

School Admissions Code

An Alternative version as if the interests of Parents and children were paramount

The text below is an edited version of the current Admissions Code – showing how it would look after a few important changes to make it more true to its own guiding principles. The starting point for this exercise is that all schools have a similar status in the process; none are their own admissions authority; there is no selection on the basis of aptitude or ability (except in the special case of ‘banding’); and the powers of OSA to police the system are strengthened.

The existing paragraph numbering has been retained to facilitate comparison with the current version. Some existing paragraphs have been expanded. Where paragraphs have been completely deleted a place holder has been inserted to indicate how many paragraphs have been removed. In some cases all or part of the existing text has been left in, with an explanation as to why it would not be necessary in a streamlined system.

Existing footnotes have been left in place; but in some cases the primary legislation or regulations they refer to would need to be amended to provide suitable legal provision to underpin this revised version of the Code. Some of the more minor changes could be effected without amending primary and/or secondary legislation but, of course, any new Code would also be made via parliamentary approval. The main changes which would require amending legislation are as follows:

1. The proposal that every school should have a right to contribute to the process of setting admissions policies for the local area could be implemented now; but the parallel proposal that the duty to translate those policies into legal “admissions arrangements” be shifted to a single ‘middle tier’ body for each locality (referred to below as the ‘Area Admissions Authority’- AAA) would require new primary legislation. These two ideas taken together would rationalise the present position whereby admissions arrangements are legally ‘determined’ by, variously, the LA for community and VC schools, the governors for VA and Foundation schools and the ‘Trust’ in respect of all forms of Academy. The role of AAA could be given to existing LAs but could be discharged by another body if wider changes were introduced.
2. This document envisages restoring the pre-2012 position whereby decisions of the Office of the Schools Adjudicator have the effect of altering admissions arrangements directly (rather than placing a duty on admissions authorities to make necessary changes). This would require new primary legislation. The consequential changes to timescales for consultation (twice), objections to the OSA, and publication of a combined prospectus would require changes in regulations.
3. Removing the status of ‘admissions authority’ from some schools will require

consequential amendments to arrangements for admission appeals. And also for arrangements related to setting the Published Admission Number (PAN) for each school and casual admissions. In general the proposed changes here locate all such powers (which were previously exercised by some types of school) with the area admissions authority. However all schools (including those that were not previously own admissions authorities) would gain new rights to prior consultation and to object to the OSA if they think those powers are being abused.

4. Other consequential changes would flow from the creation of single admissions authorities for all schools. These include: duties to consult and notify changes; administration and management of the application process; making decisions and the application of oversubscription process – including organising banding tests and random ballots; managing admissions appeals; coordinating casual admissions; and referring objections to the adjudicator. In all cases these changes would tend to render the overall position simpler and more transparent and make it easier for parents to understand and access the system.
5. Certain requirements within the Code - e.g. the injunction proscribing school uniform policies that discourage applications from poorer families – were previously unenforceable because they fell outside the jurisdiction of the OSA. This version of the Code (with the necessary legislative provisions) would explicitly bring them within scope of objections to the OSA.
6. This version of the Code would outlaw selection on academic grounds (except in so far as it is necessary to operate permitted banding schemes) or by reference to aptitude. These changes would require legislative amendments.
7. It also assumes that schools designated as having a religious character (i.e. ‘faith schools’) would still be allowed to give preference to applicants who are practicing members of their faith community; but reduces the scope for establishing ‘hierarchies of observance’ via separate oversubscription criteria.
8. It also applies a more restrictive approach to permitted oversubscription criteria to reduce the scope for ‘covert selection’. By and large these changes would not require changes to legislation or regulations.
9. The position on Fair Access Protocols would also be simplified and strengthened. As the power of admission would be located at an area level, individual schools would no longer have to agree to participate; although they would still be consulted on the details of the scheme and willing participation would be an objective. However schools would lose the capacity to resist or opt out altogether. Similarly LAs would no longer need a power to direct schools to admit hard to place children as they would either be, or be in a position to work closely with, the single admissions authority for all schools. However in such cases every school would retain the ability to challenge decisions to admit by appeal to the adjudicator; but the mechanism would, in all cases, be that which now applies only to community / VC schools.

