arrangements are determined by admission authorities.
- Admission authorities **must** set ('determine') admission arrangements annually. Where changes are proposed to admission arrangements, the admission authority **must** first publicly consult on those arrangements. If no changes are made to admission arrangements, they **must** be consulted on at least every 7 years. Consultation **must** be for 8 weeks between 1 November and 1 March of the year before those arrangements are to apply. For example: for arrangements which are to apply for applications in 2012 (entry in September 2013), consultation **must** be completed by 1 March 2012. This consultation period allows parents, other schools, religious authorities and the local community to raise any concerns about proposed admission arrangements.
- Once all arrangements have been determined, arrangements can be objected to and referred to the Schools Adjudicator by 30 June. Any decision of the Adjudicator **must** be acted on by the admission authority and their admission arrangements amended accordingly. The local authority will collate and publish all the admission arrangements in the area in a single composite prospectus.

⁹ A maintained special school is a school maintained by the local authority, specially designed to make special educational provision for pupils with special educational needs.

- In the normal admissions round,¹⁰ parents apply to the local authority in which they live for places at their preferred schools. Parents are able to express a preference for at least three schools. The application can include schools outside the local authority where the child lives: a parent can apply for a place for their child at any state-funded school in any area. If a school is undersubscribed, any parent that applies **must** be offered a place. When oversubscribed, a school's admission authority **must** rank applications in order against its published oversubscription criteria and send that list back to the local authority.
- All preferences are collated and parents then receive an offer from the local authority at the highest preference school at which a place is available. For secondary schools, the offer is made on or about 1 March (known as National Offer Day) in the year in which the child will be admitted. For primary schools, offers are sent out on a single day in each local authority area but usually a little after the National Offer Day for secondary schools.
- Parents have the right to appeal against a decision to refuse admission of their child to a school. The admission authority **must** set out the reasons for the decision, that there is a right of appeal and the process for hearing such appeals. The admission authority **must** establish an independent appeals panel to hear the appeal. The panel will decide whether the appeal of the decision should be upheld or a new decision made (the School Admission Appeals Code sets out the requirements relating to appeals).

¹⁰ (I.e. application in October (secondary school) for following year and January (primary school) for same year admission).

Section 1: Determining Admission Arrangements:

1.1 Admission authorities are responsible for admissions and **must** act in accordance with this Code, the School Admission Appeals Code, other laws relating to admissions¹¹, and relevant human rights and equalities legislation.

1.2 **Published Admission Number (PAN)**. As part of their admission arrangements¹², all admission authorities **must** set an admission number for each 'relevant age group' (year group) in which children normally enter the school, set with regard to the net capacity assessment of the school. Admission authorities **must** notify the local authority, local schools and such other persons in the relevant area who appear to the admission authority to have an interest in the admission arrangements of their intention to increase their PAN.

1.3 Anyone who considers that any maintained school or Academy's¹³ admission arrangements are unfair or unlawful or not in compliance with the Code or relevant law relating to admissions can make an objection to the Schools Adjudicator. In respect of an objection in relation to an increase in PAN, there will be a strong presumption in favour of increase unless the increase would lead to a clear threat to pupil safety.

1.4 **Oversubscription criteria** – The admission authority for the school **must** set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied. All children whose statement of special education needs (SEN)¹⁴ names the school **must** be admitted. If the school is not oversubscribed, all applicants **must** be offered a place.

1.5 All schools **must** have oversubscription criteria for each 'relevant age group'¹⁵, and the highest priority **must** be given to looked after children¹⁶. Oversubscription criteria **must** then be applied to all other applicants in the order set out in the arrangements.

1.6 Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not

¹¹ The main provisions relating to admissions are in Chapter 1 of Part 3 of the SSFA 1998.

¹² See sections 88C and 88D of the SSFA 1998.

¹³ See footnote 7: subject to Royal Assent of Education Bill.

¹⁴ A Statement of Special Educational Need is a legal document issued by the local authority specifying the particular needs and resources for providing education for that child.

¹⁵ This is the age group at which pupils are or will normally be admitted to the school (section 142 SSFA 1998).

¹⁶ 'Looked after children' are children who are in the care of the local authority as defined by section 22 of the Children Act 1989. In relation to school admissions a 'looked after child' is only considered as such if the local authority confirms he or she will be in public care when he or she is admitted to school.

discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear and fair tiebreaker to decide between two applications that cannot otherwise be separated.

1.7 It is for admission authorities to formulate their admission arrangements, but they **must not**:

- a) place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements;
- b) take into account any previous schools attended, unless it is a named feeder school;
- c) give extra priority to children whose parents rank preferred schools in a particular order, including 'first preference first' arrangements;
- d) introduce any new selection by ability;¹⁷
- e) give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority;
- f) give priority to children according to the occupational, marital, financial or educational status of parents applying (though children of staff at the school may be prioritised in arrangements¹⁸);
- g) take account of reports from previous schools about children's past behaviour, attendance, attitude or achievement, or that of any other children in the family;
- h) discriminate against or disadvantage disabled children or those with special educational needs;
- i) prioritise children on the basis of their own or parents' past or current hobbies or activities. (Designated faith schools may take account of religious activities, as laid out by the faith provider body/religious authority);
- j) in designated grammar schools that rank all children according to a pre-determined pass mark and then allocate places to those who score highest, give priority to siblings of current or former pupils;
- k) in the case of schools with boarding places, rank children on the basis of a child's suitability for boarding – more information on boarding schools is set out at paragraphs 1.34 - 1.35;
- l) name fee-paying independent schools as feeder schools;

¹⁷ There is a general restriction on selection by ability. Only designated 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. Grammar schools are designated as such by order made by the Secretary of State under section 104 of the SSFA 1998.

¹⁸ Free Schools and Academies may also, where their funding agreements permit, give priority in admission arrangements to children eligible for Free School Meals (in future, the Pupil Premium). [Further guidance will be produced on this policy area following consultation]

- m) interview children or parents. In the case of sixth form applications, a meeting may be held to discuss options and academic entry requirements for particular courses, but this meeting cannot form part of the decision making process on whether to offer a place. Boarding schools may interview children to assess their suitability for boarding;
- n) request financial contributions (either in the form of voluntary contributions, donations or deposits (even if refundable)) as any part of the admissions process – including for tests;
- o) request photographs of a child for any part of the admissions process, other than as proof of identity when sitting a selection test.

1.8 This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances, but the most common include:

Siblings at the school

1.9 Admission authorities **must** state clearly in their arrangements what they mean by 'sibling' (i.e. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or siblings who are former pupils of the school).

1.10 Some schools give priority to siblings of pupils attending another state funded school with which they have close links (for example schools on the same site, or close links between two single sex schools). Where this is the case, this priority **must** be set out clearly in the arrangements.

Distance from the school

1.11 Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the 'home' address will be determined and the point in the school from which all distances are measured. This should include provision for cases where parents have shared residence of a child following the breakdown of their relationship and the child lives for part of the week with each parent.

Catchment Areas

1.12 Catchment areas **must** be designed so that they are reasonable and clearly defined¹⁹. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school.

Feeder Schools

1.13 Junior and secondary schools may wish to name a primary or infant

¹⁹ R v Greenwich London Borough Council, ex parte John Ball Primary School (1989) 88 LGR 589 [1990] Fam Law 469 held that pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated. Section 86(8) of the SSFA 1998 places an equal duty on local authorities to comply with parental preference in respect of parents living within and outside their boundary.

school as a feeder school. The selection of a feeder school or schools as part of over subscription criteria **must** be made on reasonable grounds.

Social and medical need

1.14 If admission authorities decide to use this criterion they **must** set out in their arrangements how they will define this need and give clear details about what supporting evidence will be required (e.g. a letter from a doctor or social worker) and then make consistent decisions based on the evidence provided.

Selection by ability or aptitude

1.15 Only designated Grammar schools²⁰ are permitted to select their entire intake on the basis of high academic ability²¹. They **must** publish the entry requirements for a selective place and the process for such selection.

1.16 Partially selective schools select a proportion of their intake by ability. Where schools can partially select, they **must** publish the entry requirements for a selective place, and the process for such selection. They **must** offer places to other children if there are insufficient applicants who have satisfied the published entry requirements for a selective place.

1.17 Partially selective schools **must not** exceed the lowest proportion of selection that has been used since the 1997-98 school year.²²

1.18 Schools that have arrangements to select by aptitude **must not** allow for more than 10% of the total admissions intake to be allocated on the basis of aptitude in any relevant age group (even if the school has more than one specialism). The specialist subjects on which a school may select by aptitude are:

- a) physical education or sport, or one or more sports;
- b) the performing arts, or any one or more of those arts;
- c) the visual arts, or any one or more of those arts;
- d) modern foreign languages, or any such language; and
- e) design and technology, and ICT for schools already selecting in those subjects before the 2008 school year. No other schools may introduce selection in these subjects.

1.19 Where there are insufficient applicants who meet the criteria for the proportion of selective admissions (not including designated grammars) the school **must** allocate those places to other applicants, applying the school's remaining oversubscription criteria.

