Summary

The new version of the Schools Admissions Code is likely to come into force on 19 December following consultation undertaken by DfE over the summer. There have been two changes of substance and a number of minor amendments designed to improve the clarity of the document without altering its intended effect. The significant changes are:

- To allow schools to give priority to applicants eligible for the Pupil Premium; and
- To bring forward the timetable for determining admissions arrangements so that objections can be resolved by the Schools Adjudicator before the start of the admissions round.

In addition to the revised Code, DfE published a report on the consultation process and amending regulations consistent with the Code changes which will come into force at the same time (these are mainly required to give effect to the new prescribed dates).

The final version of the new Code contains wording different from the consultation draft in a small number of places. Most of these make no difference to the intended effect of the Code but one, relating to ‘out of age’ admissions, will require an amendment to most, if not all, admissions arrangements in the forthcoming round.

This briefing will be of interest to lead members and senior officers concerned with school admissions.

Overview

The new version of the Schools Admissions Code is likely to come into force on 19 December 2014 following completion of the Parliamentary process. DfE consulted over the summer (between 22 July and 29 September 2014). See Changes to school admissions: consultation document. The document included: explanations about the main issues (giving priority to applicants eligible for the Pupil Premium, bringing forward the timetable for determination and objections to the adjudicator, and changes designed to improve clarity). In addition the document also included: summaries of: the proposed timetable changes in tabular form; a list of minor technical drafting changes; and, the Code paragraph numbers where changes were being proposed. A draft version of the revised Code showed the changes in context. See Related Briefings. The DfE published its response to the consultation on 30 October.

The draft Code (in a slightly revised version) and accompanying regulations were laid before parliament for the statutory 40 days (due to come to an end on 19 December) and will come into force thereafter, provided MPs and peers take no action to block them. The Parliamentary procedure does not include any opportunity for amendment so, although there can be a degree of scrutiny, the only sanction is complete rejection – which rarely happens.
In this instance, some concern was expressed that the bulk of the consultation took place during the summer holidays but no significant matters were raised on the substance. In addition to the published summary of comments, DfE told parliamentarians that “the proposed changes were tested in advance of consultation with key stakeholders, and that, during the consultation period, further stakeholder engagement was carried out, including meetings with interested representative groups. Over 400 responses were received: the proposals were broadly welcomed, although some issues were raised regarding specific details of the policy or how the proposals might work in practice.” It can therefore be assumed that the version laid before Parliament is definitive. There Code can be here and the accompanying regulations here.

**Briefing in full**

As indicated above the changes in this final version of the Code are very much the same as were outlined in the consultation.

The first headline change is to extend the option to give priority to recipients of the Pupil Premium, which was initially available only to the academy/free school sector if funding agreements gave explicit permission, to all schools via the Code.

The second major change, bringing forward the timetable for determining admissions arrangements, is linked to the key issue of implementing Office of the Schools Adjudicator (OSA) rulings on objections to determined arrangements. Admission authorities consulting on proposed changes will, from the 2015/16 cycle, i.e. this element does not apply to the consultation/determination round that is already underway, have to start earlier but are obliged to consult for a shorter period. From autumn 2015, consultation for a minimum of 6 (rather than 8) weeks must take place during a four month window between 1 October and the end of January – a month earlier that the current November to February window. Determination will have to be completed six weeks earlier by 28 February 2016 (rather than 15 April which will be the deadline for the last time in 2015). The deadlines for new arrangements to be published and objections lodged with the OSA are similarly brought forward by 6 weeks to 15 March (currently 1 May) and 15 May (currently 30 June) respectively for 2016.

Additionally there have been substantive changes which:

- require admission authorities to amend their admission arrangements to comply with the Code within two months of a decision of the Schools Adjudicator, where the Adjudicator rules the arrangements are unlawful.
- clarify the provisions relating to the admission of summer born children to aid decision-making;
- make clear that the highest priority for admission applies to all children who have been adopted from local authority care.