Alan Parker, March 2018

School Admissions Code

For Presentation to
Parliament pursuant to
Section 85(3) of the
School Standards and
Framework Act 1998

The School Admissions Code

<u>Contents:</u>	<u>Page</u>
Statutory basis for the Code	3
Introduction	5
Section 1: Determining Admission Arrangements	7
Published Admission numbers	
Oversubscription criteria	
Consultation	
Determination	
Section 2: Applications and Offers	17
Applications	
Co-ordination	
Offering places	
Section 3: Ensuring fairness and resolving issues	26
The Schools Adjudicator	
Fair Access Protocols	
Appendices	
Relevant Legislation	28
Sample Admission Arrangements	30
Admissions Timeline	30
Glossary	30

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 [] and, unless otherwise stated, applies with immediate effect. It will apply to admission arrangements determined in [] for admission in [the following] school year []. 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 England.

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 1998²
- 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.

[N.B. the following wording from the current Code could be left out/modified if legislation was enacted to bring all publicly funded schools within a common legal framework as public bodies with no possibility of contractual 'opt-outs']

Application of the Code to Academies

4. *Academies, by which we mean Academy Schools³, (including those that are 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). Academies are required by their funding agreements 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 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.

³ Section 53 of the Education Act 2011 will insert Section 1A, which defines an Academy School, into the Academies Act 2010 when it comes into force in 2012. At the time of laying the Code, Academies are defined in Section 1 of the Academies Act.

Compliance with the Code

5. It is the responsibility of every school governing body to form a view about the admissions policy for local schools in accordance with this Code. The admission authority for each area, hereinafter referred to as the Area Admission Authority (AAA), must determine admission arrangements⁴ for all schools under their jurisdiction having regard to their views and preferences but only so far as they are compliant with this Code.

6. Section 88P of the SSFA 1998 requires local authorities to make reports to the adjudicator about such matters connected with relevant school admissions as required by the Code. Minimum requirements for that report are set out at paragraph 3.23 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, previously looked after children and the number and percentage of lodged and upheld parental appeals. The report must be published locally. The Schools Adjudicator will report annually to the Secretary of State on Fair Access.

7. Objections to the admission arrangements determined by the area admissions authority for maintained schools can be made to the Schools Adjudicator whose decisions are binding and enforceable⁵.

8. The Secretary of State may refer the admission arrangements determined by the area admissions authority for any school to the Schools Adjudicator at any time if the Secretary of State considers that they do not or may not comply with the mandatory requirements of this Code or the law.

9. The Schools Adjudicator may investigate the admission arrangements set by Area Admissions Authorities (either as a whole or in respect of any individual schools) that the Adjudicator considers do not, or may not, comply with the mandatory requirements of this Code or the law.

10. Any decision of the Adjudicator will take effect immediately (or at a time specified in the determination.) It will be for the area admission authority to revise the composite prospectus without delay. Where the area admissions authority fails to implement decisions of the Adjudicator the Secretary of State may direct the area admission authority to do so under Section 496 or 497 of the Education Act 1996.

[11. *There is no need to include a table explaining different admission authorities for each type of school - as it is always the same. All schools have a right to decide on their preferred policy; but in each case the legal duty to determine lawful arrangements falls to the area admissions authority for their locality.*]

⁴ Preferred admissions policy means a statement of objectives that a school wishes its admissions arrangements to achieve. 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.

⁵ Section 88H of the SSFA 1998.

Introduction

Purpose of this Code

12. The purpose of the Code is to ensure that all school places for maintained schools (excluding maintained special schools⁶) 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. All other statements have the status of formal 'guidance' which means bodies to whom this Code applies must have regard to its provisions and follow them unless they have good and valid reasons to do otherwise.