²⁰ As designated by the Education (Grammar School Designation) Order 1998 (SI 1998/2219). Academies that were designated as Grammar Schools before conversion are permitted to continue selecting their entire intake: section 6(3) of the Academies Act 2010.

²¹ Section 104 of the SSFA 1998.

²² Section 100 of the SSFA 1998.

Banding

1.20 Pupil ability banding is a permitted form of selection²³ used by some admission authorities to ensure that the intake for a school includes a proportionate spread of children of different abilities. Banding can be used to produce an intake that is representative of:

- a) the full range of ability of applicants for the school(s);
- b) the range of ability of children in the local area; or
- c) the national ability range.

1.21 Admission authorities' entry requirements for banding **must** be fair, clear and objective. Banding arrangements which favour high ability children that have been continuously used since the 1997-98 school year may continue, but **must not** be introduced by any other school.

1.22 The admission authority **must** publish the admission requirements and the process for such banding and decisions, including details of any tests that will be used to band children according to ability.

1.23 Where the school is oversubscribed, looked after children **must** be given priority in each band, and then any oversubscription criteria applied within each band. Schools that operate both banding and selection of 10 per cent of pupils with reference to aptitude **must** band pupils first, and then admit 10 per cent of places available on the basis of the relevant aptitude from within the bands. Priority **must not** be given within bands according to the applicant's performance in the test.

1.24 Children with statements of SEN may be included in banding tests and allocated places in the appropriate bands, but, regardless of banding tests, they **must** be allocated a place if their statement names the school.

1.25 Tests for all forms of selection **must** be clear, objective, and give an accurate reflection of the child's ability or aptitude, irrespective of sex, race, or disability. It is for the admission authority as to which test is used, providing that the test is a true test of aptitude or ability.

1.26 Admission authorities **must**:

- ensure that tests for aptitude in a particular subject test only for aptitude in the subject concerned;
- ensure that tests are accessible to children with special educational needs and disabilities, having regard to the reasonable adjustments for disabled pupils required under equalities legislation;
- inform parents of the outcome of selection tests before parents make applications for other schools – while making clear that this does not equate to a guarantee of a selective place.

²³ Section 101 of the SSFA 1998.

1.27 Admission authorities **must not** adjust the score achieved by any child in a test to take account of oversubscription criteria, such as having a sibling at the school.

Random allocation

1.28 Local authorities **must not** use random allocation as the principal oversubscription criterion for allocating places at all the schools in their area for which they are the admission authority. Admission authorities that decide to use random allocation when schools are oversubscribed **must** set out clearly how this will operate, ensuring that arrangements are transparent, and that looked after children are prioritised.

1.29 The random allocation process **must** be supervised by someone independent of the school, and a fresh round of random allocation **must** be used each time a child is to be offered a place from a waiting list.

Faith based oversubscription criteria in schools with a religious character

1.30 As with other maintained schools, faith schools are required to offer every child who applies, whether of the faith, another faith or no faith, a place at the school if there are places available. Schools designated by the Secretary of State as having a religious character (commonly known as faith schools) may use faith-based oversubscription criteria²⁴ and allocate places by reference to faith where the school is oversubscribed.

1.31 Admission authorities **must** ensure that parents can easily understand how the criteria will be satisfied. While admission authorities for faith schools may give priority to all looked after children whether or not of the faith they **must** give priority to looked after children of the faith before other children of the faith. Where any element of priority is given in relation to children not of the faith they **must** give priority to looked after children not of the faith above other children not of the faith.

1.32 Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the relevant faith provider group or religious authority when constructing faith-based oversubscription criteria, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code. They **must** also consult with the relevant faith provider group or religious authority when deciding how membership or practice of the faith is to be demonstrated. Church of England schools **must**, as required by the Diocesan Boards of Education Measure 1991²⁵, consult with their diocese about proposed admission arrangements before any public consultation.

²⁴ Funding agreements for entirely new Academies (i.e. not converters from the maintained or independent sectors, or those sponsored Academies with a predecessor school) and Free Schools with a religious character provide that where the school is oversubscribed at least 50% of places are to be allocated without reference to faith.

²⁵ 1991 No 2.

Children of staff at the school

1.33 If admission authorities decide to give priority to children of staff, they **must** set out clearly in their admission arrangements how they will define 'staff' and on what basis children of staff will be prioritised.

Maintained boarding schools

1.34 Maintained boarding schools can set separate admission numbers for day places and boarding places. A maintained boarding school can interview applicants to assess suitability for boarding but such interviews **must** only consider whether a child presents a serious health and safety hazard to other boarders or whether they would be able to cope with and benefit from a boarding environment. To help with this assessment, they may also use a supplementary information form, and information provided by the previous school and by the child's home local authority (on safeguarding issues). These processes, and the timeline for them, **must** be clearly set out in the school's admission arrangements.

1.35 Boarding schools **must** give priority in their oversubscription criteria in the following order:

- looked after children;
- children of members of the UK Armed Forces who qualify for Ministry of Defence financial assistance with the cost of boarding school fees;
- children with a 'boarding need', making it clear what they mean by this.

1.36 **Consultation** – When changes are proposed to admission arrangements, all admission authorities **must** consult by 1 March on the full admission arrangements²⁶ (including any supplementary information form) that will apply for admission applications the following academic year. There is no requirement to consult on any increases in PAN. Where those arrangements have not changed from the previous year there is no requirement to consult, subject to the requirement that admission authorities **must** consult on their admission arrangements at least once every 7 years, even if there have been no changes during that period.

1.37 Consultation **must** last for a minimum of 8 weeks between 1 November and 1 March in the determination year.

1.38 Admission authorities **must** consult with (amongst others)²⁷:

- relevant parents;
- other groups with an interest in the local area (for example, community

²⁶ Grammar school arrangements which relate to the retention of permitted selection or removal of selection following a ballot or decision by the governing body (s108 and 109 of the SSFA 1998) are exempt from consultation.

²⁷ As detailed in the School Admissions (Admission Arrangements) (England) Regulations 2008 (2008/3089).

- groups, or Admission Forums where they exist);
- all other admission authorities within the relevant area;
- their local authority;
- neighbouring local authorities;
- the relevant religious authority (in the case of faith schools²⁸).

1.39 For the purposes of consultation the admission authority **must** publish a copy of their proposed admission arrangements on their website, where they have one, and send a copy by email or letter to all of the groups named above, bearing in mind that failing to consult effectively may be grounds for subsequent complaints and appeals.

Determination

1.40 All admission authorities **must** determine admission arrangements by 15 April every year – even if they have not changed from previous years and a consultation has not been required.

1.41 Once admission authorities have determined their admission arrangements, they **must** publish a copy of the determined arrangements on their website, where they have one, displaying them for the whole offer year. They **must** send a copy of their full, determined arrangements to the local authority as soon as possible before 1 May.

1.42 Where an admission authority has determined a published admission number that is higher than in previous years, they **must** notify the local authority that they have done so, and make specific reference to the change on their website.

1.43 Local authorities **must**, by 1 May, publish on their website details of where the determined arrangements for all schools can be viewed, and information on how to refer objections to the Schools Adjudicator.

1.44 Following determination of arrangements, any objections to those arrangements **must** be made to the Schools Adjudicator by **30 June**. Admission authorities that are not the local authority **must** provide all the information that the local authority needs to compile the composite prospectus no later than 8 August, unless agreed otherwise.

1.45 **Composite prospectuses** – Local authorities **must** publish online - with hard copies available for those who do not have access to the internet - a composite prospectus for parents by **12 September** in the offer year (the academic year that offers for places are made), which contains the admissions arrangements for each of the state-funded schools in the local authority area to which parents can apply (i.e. all schools including Academies). They **must** ensure that this information is kept up to date throughout the period in which it is possible for parents to apply for a place for their child, and that it is written in a way that makes it clear and accessible to

²⁸ As specified in regulation 12 of the School Admissions (Admission Arrangements) (England) Regulations 2008 SI 2008/3089.

parents.

Section 2: Applications and Offers

2.1 **Applying for places** – For applications in the normal admission round, local authorities **must** provide a common application form ('CAF') that enables parents to express their preference for a place at any state funded school, with a minimum of 3 preferences in rank order, allowing them to give reasons for their preferences. While parents may express a preference for any state funded school – regardless of whether it is in the local authority area in which they live, admission authorities **must not** give any guarantees that a preference will be met.

2.2 The CAF **must** allow parents to provide their name, their address (including documentary evidence in support), and the name, address and date of birth of the child. The child **must not** be required to complete any part of the form. Local authorities **must** provide advice and assistance to parents when they are deciding which schools to apply for.²⁹

2.3 Regardless of which schools they express preferences for, the form is returned to the local authority in the area that they live (the 'home' authority). The home authority **must** then pass information on applications to other local ('maintaining') authorities about applications to schools in their area. The maintaining authority **must** determine the application in the normal way, and inform the home local authority if a place is available. The offer to parents **must** be made by the home local authority.