Beyond this the new Code includes a number of minor technical drafting changes to certain provisions, which improve the clarity of the relevant provisions without changing the correct interpretation of the previous version. These include: updating the Code to take account of changes to the legal and technical context (e.g. EHC plans progressively replacing SEN statements, and the definition of ‘previously looked after children’); clarify some matters which had been found to be ambiguous (e.g. entitlement to a full-time place in reception following a child’s fourth birthday and the limitations on selection on ‘aptitude’); re-including some material where
previous abbreviation had gone too far (e.g. strengthening the references to sixth form arrangements which had almost entirely disappeared); and, the addition of an index.

Differences between the Consultation Draft and the Version of the Code laid before Parliament

Pupil and Nursery Premium

The draft included an addition to paragraph 1.9 b) that has not been carried through to the final version (on page 10) which remains as it was in the 2012 version: that admission arrangements must not . . . “take into account any previous schools attended, unless it is a named feeder school.” The additional words in the draft made a cross-reference to paragraph 1.39B which deals with allowing primary schools to prioritise applicants attending their own nursery provision. That paragraph in turn (page 16) has been recast and now defines eligible provision as, eligible pupils who:

“a) are in a nursery class which is part of the school; or
b) attend a nursery that is established and run by the school. The nursery must be named in the admission arrangements and its selection must be transparent and made on reasonable grounds.”

That wording is tighter than the draft version and renders the original proposed change to 1.9 b) unnecessary. However it is not without ambiguity. Presumably the words “its selection” are meant to be understood as a reference to the way young children were previously selected to attend the nursery; rather than the way the nursery was chosen as a feeder – although the rules of grammatical construction would tend to imply the latter.

Paragraph 1.39A has been amended by the addition of the words “early years pupil premium” to rectify the anomaly (picked up in the earlier CSN briefing) that it could have been construed as excluding those in receipt of that benefit who were not already using the school’s own provision.

Faith Based Criteria

Paragraph 1.9 i) in the final version (page 11) has reverted to the 2012 wording and a cross-reference to paragraphs 1.37 and 1.38 proposed in the draft has been left out. Those two paragraphs remain substantially as they were before except that the use of “faith school” in 1.37 has reverted to the more technically correct “schools designated with a religious character” used in the 2012 version; but 1.38 retains the substitution of the more general “admission arrangements” for the specific “oversubscription criteria” in the draft. The net result of this is to strengthen slightly the hand of designated religious authorities by making it clear they have a right to influence all aspects of faith schools’ admissions arrangements not merely the oversubscription criteria.

Admission of children outside their normal age group

Paragraph 2.17 of the 2012 Code comprised three sentences which indicated that parents could make a request for an ‘out of age’ place for a child which had to be considered on its merits; but that their statutory right of appeal would relate only to the offer or refusal of a place at the school not on the decision about the appropriate year group allocation. The draft Code recast 2.17 and included two additional paragraphs (2.17A & 2.17B) incorporating some material from previously issued guidance expanding upon although not actually changing the basic position - which remains the same.
The version laid before parliament has further expanded and reworked those three paragraphs. Some additional words in paragraphs 2.17A and 2.17B have been imported from the previously separate guidance and will neither be unfamiliar nor create any material change to the previous position. However there is a new final sentence added to paragraph 2.17 which reads: Admissions authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group”. Although the word “must” has not actually been emboldened it is difficult to construe this as anything other than a mandatory requirement. So, notwithstanding the fact that the legal position has not changed, all admission authorities are required to advertise the fact that they must consider any such requests via an explicit statement in their admissions arrangements.

This aspect of the Code comes into force immediately creating the need for most, if not all, arrangements to be amended by 15 April 2015. The fact that this new requirement has not (at the time of drafting) been widely publicised may cause some consternation for admissions authorities which were not otherwise intending to amend their arrangements and have not, therefore, planned for an eight week consultation to be completed before 28 February 2015. In fact, paragraph 3.6 (under regulation 19 of the 2012 regulations as amended) allows previously determined arrangements to be revised “to give effect to a mandatory requirement of the Code.”