13. Schools and local admission authorities **must** also comply with the regulations and legislation set out in the Appendix to this Code.

Overall principles behind setting arrangements

14. In drawing up admission arrangements on behalf of schools in their area, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. In doing so the arrangements for each school in a locality must be constructed with regard to those nearby such that each phase of education can be seen as a fair, open and coherent system. Parents should be able to look at the arrangements for all schools in their locality and understand easily how places for each school will be allocated.

How admissions work

15. In summary, the process operates as follows:

- a) Admission arrangements for all schools **must** clearly set out how children will be admitted, including the criteria that will be applied if there are more applications than places at the school. Admission arrangements are determined by area admission authorities having regard to the views and preferences of all local schools.
- b) Area Admission Authorities **must** set ('determine') admission arrangements annually. Where a school wishes to ask the AAA to change its admissions arrangements, the governors **must** first publicly consult on those changes indicating how they differ from previous arrangements. *[N.B. the statement to which footnote ⁷ applies has been deleted]*. Consultation **must** be for a minimum of 6 weeks and **must** take place during the autumn term of the year before consequential arrangements are to apply. Whether or not changes are proposed each school **must** submit its views to the relevant area admissions authority by **31st December** of the year before those

⁶ 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.

⁷ Except where the change is an increase to a school's published admission number (see paragraph 1.3) or is made to comply with any mandatory requirements of the Code or The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (hereafter the "School Admissions Regulations 2012").

arrangements are to apply. This consultation period allows parents, other schools, religious authorities and the local community to raise any concerns about the proposals' impact on local admission policies.

- c) The admissions authority for each area **must** publish a draft composite prospectus by **1st February**, taking account of all the agreed school policies it has received. Following a minimum of 6 weeks consultation, open to parents, schools, religious authorities and the local community, it **must** publish a second draft identifying any changes made in response to representations. Thereafter, formal objections to any of the arrangements can be referred to the Schools Adjudicator by **1st June**. Any such objections may refer to matters raised during either stage of consultation or alleged non-compliance with the Code in the final document. If no referrals are made the second draft automatically becomes final. Any decision of the Adjudicator to modify arrangements will take effect immediately and **must** be reflected in a revised final version of the single composite prospectus. (Any changes arising from determinations made after 1st September will take effect for the following admissions round.)
- d) In the normal admissions round⁸ 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, the area admission authority **must** rank applications in order against each school's published oversubscription criteria and process them in accordance with its coordinated admissions procedure. Published admission arrangements **must** make clear to parents that a separate application must be made for any transfer from nursery to primary school, and from infant to junior school.
- e) All preferences are collated and parents then receive an offer from the [local authority / area admissions 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, the offer is made on or about **16 April**⁹, in the year in which the child will be admitted.
- f) Parents, and in some circumstances children, have the right to appeal against an area admission authority's decision to refuse admission. The area 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 area admission authority **must** establish a system of independent appeals panels to hear appeals. The school in question has a right to be represented as an interested party at relevant admissions appeals. The panel will decide whether to uphold or dismiss the appeal. If the appeal is upheld the child must be admitted.

⁸ (i.e. application in October (secondary school) for following year and January (primary school) for same year admission).

⁹ The first primary National Offer Day will not take place until 16 April 2014.

Section 1: Determining Admission Arrangements:

1.1 Area Admission Authorities are responsible for admissions and **must** act in accordance with this Code, the School Admission Appeals Code, other laws relating to admissions¹⁰, and relevant human rights and equalities legislation.

1.2 **Published Admission Number (PAN)** - As part of determining admission arrangements¹¹, all AAAs **must** set an admission number for each 'relevant age group'¹² in each school within their area.

1.3 All schools are permitted to take a view about the PAN for their school and are required to consult before seeking any change to this aspect of the local admissions policy¹³. When setting the PAN for each school the AAA must have regard to the wishes of the governors and the community that uses each school. However final decisions should reflect the need for school places and the efficient use of resources across the whole area. Schools, and other interested parties, have the right to object to the Schools Adjudicator about the PAN set for any school. The Schools Adjudicator **must** have regard to the need for school places and the efficient use of resources when considering any such objection.