2.4 In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they **must** only use supplementary application/information forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. They **must not** use supplementary application or information forms that ask for any of the information prohibited by paragraph 1.7 or for:

- a) any personal details about parents and families, such as maiden names, criminal convictions, marital, or financial status (including marriage certificates);
- b) the first language of parents or the child;
- c) details about parents' or children's disabilities, special educational needs or medical conditions;
- d) parents to agree to support the ethos of the school in a practical way;
- e) both parents to sign the form, or for the child to complete the form.

2.5 Admission authorities may need to ask for proof of address where it is unclear whether a child meets the published oversubscription criteria. In these cases they **must not** ask for any evidence that would include any of the

²⁹ In accordance with section 86 (1A) of the SSFA 1998.

information detailed above. Once a place has been offered, admission authorities may ask for proof of birth date, but **must not** ask for a 'long' birth certificate or other documents which would include information about the child's parents.

2.6 Applying for places at Sixth Form - Children and their parents applying for sixth form places may use the CAF although if they are already on roll they are not required to do so in order to transfer into year 12. Admission authorities can, however, set academic entry criteria for their sixth forms, which **must** be the same for both external and internal places. As with other points of entry to schools, highest priority in oversubscription criteria for sixth form places **must** be given to looked after children. As stated in paragraph 1.7(m), any meetings held to discuss options and courses **must not** form part of the decision process on whether to offer a place.

Offering places

2.7 Admission authorities **must** allocate places on the basis of their published admission arrangements only, and a decision to offer or refuse admission **must not** be made by one individual in an admission authority. Where the school is its own admission authority the whole governing body, or an admissions committee established by the governing body, **must** make such decisions.

2.8 With the exception of designated grammar schools, all maintained schools, including faith schools, that have enough places available **must** offer a place to every child who has applied for one, without condition or the use of any over-subscription criteria.

2.9 Admission authorities **must not** refuse to admit a child solely because:

- a) they have applied later than other applicants;
- b) they are not of the faith of the school in the case of a faith school;
- c) they followed a different curriculum at their previous school;
- d) information has not been received from their previous school; or
- e) they have missed entrance tests for selective places.

2.10 In the normal admissions round, offers of primary and secondary places **must** be sent by the home local authority and schools **must not** contact parents about the outcome of their applications until after these offers have been received (although they can notify parents of the result of selection tests or boarding suitability tests in advance of offers being made or even formal applications being submitted). Admission authorities **must not** provide any guarantees to applicants of the outcome of their application prior to the formal notification of any offers of a place in a suitable school.

2.11 Where a place is available for a child at more than one school, the home local authority **must** ensure, so far as is reasonably practicable, that the

child is offered a place at whichever of these schools is their highest preference. If the local authority is unable to offer a place at one of the parents' preferred schools it **must**, if there are places available, offer a place at another school.

2.12 Withdrawing a place – An admission authority **must not** withdraw an offer unless it has been offered in error, a parent has not responded within a reasonable period of time, or it is found out that the place was obtained through a fraudulent or intentionally misleading application. Where the parent has not responded to the offer, the admission authority **must** give the parent a further opportunity to respond and explain that the place may be withdrawn if they do not. 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.

2.13 A school **must not** withdraw a place 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, for example, it might be considered appropriate to withdraw the place if the child has been at the school for less than one term.

2.14 Waiting lists – Each admission authority **must** maintain a clear, fair and objective waiting list for at least the first term of the academic year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. Priority **must not** be given to children based on the date either their application was received or their name was added to the list. Looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, **must** take precedence over those on a waiting list.

2.15 Infant class size – Infant classes (those where the majority of children will reach the age of 5, 6 or 7 during the school year) **must not** contain more than 30 pupils with a single school teacher. Additional children may be admitted under very limited exceptional circumstances. These children will remain an 'excepted pupil' for the time they are in an infant class or until the class numbers fall back to the current infant class size limit. The excepted children are:

- children with statements of special educational needs outside the normal admissions round;
- children who move into the area outside the normal admissions round for whom there is no other available school within reasonable distance;
- children admitted, after initial allocation of places on the local offer date, because of a procedural error made by the admission authority or local authority in the original application process;
- looked after children admitted outside the normal admissions round;

- children admitted after an independent appeal panel upholds an appeal;
- children with SEN who are normally taught in an SEN unit³⁰ attached to the school, who attend some infant classes within the mainstream school;
- children of UK service personnel admitted outside the normal admissions round;
- twins and children from multiple births.

2.16 Admission of children below compulsory school age and deferred entry to school – Admission authorities **must** provide full or part-time places for four year olds in their area, or keep places open for children whose parents have deferred entry up to compulsory school age, setting this out clearly in their arrangements. Places allocated to children whose parents have deferred entry cannot be offered to another child, unless the parent withdraws acceptance of the place.

2.17 Admission of children outside their normal age group – Parents of gifted and talented children, or those who have experienced problems or missed part of a year, for example due to ill health, can seek places outside their normal age group. Admission authorities **must** make decisions on the basis of the circumstances of each case, informing parents of their statutory right to appeal. This right does not apply if they are offered a place in another year group at the school.

2.18 Children of UK service personnel and Crown Servants – For families of service personnel (armed forces), Crown Servants and British Council employees with a confirmed posting to their area, admission authorities **must**:

- allocate a place in advance, if accompanied by an official government letter which declares a relocation date and a Unit postal address or quartering area address for considering the application against their oversubscription criteria. This **must** include accepting a Unit postal address or quartering area address for a service child. Admission authorities **must not** refuse a service child a place because the family does not currently live in the area, or reserve blocks of places for these children;
- ensure that arrangements in their area support the Government's commitment to removing disadvantage for service children. Arrangements **must** be appropriate for the area and be described in the local authority's composite prospectus.

2.19 Children from overseas - admission authorities **must** treat applications for children coming from overseas in accordance with European Union law or

³⁰ An SEN unit forms part of a maintained school and is specially organised to provide education for pupils with SEN.

Home Office rules for non-European Economic Area nationals. Non–statutory guidance on this is available on the website of the Department for Education.

2.20 Co-ordination – Each year all local authorities **must** formulate a scheme by 1 January³¹ to co-ordinate admission arrangements for state funded schools within their area. All admission authorities³² **must** participate in co-ordination and provide the local authority with the information it needs to co-ordinate admissions by the dates agreed within the scheme. Local authorities **must** make applications forms available to parents who wish to apply to a school in a neighbouring area which operates a different age of transfer (e.g. middle schools), and process these as it would in its normal admissions round.

2.21 There is no requirement for local authorities to co-ordinate ‘in year’ applications but they **must**, on request, provide information to a parent about the places still available within its area, and a suitable form for them to use in applying to a school for a place for their child. Any parent can apply for a place for their child at any time to any school.

2.22 Admission authorities **must**, on receipt of an in year application, notify the local authority of both the application, and its outcome, to allow the local authority to keep up to date figures on the availability of places in the area. The admission authority **must** also inform parents of their right to appeal against the refusal of a place.

2.23 Offering a place – Where schools are oversubscribed, admission authorities **must** rank applications in accordance with their published arrangements. The co-ordinated scheme **must** ensure that:

- only one offer is made per child by the local authority;
- for secondary school applications, all offers **must** be made on the same National Offer Day – 1 March or the next working day. There is no national offer day for primary schools; each authority **must** set its own offer date.

2.24 Right to appeal – Parents and children over compulsory school age may appeal against decisions to refuse admission to preferred schools. When a child is refused admission to a school, the admission authority **must** ensure the person who applied for the school place (whether the parent or the child) receives the reasons for that decision and the information about their right to appeal and the requirements for making an appeal.

2.25 School closure - Where a maintained school or Academy is to be

³¹ As set out in the Schools Admissions (Co-ordination of Admission Arrangements) (England) Regulations 2008 (SI 2008/3090).

³² Academies are required under their funding agreements to participate in and comply with requirements in relation to local authority co-ordination of admission arrangements. For the first year of opening only, funding agreements for Free Schools will provide that they may choose whether they wish to participate in the local co-ordination scheme.

closed, the local authority **must** collaborate with other schools in their area to consider the best way to ensure provision for children in other local schools.

Section 3: Ensuring Fairness and Resolving Issues

3.1 **The Schools Adjudicator** – The Schools Adjudicator **must** consider whether admission arrangements referred to him comply with the Code and the law relating to admissions. The admission authority **must** revise their admission arrangements immediately to give effect to the Adjudicator’s decision. An Adjudicator’s determination is binding and enforceable.

3.2 Local authorities **must** use their power to refer an objection to the Schools Adjudicator if they are of the view or suspect that the admission arrangements at schools in their area (for which they are not the admission authority) contravene admissions law and/or the Code.

3.3 Anyone who considers that any maintained school or Academy’s arrangements are unfair or unlawful, or not in compliance with the Code or relevant law relating to admissions, can make an objection to the Schools Adjudicator. Further information on how to make an objection can be obtained from the Office of the Schools Adjudicator:
<http://www.schoolsadjudicator.gov.uk>

3.4 Where the Schools Adjudicator is considering an objection that an increase in PAN is unreasonable, he **must** have regard to the presumption in favour of increase unless he is of the view that the increase would lead to a clear threat to pupil safety.