**Comment**

A number of the detailed amendments are, as indicated in the consultation, improvements to the clarity of the document which may assist in the Code being interpreted and implemented in the way that has always been intended.

The timetable changes, and the stronger emphasis on the timely implementation of Adjudicator decisions, will require a little more forward planning on the part of admissions authorities but should offer considerable benefits in securing greater compliance with the Code.

The additional material relating to ‘out of age’ admissions reflects a difference of perspective between DfE and admissions authorities which has previously been played out in discussions about the separate guidance on the matter previously issued by DfE. From the local perspective the position is straightforward and clear. Providing education out of the normal age group is allowed provided it is in the best interests of the child, and the decision as to whether this is appropriate is best taken by professionals. The DfE position is driven by a small but continuous stream of casework from parents who, having failed to persuade a local school to give them what they want, apply pressure to ministers via their MP. The expansion of Code to three paragraphs, as set out in the consultation, did not change the fundamental position but was less detailed than the separate guidance which remains extant. It is therefore hard to see that it will make any difference to the overall position. The late decision to add a requirement for this matter to be mentioned explicitly in all admission arrangements may have an impact - but not necessarily the one that DfE were looking for. Clearly it will still not make any difference to the view taken locally about individual cases; but it could encourage some parents to make such a request when they wouldn’t previously have thought to do so. Since it is also likely that these will be intrinsically weaker cases and more likely to be refused the volume of casework finding its way to the DfE could well increase.

It is perhaps unsurprising that the changes to allow a Pupil Premium priority outlined in the original consultation document have been carried through with only very minor amendments to the
previously published draft text. This was a politically driven change motivated by the ‘social mobility agenda’ and was always going to be pushed through regardless of the consultation. This was reflected in the bland report on responses which registered substantial support for the idea (which in terms of its aspirations is fair enough) but noted that some respondents raised “administrative issues” about how “it might work in practice”. As a summary of the detailed critique set out in the previous briefing (which was communicated directly to DfE officials) this is something of an understatement.

In particular allowing reception class oversubscription criteria to include a priority for Pupil Premium (PP) eligible applicants in the schools own nursery remains highly problematic. One of the mitigating factors for the policy as a whole is that the administrative difficulties and uncertain outcomes mean that a general PP priority it is highly unlikely to be adopted by many schools. However, the more controlled nature of an ‘own nursery’ category will make it less problematic and more attractive to some primary schools. But the more serious problems of principle - notably the regular decisions by the OSA that any priority for nursery attendance is inconsistent with the overriding principles that underpin the Code – remain. One bit of redrafting (see above) included in the final version may have been intended to address one of these difficulties - namely that since nursery admissions are unregulated by the Code those who were admitted to the nursery by unfair means could get a reception place ahead of those with a stronger claim. However this was so poorly drafted it is unlikely to be widely understood and may be difficult for OSA to enforce.

External links

DfE consultation webpage: Changes to the school admissions code
DfE webpage: Free schools admissions
Office of the Schools Adjudicator (OSA) website

Related briefings

Changes to the Schools Admissions Code – Consultation (5 September 2014)
Free Schools Admissions DfE update to recent advice.pdf (30 June 2014)
Free Schools Admissions – recent DfE advice (May 2014)
Office of the Schools Adjudicator Annual Report 2013 (December 2013)
School Organisation – DfE consultation and recent advice (September 2013)
School admissions: Revised Admissions and Appeals Codes, consultation on Regulations, Adjudicator’s Annual Report, and LGO report (November 2011)
Education Act 2011 (November 2011)

For further information, please visit www.lgiu.org.uk or email john.fowler@lgiu.org.uk

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