1.4 If, at any time following determination of the PAN, an AAA decides that it is necessary to admit above the PAN of a particular school, it **must** consult the school in good time to allow an appeal to the Schools Adjudicator and for co-ordinated admissions systems to be carried out effectively. AAAs may also admit above a school's PAN in-year. Schools may appeal against such decisions to the schools adjudicator.

1.5 Any admissions above the PAN as set out in paragraph 1.4 above will not constitute an increase to the PAN¹⁴. Information on variations to the PAN in-year is set out in paragraph 3.6 of this Code.

1.6 **Oversubscription criteria** - The AAA for the school **must** set out in their arrangements the criteria against which places will be allocated at each school when there are more applications than places and the order in which the criteria will be applied. All children whose statement of special educational needs (SEN)¹⁵ names the school **must** be admitted. If the school is not oversubscribed, all applicants **must** be offered a place.

1.7 Oversubscription criteria **must** be stated for all schools in each

¹⁰ The main provisions relating to admissions are in Chapter 1 of Part 3 of the SSFA 1998.

¹¹ See Sections 88C and 88D of the SSFA 1998.

¹² This is the age group at which pupils are or will normally be admitted to the school e.g. reception or year 7 (Section 142 of the SSFA 1998).

¹³ Regulation 14 of School Admissions Regulations 2012.

¹⁴ Where an enlargement of school premises is proposed the governing body of a maintained school is required to observe the relevant regulations, currently the School Organisation (Prescribed Alteration Regulations to Maintained Schools)(England) Regulations 2007 (SI 2007/1289). For Academies, such changes are agreed with the Secretary of State through the Funding Agreement.

¹⁵ A Statement of Special Educational Need is a statement made by the local authority under Section 324 of the Education Act 1996 specifying the special educational provision required for that child.

'relevant age group' and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children¹⁶ and previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted¹⁷ (or became subject to a residence order¹⁸ or special guardianship order¹⁹). Further references to previously looked after children in this Code means such children who were adopted (or subject to residence orders or special guardianship orders) immediately following having been looked after. Oversubscription criteria **must** then be applied to all other applicants in the order set out in the arrangements.

1.8 Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. AAAs **must** ensure that 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. Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated. Other policies adopted by schools (for example requirements relating to school uniform or paying for school trips) **must not** discourage parents from applying for a place for their child. Anyone who considers that this is case may refer an objection to The Office of the Schools Adjudicator who has power to direct schools to modify any such policies.

1.9 It is for Area Admission Authorities to formulate admission arrangements for local schools with regard to their preferred polices, but the arrangements **must not**:

- a) place any conditions on the consideration of any application other than those in the oversubscription criteria published in the 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) include any form of selection by ability other than that necessary to implement permitted 'banding schemes'²⁰;

¹⁶ A 'looked after child' is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989) at the time of making an application to a school.

¹⁷ Under the terms of the Adoption and Children Act 2002. See Section 46 (adoption orders).

¹⁸ Under the terms of the Children Act 1989. See Section 8 which defines a 'residence order' as an order settling the arrangements to be made as to the person with whom the child is to live.

¹⁹ See Section 14A of the Children Act 1989 which defines a 'special guardianship order' as an order appointing one or more individuals to be a child's special guardian (or special guardians).

²⁰ 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.

- 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 ²¹ (though children of staff at the school may be prioritised in arrangements);
- 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 their parents' past or current hobbies or activities (schools which have been designated as having a religious character²² may take account of religious observance, as laid out by the body or person representing the religion or religious denomination²³);
- j) give priority to siblings of current or former pupils except as expressly permitted by this Code ;
- 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 1.40 - 1.41 below;
- l) use feeder school criteria except as expressly permitted by this Code; and in no circumstances name fee-paying independent schools as feeder schools;
- 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; or
- o) request photographs of a child for any part of the admissions process, other than as proof of identity when sitting a permitted selection test.