3.5 **Variations** – once admission arrangements have been determined for a particular academic year, they cannot be revised by the admission authority – unless a misprint needs correcting, or they need to be brought in line with an Adjudicator’s determination or a mandatory requirement of this Code and Part 3 of the SSFA 1998³³. The only other variations permitted to determined admission arrangements are those proposed by the admission authority following a major change of circumstances. These **must** be referred to, and approved by, the Schools Adjudicator.

3.6 Schools that wish to vary their PAN during the admissions year **must** refer their proposal to the Schools Adjudicator for approval³⁴. In making decisions on a proposal to decrease PAN, the presumption is against decreases in PAN unless the admission authority provides sufficient evidence of a sustained decrease in parental demand.

3.7 **Children with challenging behaviour and those who have been excluded twice** – Admission authorities **must not** refuse to admit children in the normal admission round on the basis of their poor behaviour elsewhere. Where a child has been permanently excluded from two or more schools

³³ Section 88K(4)(d) of the SSFA 1998 and the School Admissions (Admission Arrangements) (England) Regulations 2008 (SI 2008/3089) allow for changes to be made in neighbouring schools so that arrangements can be brought in line with a determination in another school.

³⁴ Variations to an Academy’s arrangements **must** be referred to the Secretary of State for agreement.

there is no need for an admission authority to comply with parental preference for a period of two years from the last exclusion³⁵. The twice excluded rule does not apply to children who were below compulsory school age at the time of the exclusion, children who have been re-instated following a permanent exclusion and children with SEN statements.

3.8 **Fair Access Protocols** – Each local authority **must** have a Fair Access Protocol, agreed with the majority of schools in its area, which sets out how, outside the normal admissions round, schools in the area will admit their fair share of children with challenging behaviour, children excluded from other schools and children who arrive outside the admissions round who may have difficulty securing a school place. In these circumstances, admission authorities may, if necessary, admit above their PAN. This **must** include how the local authority will use alternative provision to meet the needs of pupils who are not ready for mainstream schooling.

3.9 The operation of Fair Access Protocols is outside the arrangements of co-ordination and is triggered when a parent of an eligible child has not secured a school place under in-year admission procedures, even following the outcome of an appeal.

3.10 All admission authorities **must** participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly and that no school takes more than its share of children with challenging behaviour. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.

3.11 Where a governing body does not wish to admit a child with challenging behaviour outside the normal admissions round, even though places are available, it **must** refer the case to the local authority for action under the Fair Access Protocol. This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. The use of this provision will depend on local circumstances and **must** be described in the local authority's Fair Access Protocol. It will not apply to a looked after child or one with a statement of special needs naming the school in question, as these children **must** be admitted.

3.12 Admission authorities **must not** refuse to admit a child thought to be potentially disruptive, or to exhibit challenging behaviour, on the grounds that the child is first to be assessed for special educational needs.

3.13 A Fair Access Protocol **must not** require a school automatically to take another child with challenging behaviour in the place of a child excluded from the school.

3.14 The list of children to be included in a Fair Access Protocol is to be agreed with the majority of schools in the area, but **must**, as a minimum,

³⁵ Section 87 of the SSFA 1998.

include the following children of compulsory school age who have difficulty securing a school place:

- Children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education;
- Children who have been out of education for two months or more;
- Children of Gypsies, Roma, Travellers, refugees and asylum seekers;
- Children who are homeless;
- Children with unsupportive family backgrounds for whom a place has not been sought;
- Children who are carers; and
- Children with special educational needs, disabilities or medical conditions (but without a statement).

3.15 **Powers of direction** – Local authorities have the power through primary legislation to direct other admission authorities for any maintained school to admit a child, with special provision for a looked after child, to the school best suited to his or her needs³⁶, even when the school is full. Such action **must** be taken in the best interests of the child.

3.16 Before giving a direction, the local authority **must** consult the admission authority for the school they propose to direct, giving reasons for the direction. The admission authority then has seven days to inform the local authority if it is willing to admit the child. If it is not, and the local authority decides to issue the direction, it **must** first inform the admission authority, the governing body (if the governing body is not the admission authority), the head teacher and, if the school is in another local authority area, the maintaining local authority.

3.17 The admission authority, or governing body if the local authority is the admission authority, has a further seven days to refer the case to the Schools Adjudicator, if the child concerned has previously been excluded from two schools and it considers that admission of the child would prejudice the provision of efficient education or efficient use of resources at the school.

3.18 The Schools Adjudicator may either uphold the direction or, if the local authority that looks after the child agrees, determine that another suitable maintained school in England **must** admit the child. The Schools Adjudicator's decision is binding. The Schools 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 prejudice the provision of efficient education or efficient use of resources.

³⁶ Section 96 and 97A-C of the SSFA 1998.

3.19 Where a local authority considers that a particular Academy will best meet the needs of the child, they can ask them to admit that child even when the Academy is full. A consensus will be reached locally in the large majority of cases, but if the Academy disagrees with the local authority's reasoning and refuses 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 can seek advice from the Schools Adjudicator in reaching his decision³⁷. In providing such advice, the Schools Adjudicator will consider the case in the same way as for maintained schools.

3.20 **Local authority reports** – Local authorities **must** produce an annual report on admissions for all the schools in their area for which they co-ordinate admissions, to be published locally by 30 June following the admissions round. The report **must** cover as a minimum:

- (a) information about how admission arrangements in the area of the local authority serve the interests of looked after children, children with disabilities and children with special educational needs and details of where problems have arisen;
- (b) an assessment of the effectiveness of Fair Access Protocols and co-ordination in their area, including how many children were admitted to each school under them;
- (c) the number and percentage of lodged and upheld parental appeals; and
- (d) any arising issues – such as objections to the Schools Adjudicator - affecting admissions for the newly-determined year.

³⁷ Section 25(3A) of the SSFA 1998.

Appendix – Relevant Legislation

This section will describe the main requirements of relevant legislation for school admissions at the time the Code will come into force. This will include reference to amended or new regulations that will accompany the changes to the School Admissions Code and School Admission Appeals Code. .

1. This appendix sets out the primary legislation and Regulations most relevant to admissions decisions. Admission authorities, Schools Adjudicators, appeal panels, local authorities, maintained schools **must** comply with the relevant law as well as acting in accordance with the provisions of this Code. This Code and the School Admission Appeals Code (the Codes) are applied to Academies³⁸ through their Funding Agreements. 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.

Equality Act 2010

2. This Act consolidates the law prohibiting discrimination, harassment and victimisation and expands the list of protected characteristics. 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.
3. An admission authority **must** not discriminate on the grounds of disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; or sexual orientation, against a person in the arrangements and decisions it makes as to who is offered admission as a pupil.
4. An admission authority **must** not harass a person who has applied for admission as a pupil, in relation to their disability; race; or sex.
5. An admission authority **must** not victimise a person in relation to a protected act either done, or believed to have been done by that person (e.g. bringing proceedings under the Equality Act 2010) in the arrangements and decisions it makes as to who is offered admission as a pupil.
6. The Act contains limited exceptions to the prohibition of discrimination on grounds of religion or belief and sex. Schools designated by the Secretary of State as having a religious character (faith schools) are exempt from some aspects of the prohibition of discrimination on the grounds of religion or belief and this means they can make a decision about whether or not to admit a child as a pupil on the basis of religion or belief. Single-sex schools are lawfully permitted to discriminate on the grounds of sex in their admission arrangements.

³⁸ 'Academies' means Academy Schools for the purposes of s1 Academies Act 2010 and includes free schools.

7. Admission authorities are also subject to the Public Sector Equality Duty and therefore **must** consider how they can eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to persons who share a relevant protected characteristic and persons who do not share it.
8. The protected characteristics for these purposes are: disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
9. Further guidance on the Public Sector Equality Duty is available on the website of the Government Equalities Office and from the Equality and Human Rights Commission.

Human Rights Act 1998

9. 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 admission decisions, though this may not necessarily result in the allocation of a place. These might include, for example, the parents' rights to ensure that their child's education conforms to their own religious or philosophical convictions (as far as is compatible with the provision of efficient instruction and the avoidance of unreasonable public expenditure).

School Standards and Framework Act 1998

10. Chapter 1 of Part 3 of the School Standards and Framework Act 1998 contains the key provisions regarding schools admissions, including the statutory basis for this Code.
11. Section 86 of the SSFA 1998 provides that the admission authority for a maintained school (with the exceptions of those that select wholly by ability) **must** comply with any preference expressed by a parent except where to do so would prejudice the provision of efficient education or the efficient use of resources.
12. Section 94 of the SSFA 1998 provides that parents (and in some circumstances children) may appeal against admissions decisions. 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. Admission authorities **must** admit a child whose parents have won an appeal.
14. The Codes largely include the provisions relating to schools admissions made in regulations. The key regulations to be aware of are³⁹:

³⁹ Following consultation on the Code, we will be reviewing the admissions regulations to bring them into line with the new provisions and with a view to seeking to streamline and consolidate them. The final list of regulations will be added to the final Code.

Sample admission arrangements - *These example arrangements are provided for illustrative purposes only – they are not “suggested” arrangements and should not be seen as such. Arrangements for individual schools must be set in the context of local circumstances.*

The school has an agreed admission number of 240 pupils for entry in year 7. The school will accordingly admit at least 240 pupils in the relevant age group each year if sufficient applications are received. All applicants will be admitted if 240 or fewer apply.

When the school is oversubscribed, after the admission of pupils with Statements of Special Educational Needs where the school is named in the Statement, priority for admission will be given to those children who meet the criteria set out below, in order:

- (1) Looked after children (“Looked after children” are children who are in the care of the local authority as defined by section 22 of the Children Act 1989. In relation to school admissions a “looked after child” is only considered as such if the local authority confirms he or she will be in public care when he or she is admitted to school.)
- (2) Children with a sibling attending the school at the time of application. Sibling is defined in these arrangements as children who live as brother or sister in the same house, including natural brothers or sisters, adopted siblings, stepbrothers or sisters and foster brothers and sisters.
- (3) Other children by distance from the school, with priority for admission given to children who live nearest to the school as the crow flies. Distances are measured from the main entrance of the child’s home to the main entrance of the school.

Random allocation will be used as a tie-break in category ‘3’ above to decide who has highest priority for admission if the distance between two children’s homes and the school is the same.

Draft School Admission Appeals Code

For Consultation Only

The School Admission Appeals Code

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Statutory basis for the School Admission Appeals Code

1. The School Admission Appeals Code (“the Code”) has been issued under section 84 of the School Standards and Framework Act 1998 (‘SSFA 1998’). The Code has been made following a consultation under section 85(2) of the SSFA 1998 and after being laid before Parliament for forty days.
2. This Code comes into force on [date] and applies to all appeals commencing on or after that date. The Code applies to admissions to all maintained schools in England. It should be read alongside the School Admissions Code and other guidance and law that affect admissions and admission appeals in England. References to ‘the Code’ or ‘this Code’ include this part and the following chapters.
3. The Code imposes mandatory requirements and refers to statutory requirements in relation to the discharge of functions by the bodies listed below. These bodies have a statutory duty to act in accordance with the relevant provisions of the Code:
 - a) **Admission authorities** as defined in section 88(1)(a) and (b) of the SSFA 1998¹
 - b) **Governing bodies and local authorities (when not admission authorities)**
 - c) **Schools Adjudicators**
 - d) **Admission Appeal Panels.**
4. Academies, by which we mean Academy Schools², Free Schools, University Technical Colleges and Studio Schools, are state-funded, non fee-paying independent schools set up under a funding agreement between the Secretary of State and the proprietor of an Academy (most commonly, and hereafter, referred to as an Academy Trust). Under their Funding Agreements, Academies are contractually bound to comply with the Code and the law relating to admissions, though the Secretary of State has the power to vary this requirement where there is demonstrable need.
5. Objections to the admission arrangements of both maintained schools and Academies³ can be made to the Schools Adjudicator whose decisions are binding and enforceable.

¹ For community and voluntary controlled schools the admission authority is usually the local authority, but it may be the governing body if the local authority with the governing body’s agreement has delegated responsibility to it for determining admission arrangements. Governing bodies are the admission authorities for foundation schools (including Trust schools) and voluntary aided schools

² Subject to the Education Bill receiving Royal Assent. Clause 52 introduces three types of Academies.

³ Subject to the Education Bill receiving Royal Assent (Clause 62). Currently objections in relation to Academies are dealt with by the Young People’s Learning Agency on behalf of the Secretary of State.

Type of school	Who is the admission authority?	Who deals with complaints about arrangements?	Who is responsible for arranging/providing for an appeal against refusal of a place at a school?
Academy schools and Free Schools	Academy Trust	Schools Adjudicator <small>*subject to Royal Assent of Education Bill</small>	Academy Trust
Community schools	Local Authority	Schools Adjudicator	Local Authority
Foundation schools	Governing body	Schools Adjudicator	Governing body
Voluntary aided schools ⁴	Governing body	Schools Adjudicator	Governing body
Voluntary controlled schools	Local Authority	Schools Adjudicator	Local Authority

6. Where mandatory requirements are imposed by this Code or by statutory provision it is stated that these bodies '**must**' comply with the particular requirement or provision. Where this Code or the law prohibits practices, it is stated that the relevant body or bodies '**must not**' use this practice.
7. The Code deals with two separate categories of admission appeals:
- Appeals by parents, and in certain circumstances by children, against a decision as to the school at which education is to be provided for the child, and
 - Appeals by governing bodies of community or voluntary controlled schools against a decision by the local authority, as their admission authority, to admit to their school a child who has been permanently excluded from two or more schools.
8. Children have the right to appeal against an admission authority's decision to refuse admission of a child:
- to a school sixth-form; or
 - to a school at which they wish to receive education other than school sixth form education. This applies where the child is above compulsory school age or will have ceased to be of compulsory school age by the time they would have received education at the school.

⁴ Voluntary aided and foundation schools often elect the local authority to be their admission authority.

School Admission Appeals Code – 2011 Revised Code

Introduction

This School Admission Appeals Code (“the Code”) sets out the government’s requirements in relation to appeals against school admission decisions and, in conjunction with the School Admissions Code, reflects its wider policy on school admissions.

School admissions are not run by central government and admission authorities need to have freedom to run the appeals process, subject to minimum requirements designed to ensure fairness and transparency. Our aspiration is that the provision of more good school places and timely and relevant information to parents will reduce the degree of uncertainty parents may feel and the need to appeal.

Appeal panels perform a judicial function and have to be transparent, accessible, independent and impartial, and operate according to principles of natural justice. The requirements set out in the Code are mandatory – admission authorities and appeal panels must comply with them. They must also comply with other relevant law – for example the Equalities Act 2010.

In drawing up this simpler, shorter Code, we are guided by the principle that admission authorities are best placed to decide how to meet those requirements. The Code builds on good practice already employed by many admission authorities. Because local circumstances vary, the Code does not seek to give guidance on every possible situation.

Whilst the Code sets out requirements relating to appeal hearings we would advise all those considering whether to appeal to speak to the local authority or the school in the first instance.

The appeals process for parents who apply at the normal round of admissions usually takes place between April and July. Appeals in respect of in-year admissions will be heard within 30 working days. The detailed timetable of the appeals process will be set by admission authorities and published on their websites.

Section 1: Constitution of Appeal Panels

- 1.1. Admission authorities are responsible for arranging appeals and **must** act in accordance with this Code, the School Admissions Code, other law relating to admissions⁵, and relevant human rights and equalities legislation.

Membership

- 1.2. Admission authorities **must** appoint a clerk to the appeal panel who is independent of the school and the education functions of the local authority. The clerk **must** have knowledge of this Code, the School Admissions Code, other law relating to admissions and other relevant law (see para 1.6), and be able to offer advice to enable the panel to undertake their judicial function.
- 1.3. The clerk, acting on behalf of the admission authority, **must** appoint an independent appeal panel that is comprised of a chair and at least two other panel members, one of whom is a lay person and one with experience in education. Admission authorities **must** ensure that panel members are independent and retain their independence for the duration of their service.
- 1.4. The clerk to the panel **must not** allow any person who is or has been a member of the home local authority or governing body of the school in question, or is or has been employed by the home local authority in a capacity connected with education, or by the governing body or the school in question, to be a member of the appeal panel concerned⁶.
- 1.5. Where a panel starts with three members, and one has to temporarily withdraw (for example because of illness), the panel **must** postpone the remaining hearings until the third panel member returns or the admission authority appoints a third member. Where a member is unable to return for a part-heard hearing the appeal **must** be reheard.

Training

- 1.6. Panel members **must not** take part in hearings until they have received appropriate training. Admission authorities **must** arrange and fund up-to-date training for appeal panel members on any aspect felt to be relevant to the functioning of the panel, but as a minimum, this **must** include the law relating to admissions; their duties under the Human Rights Act 1998 and Equality Act 2010; procedural fairness and natural justice; diversity awareness; and the roles of particular panel members (for example, chairing skills).

Indemnity

- 1.7. Admission authorities **must** indemnify the members of any appeal panel against any reasonable legal costs and expenses they incur in connection with any decision or action taken in good faith whilst acting as members of the appeal panel.

⁵ The main provisions relating to admissions are in chapter 1 of Part 3 of the School Standards and Framework Act 1998.

⁶ For Academies, the governing body of a school should be read as the Academy Trust.

Costs

- 1.8. Local authorities **must** allocate reasonable funds to governing bodies of maintained schools which are admission authorities to meet admission appeals costs, including training for panel members, unless the school and local authority agree that the local authority will carry out the administration on the governing body's behalf⁷.
- 1.9. Panel members are eligible to receive travel and subsistence allowances and they can also be compensated for any loss of earnings or any individual expenses, including child minding costs, that are necessarily incurred as a result of attending an appeal panel or associated training⁸. The payment is set by the local authority which **must** have regard to the recommendations of its independent remuneration panel⁹.