1.10 This Code does not give a definitive list of acceptable oversubscription criteria. It is for area admission authorities to decide which criteria would be most suitable to each school according to its preferences and local circumstances. The most common are set out below.

²¹ Free Schools and Academies may, where their Funding Agreements permit, give priority in admission arrangements to children eligible for Free School Meals (in future, the Pupil Premium).

²² Designated by order under Section 69(3) of the SSFA 1998.

²³ Schedule 3 of the School Admissions Regulations 2012. For Academies the representative body or person is set out in the Funding Agreement.

Siblings at the school

1.11 Admission authorities **must** state clearly in their arrangements what they mean by 'sibling' (e.g. 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). Sibling criteria should be included in the arrangements for Infant, Primary and Junior Schools. Where catchment areas are used, higher priority should be given to in-catchment first time applicants than out-catchment siblings. Sibling criteria should not normally be used in the arrangements for Secondary Schools.

1.12 Sibling criteria **must not** give priority to siblings of former pupils (i.e. those who will no longer be at the school when the younger sibling is due to start). Sibling criteria **must not** give priority to siblings of pupils attending other schools unless they are located on the same site. Where this is the case, this priority **must** be set out clearly in the arrangements.

Distance from the school

1.13 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 responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.

Catchment Areas

1.14 Catchment areas **must** be designed so that they are reasonable and clearly defined²⁴. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school.

Feeder Schools

1.15 The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds. For example where linked infant and junior schools are operated in such a way that parents have a legitimate expectation that children will progress automatically from one to the other, a feeder school priority should be used to allow this to happen. However feeder school criteria **must not** be used to cement managerial or governance links between schools; to influence the de facto catchment of a school; to disadvantage recent arrivals in the area served by the school; or, in such a way as to prejudice the earlier free expression of parental preferences. Secondary schools **must not** name primary schools as feeders without their express consent.

Social and medical need

1.16 Social and medical needs, (other than those related Education Health and Care Plans) should not normally be used as oversubscription criteria.

²⁴ 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.

Where schools wish to use such needs as an oversubscription criterion they should make a case to the Area Admission Authority. If the AAA agrees, the arrangements **must** set out clearly how such needs will be defined and give clear details about what supporting evidence will be required. Consistent individual decisions must be made by the AAA, or a designated body independent of the school, based on the evidence provided.

Selection by ability or aptitude

1.17 The only permitted form of selection by aptitude or ability is in order to operate a banding system designed to secure a balanced intake for a comprehensive school.

[N.B. This document is predicated on the assumption that other forms of selection are abolished. However retention of the existing forms of permitted selection by ability or aptitude would not invalidate the other reforms set out here]

[Grammar schools

1.18 There is no such thing as a Grammar school.^{25 26}..

1.19 There is no such thing as a Grammar school.

1.20 There is no such thing as a Grammar school.]

Pre-existing, partially selective schools

1.21 There is no such thing as a partially selective school. Previous concessions allowing historic arrangements that would otherwise not comply with this Code are discontinued.

[1.22 There is no such thing as a partially selective school.²⁷.

1.23 There is no such thing as a partially selective school.]

Selection by aptitude

1.24 Schools that are identified as having ‘specialisms’ may continue to devote resources to promoting them and invite applications from those with a relevant interest in pursuing that subject or subjects. However no form of selection by tests of aptitude or otherwise may be used to allocate priority admission.

Banding

1.25 Pupil ability banding is a permitted form of selection²⁸ 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);

²⁵ As designated by the Education (Grammar School Designation) Order 1998 (SI 1998/2219). Where a designated grammar school converts to become an Academy, the Academy is permitted to continue selecting their entire intake: Section 6(3) of the Academies Act 2010.

²⁶ Section 104 of the SSFA 1998.

²⁷ Section 100 of the SSFA 1998.

²⁸ Section 101 of the SSFA 1998.