⁷ Academies receive funding directly from central government, but would be expected to pay expenses at the rate set by the relevant local authority.

⁸ In accordance with the application of s173 and s174 of the Local Government Act 1972 as provided for by the Education (Admission Appeals Arrangements) (England) Regulations 2008 (SI 2008/2899)(to be amended).

⁹ As provided for in the Local Authorities (Members Allowances) Regulations 2003 (SI 2003/1021).

Section 2: Appeal Hearings

Timetable

- 2.1 Admission authorities **must** set a reasonable timetable for organising and hearing appeals that **must** include deadlines for lodging appeals; for giving notice to parents of appeal hearings; for requesting evidence and other information from parents; for admission authorities to send evidence to the clerk; for the clerk to send appeal papers to the panel and parties; and for sending out decision letters. All admission authorities **must** publish such an appeals timetable on their websites by 28 February each year.
- 2.2 Admission authorities **must** send parents any information needed to help them prepare their case for appeal and **must not** limit the grounds on which appeals can be made.
- 2.3 Admission authorities **must** ensure appeals are heard within the following timescales:
- For applications to primary and secondary schools made in the normal round of admissions, appeals **must** be heard within 40 working days from the deadline for lodging appeals.
 - For late applications made for primary and secondary schools in the normal round of admissions, appeals **must** be heard within 40 working days from the deadline for lodging appeals, where possible, or by the end of the summer term.
 - For applications to sixth forms, appeals **must** be heard within 30 working days from the confirmation of the GCSE results that the offer depends on. Appeals lodged after the beginning of the autumn school term **must** be treated as appeals for in-year admissions.
 - For applications for in-year admissions (for applications received outside the normal round of admissions), appeals **must** be heard within 30 working days of the appeal being lodged.

Notifying appellants of the right to appeal and the appeal hearing

- 2.4 Admission authorities **must** allow appellants at least 30 working days from the date of notification that their application was unsuccessful, to prepare and submit their written appeal. Admission authorities **must** organise the hearing of appeals submitted after their specified deadline, but can do that to a timescale set by them. When a local authority or an admission authority sends a decision on the allocation of a school place, it **must** include the reason why admission was refused; the right to appeal; the deadline for lodging an appeal and the contact details for the authority. Parents **must** be informed that they need to set out their grounds for appeal in writing and requested to submit any initial supporting evidence or other information that they want to be considered at the hearing if they wish to appeal.
- 2.5 Admission authorities **must**, no later than 15 working days before the hearing, notify appellants of the details of, and arrangements for, the hearing. This includes requesting that the appellant submits any further evidence or information that was not sent with the initial appeal by a specified date. Admission authorities **must** ask appellants whether they intend to call any witness evidence or be represented at the hearing and inform them that any information or evidence not received in advance of the hearing may not be considered at the appeal.

- 2.6 Admission authorities **must** explain to the appellant that where an appellant fails, or is unable, to attend and it is also impractical to offer an alternative date, the appeal will go ahead and be decided on the written information submitted.

Production of evidence from the admission authority prior to the hearing

- 2.7 In accordance with timetable specified, the admission authority **must** supply the clerk to the appeal panel with all relevant documents needed to conduct the hearing in a fair and transparent manner, including details of how the admission arrangements and the co-ordinated admissions scheme apply to the appellant's application, factual information, the reasons for the decision and an explanation as to how admission of an additional child would cause prejudice to the provision of efficient education or use of resources.
- 2.8 The clerk **must** send all the papers required for the hearing, including the names of the panel members, to both parties and members of the panel, a reasonable time before the date of the hearing. This will allow opportunity for any objections regarding impartiality to be notified to the clerk. An appeal panel **must** decide whether any material not submitted in advance is to be considered by taking into account its significance and the effect of a possible need to adjourn the hearing.

Attendance and representation

- 2.9 The admission authority **must** provide a presenting officer who is responsible for presenting their decision not to admit the child, and is prepared to answer detailed questions about the case being heard and the school. If no presenting officer is available, the panel can decide to resolve the case by using the evidence submitted by the admission authority if it is satisfied that to do so will not cause prejudice to the appellant.
- 2.10 Appeal panels **must** allow appellants the opportunity to appear in person and make oral representations. Appellants may be represented, or accompanied by a friend. Although not usually necessary, witness evidence is permitted where the appeal panel thinks it is appropriate. Appeal panels **must** comply with their duties under the Equality Act 2010 when considering an appellant's attendance and representation at the appeal.
- 2.11 Panels **must not** allow representatives of schools to support individual appeals for places at their school at the hearing itself, or by providing letters of support for appellants, because of possible conflicts of interest and the possibility of unfairness to other appellants.

The appeal hearing

- 2.12 Admission authorities **must** take all reasonable steps to ensure the venue is appropriate, accessible to appellants, and has a suitable area for appellants and presenting officers to wait separately from the panel before and between appeals.

- 2.13 Admission authorities **must** ensure that appeal hearings are held in private¹⁰, and are conducted in the presence of all panel members and parties in attendance. Where both parties are in attendance, one party **must not** be left alone with the panel in the absence of the other. Where one party has not attended the clerk **must** remain with the panel at all times.

The order and nature of the hearing

- 2.14 It is part of the clerk's role to notify all parties of the order of proceedings in advance of the hearing. The appeal panel **must** ensure that there is good time for all parties to make their case and to be questioned on any detail in that case. There **must** also be good time for any summing up by all parties. Once all parties have concluded their evidence, the panel **must** withdraw to reach a decision as to whether to uphold or reject the appeal.

Guiding principles for appeal panels

- 2.15 Appeal panels **must** operate according to the principles of natural justice. Those most directly relevant to appeals are:
- members of the panel **must not** have a vested interest in the outcome, or any involvement in an earlier stage, of the proceedings;
 - each side **must** be given the opportunity to state their case without unreasonable interruption; and
 - written material and evidence **must** have been seen by all the parties.

Reaching a decision

- 2.16 Section 3 of this Code provides guidance on decisions, but appeal panels **must** either uphold or reject an appeal and **must not** uphold an appeal subject to any specified conditions. Under section 94(6) of the SSFA 1998, a panel's decision that a child shall be admitted to a school is binding on the admission authority concerned.
- 2.17 Panels **must** ensure that decisions on appeals where there is not unanimous agreement are reached by a simple majority of votes cast. Where there are equal numbers of votes the panel chair has a second or casting vote.

Notification of the decision

- 2.18 The panel **must** communicate the decision of each appeal, including the reasons for that decision, in writing to the appellant and admission authority. The clerk **must** sign the decision letter and send it to the parties as soon as possible after the hearing but not later than five working days, unless there is good reason. When notifying appellants of a successful appeal outside the normal admissions round, the letter **must** also include a date on which the child can start at the school.
- 2.19 The panel **must** ensure that the decision is easily comprehensible so that the parties can understand the basis on which the decision was made and why they did or did not succeed. The decision letter **must** contain a summary of relevant factors that were raised by the parties and considered by the panel along with a summary of any legal

¹⁰ except in the first stage of grouped multiple appeals (see paragraph 3.9).

advise the panel sought. It **must** also give clear and detailed reasons for the panel's decision, including how, and why, any issues of fact or law were decided by the panel during the hearing.

Notes and records of proceedings

- 2.20 The clerk **must** ensure a complete and accurate record is taken of the points raised at the hearing, including the proceedings, attendance, voting and reasons for decisions.
- 2.21 These notes and records of proceedings are the property of the appeal panel and **must** be kept securely by the admission authority for a minimum of two years. Such notes and records of the proceedings are not subject to the Freedom of Information Act 2000. Admission authorities may wish to obtain legal advice where a request has been made under the Data Protection Act 1998 for access to personal data contained in the records of proceedings.

Section 3: Reaching Decisions on Appeals

Three stage process

- 3.1 Panels **must** follow different processes depending on the type of school that is the subject of the appeal, for example, primary, secondary, grammar or sixth form, and whether it is an individual or multiple appeal. These are set out below (infant class appeals are in section 4).

Individual appeals

First stage

- 3.2 The panel **must** consider:
- i. whether the admission authority's admission arrangements (including the area's co-ordinated admission arrangements) comply with the mandatory requirements of the School Admissions Code and Part 3 of the SSFA 1998; and
 - ii. whether the admission arrangements were correctly and impartially applied in the individual's case. The panel **must not** make its own decision on the matter but consider whether or not there was an error in the way in which the original decision was reached.
- 3.3 If the panel considers that the admission arrangements are in compliance, and that they were correctly and impartially applied to the decision in question, it **must** proceed to the second stage. If the panel finds that the arrangements contravene admissions law or had not been correctly and impartially applied to the child concerned, it **must** go on to consider whether the child would have been offered a place if the arrangements had not been in contravention, or had been correctly and impartially applied. If the panel find that a child would have been offered a place it **must** uphold the appeal at this stage.
- 3.4 If the panel find that the child would not have been offered a place the panel **must** go on the second stage. In all cases, the panel **must** refer to the local authority and the admission authority (if the appeal is for a school that is its own admission authority) any aspects of the admission arrangements that they identify as unlawful.

Second stage

- 3.5 The panel **must** decide whether the admission of the child in question would prejudice the provision of efficient education or the efficient use of resources at the school. Whilst the panel **must** take into account the school's published admission number, the admission authority **must** be able to demonstrate prejudice over and above the fact that the published admission number has already been reached¹¹. The panel **must not** reassess the capacity of the school, but **must** consider the impact on the school of admitting additional children. In reaching a decision as to whether or not there would be prejudice the panel may consider the following factors:
- what effect an additional admission would have on later year groups;

¹¹ The published admission number is set with regard to the indicated admission number derived from the net capacity assessment for the school. The net capacity is designed to encompass the wide variety of teaching styles and room layouts that are found in schools across the country, but allows admission authorities and local authorities some flexibility to set an admission number that suits the needs of the school.

- whether any changes have been made to the school's physical accommodation or organisation since an admission number was originally set for the relevant year group;
 - the impact of the locally agreed Fair Access Protocol¹²;
 - the impact on the organisation and size of classes, the availability of teaching staff, and the effect on children already at the school.
- 3.6 If the panel is satisfied at this stage that there would be prejudice, it **must** go on to the third stage. If no prejudice is found, the panel **must** allow the appeal.

Third stage

- 3.7 The panel **must** exercise its judgement, balancing the degree of prejudice to the school against the appellant's case for the child being admitted to the school, before arriving at a decision. If the panel considers that the appellant's grounds for the child to be admitted outweigh the prejudice to the school identified at the second stage, it **must** uphold that appeal. The panel **must** take into account the appellant's reasons for expressing a preference for the particular school, including what that school can offer the child that the allocated or other schools cannot.

Multiple appeals

- 3.8 Multiple appeals are when a number of appeals have been received in relation to the same school. Admission authorities **must** take all reasonable steps to ensure that multiple appeals for a school are heard by one panel with the same members. Where more than one panel has to consider appeals for the same school, each panel **must** make its own decision independently.
- 3.9 Admission authorities may hear multiple appeals as either individual or grouped appeals. Grouped multiple appeals are more efficient, especially where there are a large number of appellants. Grouped multiple appeals are where the presenting officer's case is heard in the presence of all the appellants, including any representatives who may put questions to the presenting officer, at the first stage of the appeal. The second stage is heard individually without the presence of other appellants. In all, there are three stages which are set out below.

First stage

- 3.10 Firstly, the panel **must** consider whether the admission authority's admission arrangements (including the area's co-ordinated admission arrangements) comply with the mandatory requirements of the School Admissions Code and Part 3 of the SSFA 1998. As with individual appeals, the panel **must** refer to the local authority and the admission authority (if the appeal is for a school that is its own admission authority) any aspects of the admission arrangements that it identifies as unlawful.
- 3.11 Secondly, the panel **must** decide how many children could be admitted, if any, without prejudice to the school. If the panel decides that all the children who are the subject of the appeals could be admitted to the school without prejudice, it **must** uphold all appeals. If the admission authority is able to satisfy the appeal panel that there would

¹² See Paragraphs 3.8 to 3.14 of the School Admissions Code for requirements in relation to Fair Access Protocols.

be prejudice if all or some of the appeals are upheld, the panel **must** move to the second stage, where it **must** hear the appeals individually without the presence of other appellants.

Second stage

- 3.12 The panel **must** consider whether the admission arrangements of the school were correctly and impartially applied to the child concerned. Where the panel finds either that arrangements were not correctly and impartially applied or were unlawful, it **must** consider whether each child would have been offered a place if the admission arrangements had been either correctly and impartially applied or were lawful. The panel **must** hear each individual appellant's grounds for admission including reasons as to why admission of their child should outweigh any prejudice to the school in question. With the exception of a decision to uphold all appeals under 3.11 above, panels **must not** decide to uphold an appeal on individual cases until all appellants' cases have been heard.

Third stage

- 3.13 The panel **must** withdraw to come to a decision. If the number of children who would have been admitted to the school if either the admission arrangements had been lawful or correctly and impartially applied is the same or fewer than the number the panel decided could be admitted to the school without prejudice, the panel **must** uphold the appeals concerning those children. For the remaining appellants, the panel **must** consider whether their grounds for admission to the school outweigh the prejudice to the school.
- 3.14 If there are several cases which outweigh the prejudice to the school and merit admission, but the panel determines that the school could not cope with that number of successful appeals, it **must** compare all the remaining cases and decide which of them to uphold, if any.
- 3.15 Where the number of children who would have been admitted to the school if the admission arrangements had been either lawful or correctly and impartially applied is greater than the number the panel decided could be admitted to the school without prejudice, the panel **must** consider whether the grounds for admission to the school outweigh prejudice to the school for all the appellants.
- 3.16 Where there are several cases which outweigh the prejudice to the school and merit admission, but the panel determines that the school could not cope with that number of successful appeals, it **must** compare all the remaining cases and decide which of them to uphold, if any. In doing so, the panel may have regard to whether a child would have been admitted if the arrangements had been either lawful or correctly and impartially applied.
- 3.17 Individual multiple appeals are where the presenting officer presents the case at the first stage, followed immediately by the individual appellant's case. Such arrangements involve repetition of the first stage and are therefore only suitable where there are small numbers of appeals. In such appeals the panel **must** ensure that the presenting officer does not produce new evidence or expand on the case in subsequent appeals, as appellants whose cases were heard earlier in the process will not have had an

opportunity to consider and respond to that new evidence. However, if material new evidence comes to light during the questioning of the presenting officer, the clerk **must** ensure that the panel considers what bearing that evidence may have on all previous and subsequent appeals.

Appeals for grammar schools

- 3.18 Designated grammar schools are permitted to select children for admission on the basis of academic ability and may leave places unfilled if there are insufficient eligible applicants¹³. Some admission authorities for grammar schools offer places to those who score highest, others set a pass mark and then apply oversubscription criteria to those applicants that reach the required standard. In the case of applicants who have been refused admission to a particular grammar school because there are more eligible children than places available and the oversubscription criteria has been applied a panel **must** follow the process outlined at paragraphs 3.2 to 3.7 for individual appeals and 3.8 to 3.17 for multiple appeals.
- 3.19 An appeal panel may be asked to consider an appeal where the appellant believes that the child did not perform at their best on the day of the entrance test. In such cases:
- a) Where a local review process has not been applied, the panel **must** only uphold the appeal if it is satisfied:
- that there is evidence to demonstrate that the child is of the required academic standards, for example, school reports giving Year 5/Year 6 SAT results or a letter of support from their current or previous school clearly indicating why the child is considered to be of grammar school ability; and
 - where applicable, that the appellant's arguments outweigh the admission authority's case that admission of additional children would cause prejudice.
- b) Where a local review process has been followed, the panel **must** only consider whether each child's review was carried out in a fair, consistent and objective way and if there is no evidence that this has been done, the panel **must** follow the process in paragraph 3.19 a).
- 3.20 In either case the panel **must not** devise its own methods to assess suitability for a grammar school place unrelated to the evidence provided for the hearing.
- 3.21 If a panel has to consider an appeal for an in-year applicant where no assessment has taken place, it **must** follow the process in paragraph 3.19 a).

Appeals for admission to sixth forms

- 3.22 Where applicants have been refused admission to a particular school because there are more eligible children than places available and over-subscription criteria have been applied, appeal panels **must** follow the three stage process at paragraphs 3.2 to 3.7 for individual appeals and 3.8 to 3.17 for multiple appeals.
- 3.23 In the case of an appeal where the child did not reach the specified entry requirements, the panel **must not** attempt to make its own assessment of a child's

¹³ Section 86(3)(c) of the SSFA 1998.

ability, but may need to decide whether the original decision that the child was not of the required standard was reasonable in light of the information before the decision-maker. In doing so, it may want to consider whether any process in place to consider such cases (for example, where a pupil had not been studying in England and did not have GCSEs) was carried out in a consistent and objective way.

- 3.24 Where a child is refused admission to a sixth form, they and their parents have the same right of appeal and where they appeal separately admission authorities **must** arrange the appeals so that they are heard together. For in-year applications made by both children and their parents, panels **must** hear appeals together where possible unless they are for different admission authorities.

Boarding schools

- 3.25 Panels **must** follow the three stage process at paragraphs 3.2 to 3.7 for individual appeals and 3.8 to 3.17 for multiple appeals against decisions for places at boarding schools. In considering whether prejudice would arise if further children were admitted to a boarding school, the panel **must** consider the effect of admitting additional day pupils on the number of boarding places which are available, for example, if the resultant effect on class size means that the number of boarding places available overall would have to be reduced. It is up to the admission authority to provide evidence that this would be the case.

Waiting lists

- 3.26 The School Admissions Code requires admission authorities to maintain waiting lists for oversubscribed schools. Appeal panels **must not** take account of where the admission authority has placed a child on the waiting list, or of the fact that appeals have not been made in respect of other children on the waiting list. Appeal panels **must not** determine where a child should be placed on that list.

Expressing a preference and Fair Access Protocols

- 3.27 The School Admissions Code requires local authorities to have a Fair Access Protocol which sets out how, outside the normal admissions round, schools in the area will admit their fair share of children with challenging behaviour, children excluded from other schools and children who arrive outside the admissions round who may have difficulty securing a school place. The allocation of a place under such a protocol does not override a parent's right to appeal. If an application has been refused, despite there being places available, the governing body **must** present their case for refusal, demonstrating how admission of the child would cause prejudice to the school – this may be the case for a school with a high proportion of children with challenging behaviour which refuses an in-year admission to a child with challenging behaviour.

Children with statements of Special Educational Needs

- 3.28 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, such appeals are considered by a Special Educational Needs and Disability Tribunal,

not a school admission appeal panel¹⁴.

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¹⁴ Section 326 of the Education Act 1996.

Section 4: Infant Class Size Appeals

- 4.1 Regulations made under Section 1 of the School Standards and Framework Act 1998 limit the size of an infant class (for example, a class in which the majority of children will reach the age of 5, 6 or 7 during the school year) to 30 pupils with a single school teacher. Only in very limited circumstances can admission over the limit be permitted¹⁵.
- 4.2 Where a child has been refused admission to a school on the grounds of infant class size prejudice (see paragraph 4.4), an appeal panel may determine that a place is to be offered to the child by the admission authority only where it is satisfied that:
- the child would have been offered a place if the admission arrangements had been properly implemented;
 - the child would have been offered a place if the arrangements had not been contrary to mandatory provisions in the School Admissions Code and the SSFA 1998; or
 - the decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case.
- 4.3 In reaching its decision, the panel **must** take into account all relevant circumstances including:
- the published admission arrangements, including the area's co-ordinated admissions scheme where applied;
 - the parent's preference;
 - the circumstances of the particular child and family; and
 - the practical consequences for the school and the children in relevant infant classes if any or all of the appeals being heard were to be successful.
- 4.4 Accordingly, panels **must** follow the process below in considering appeals under infant class size prejudice grounds¹⁶.
- i. The panel **must** consider the lawfulness of the admission arrangements (including the area's co-ordinated admission arrangements) and whether they have been correctly and impartially applied. The panel **must** immediately refer to the local authority and the admission authority (if the appeal is for a school that is its own admission authority) any aspects of the admission arrangements it identifies as unlawful.
 - ii. Under these grounds, the panel can only uphold the review in cases where it is clear that the child would have been offered a place if the admission arrangements had been properly applied or were not contrary to mandatory provisions in the School Admissions Code and the SSFA 1998. The panel should allow fresh material to be submitted by the parents in order to

¹⁵ See paragraph 2.15 of the School Admissions Code.

¹⁶ The procedure for determining infant class size appeals has been considered by the Court of Appeal and High Court in a number of cases: *R v London Borough of Richmond ex parte JC* [2001] ELR 21, CA; *The School Admission Appeals Panel for the London Borough of Hounslow v The Mayor and Burgesses of the London Borough of Hounslow* [2002] EWCA Civ 900; *R (on the application of South Gloucestershire Local Education Authority) v South Gloucestershire Schools Appeal Panel* [2001] EWHC Admin 732; and *R (K and S) v Admissions Appeal Panel of Cardiff County Council and Cardiff County Council* [2003] EWHC 436 (Admin).

establish the factual basis for their claim that the arrangements had not been properly implemented or had been contrary to mandatory provisions in the School Admissions Code and the SSFA 1998.

- iii. Unless the appeal has already been upheld, the appeal panel **must** go on to consider whether the admission authority's decision was one which a reasonable admission authority would have made in the circumstances of the case.
- iv. The panel should review the admission authority's decision in the light of the material available at the time when it made its decision. Exceptionally, a panel may also consider material which would have been available to the admission authority if it had acted properly. The panel may also consider evidence submitted by the parents to show what their circumstances were at the time the decision was made in order to support their claim that no reasonable admission authority would have made that decision.
- v. If the panel finds that the admission authority's decision was not one which a reasonable admission authority would have made in the circumstances of the case, then it should uphold the review.

Considering infant class size prejudice

- 4.5 Applications for admission may have been refused because places had been allocated up to the published admission number, but this does not necessarily mean that admitting another child would breach the infant class size limit. The panel **must** consider whether infant class size prejudice would be caused by the evidence provided that further admission would be detrimental to the efficient provision of education or efficient use of resources.
- 4.6 The panel **must** also consider whether admission of an additional child would cause future infant class size prejudice. Schools are responsible for organising their classes and can choose to split or merge classes to ensure appropriate teaching and learning. In such cases, panels **must** ensure that future infant class prejudice will not be caused for schools that have admitted children up to their published admission number in reception but plan to merge infant classes in Year 1 or 2. For example, a school publishes an admission number of 60, admitting 20 children to three reception classes, which become two classes of 30 children in Years 1 and 2. Admission of a 61st child to reception would lead to one of the Year 1 classes exceeding the infant class size limit unless the school takes remedial measures, such as recruiting an additional teacher.

Multiple infant class size appeals

- 4.7 Appeal panels may hear multiple infant class reviews for the same school in groups, where the presenting officer's case is heard in the presence of the appellants, including any representatives, who may question the case. If the panel is satisfied that there is infant class size prejudice, it **must** proceed to consider the appeals of the individual appellants (as in paragraphs 4.3 and 4.4) without the presence of the others. If infant class size prejudice is not proven, the panel **must** decide which children should be admitted before infant class size prejudice arises, and then consider all remaining appeals as infant class size prejudice cases. Panels **must not** make decisions until all the appeals have been heard.

Section 5: Other appeals and complaints

Further Appeals

- 5.1 Appellants do not generally have the right to a second appeal in respect of the same school for the same academic year. However a second appeal may be held where:
- i. it is requested by the Local Government Ombudsman for a maintained school, by the Secretary of State for an Academy, or when the admission authority accepted there were faults in the first appeal which may have significantly altered the outcome; or
 - ii. the admission authority has accepted a further application because of a significant and material change in the circumstances of the parent, child or school but still refused admission.
- 5.2 A second appeal panel **must** be made up of different members to the first.

Complaints about appeals

- 5.3 Admission authorities **must** inform parents about the arrangements for making a complaint about maladministration on the part of the panel hearing appeals. For a maintained school such a complaint should be made to the Local Government Ombudsman¹⁷.

Appeals by governing bodies against local authority decisions to admit twice excluded children

Notice of appeal

- 5.4 When a local authority takes a decision that a twice excluded child is to be admitted to a community or voluntary controlled school, it **must** give the governing body of the school notice in writing of that decision and of their right to appeal¹⁸. The local authority **must** comply with the principles of this Code when organising such appeals.
- 5.5 The governing body **must** make any appeal against such a decision in writing within 15 working days after the day it is given notice, and **must** give the grounds on which the appeal is being made. Local authorities are not, however, required to make these arrangements where their decisions are in the form of directions made under section 96 of the SSFA 1998, which empowers the local authority, in prescribed circumstances, to direct a foundation or voluntary aided school to admit a particular child.

Appeal panels

- 5.6 The appeal panel **must** be constituted in the same way as one hearing an appeal by a parent or a child against an admission authority's decision not to admit. The hearing

¹⁷ For Academies this would be the Secretary of State.

¹⁸ The requirements for appeals of this type are set out in Schedule 2, paragraph 2 of the Appeals Regulations 2002/2899.

must be on a date determined by the local authority, within 15 working days from the appeal being lodged. A panel **must not** include a member who has been involved in any way in previous considerations of whether the child should be reinstated at any school from which he or she has been permanently excluded or in any previous appeal relating to the child under section 85(2) of the SSFA 1998.

The appeals procedure

- 5.7 The appeal panel **must** ensure that appeals are heard in private and allow:
- the local authority and the governing body to make written representations;
 - a representative of the local authority and a governor nominated by the governing body, to appear and make oral representations.
- 5.8 In considering the appeal, the panel **must** consider:
- the reasons for the local authority's decision to admit the child; and
 - any reasons put forward by the governing body as to why it does not want to admit the child.
- 5.9 If the members of the panel disagree, the panel **must** decide the appeal by a simple majority vote. If the votes are equally divided, the panel chair has a second or casting vote. The decision reached is binding and the school and local authority **must** comply with it.
- 5.10 The clerk **must** communicate in writing the decision of an appeal panel, and the reasons for it, to the local authority, governing body and parents concerned, by the end of the second school day after the conclusion of the appeal hearing. The decision may also be confirmed to the parents by telephone by at least the next school day after the hearing.¹⁹

¹⁹ Where a local authority wishes an Academy to admit a particular child against the wishes of the Academy the case should be referred to the Secretary of State, who has the power to direct admission.