- b) the range of ability of children in the local area; or
- c) the national ability range.

1.26 Entry requirements for schools that use banding **must** be fair, clear and objective. Banding arrangements which favour high ability children that were permitted under previous versions of this Code must cease and be replaced by a compliant methodology.

1.27 The area admission authority **must** ensure that all banding arrangements used within their area are consistent and coherent and use common methods for testing and utilisation of results. Children must not be expected to sit more than one set of tests or assessments to enable them to apply to any, or all, schools using this admissions system. The administration of all tests and application of results must be independent of the schools involved. Area admissions authorities should collaborate with neighbouring authorities to ensure, as far as possible, that applicants applying to schools in other areas do not have to sit multiple tests. 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 **must be** published in the common prospectus for each area where they are used.

1.28 Where the school is oversubscribed:

- a) looked after children and previously looked after children **must** be given top priority in each band, and then any oversubscription criteria applied within each band, and
- b) priority **must not** be given within bands according to the applicant's performance in the test.

1.29 *Paragraph no longer needed [Schools that operate admission arrangements which include both banding and selection with reference to aptitude]*

1.30 Children with statements of special educational needs or EHC plans may be included in banding tests and allocated places in the appropriate bands (or allocated to bands by other means) but, regardless of any banding arrangements, they **must** be allocated a place if their statement names the school.

Tests for permitted selection (e.g. banding)

1.31 Tests for any form of selection **must** be clear, objective, and give an accurate reflection of the child's ability, irrespective of sex, race, or disability. It is for the Area Admission Authority to decide the content of the test, providing that the test is a valid and reliable test of ability.

1.32 Admission authorities **must**:

- a) *Paragraph no longer needed [tests for aptitude do not test for ability];*
- b) 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, and

- c) *Paragraph no longer needed [inform parents of the outcome of selection tests before the closing date for secondary applications on 31 October]- Because a banding test is inherently 'low stakes' the outcome does not affect the offer of a place in any predictable way and therefore can have no bearing on parents' 'choices'. Requiring parents to be informed implies the opposite and is therefore potentially confusing.*

1.33 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

1.34 It is inappropriate to use random allocation as the sole oversubscription criterion for allocating places at schools. Schools that wish to use random allocation when they are oversubscribed **must** set out clearly in their submission to the area admissions authority what the approach is intended to achieve how it might operate. In implementing such requests, AAAs **must** ensure that arrangements are transparent, and that looked after children and previously looked after children are prioritised.

1.35 The random allocation process **must** be supervised by the area admissions authority or someone, independent of the school concerned, appointed by it.

Faith based oversubscription criteria in schools with a religious character

1.36 As with other maintained schools, these 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 criteria²⁹ and allocate places by reference to faith where the school is oversubscribed. However those qualified to benefit from priority by virtue of their membership or practice of the faith **must** form a single category. Arrangements must state clearly the test of membership and/or practice of the faith which will confer qualification; and **must not** include a hierarchy of oversubscription criteria by reference to different levels of religious observance.

1.37 Area Admission Authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied. Admission authorities for faith schools may give priority to all looked after children and previously looked after children whether or not of the faith, but they **must** give priority to looked after children and previously 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 and previously looked after children not of the faith above other children not of the faith³⁰.

²⁹ 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.

³⁰ Regulation 9 of the School Admissions Regulations 2012.

1.38 Area Admission Authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination 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 body or person representing the religion or religious denomination 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 1991³¹, consult with their diocese about proposed admission arrangements before any public consultation.

Children of staff at the school

1.39 Admission authorities may give priority in their oversubscription criteria to children of staff provided that such priority is equally available to all staff. "Staff at the school" is defined as those directly employed to work at the school site (or one of them in multi-site schools) for at least eight hours per week.

Maintained boarding schools

1.40 Maintained boarding schools can have 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.

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

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

1.42 **Consultation**³² - When schools wish to propose changes³³ to their admission arrangements they **must** consult during the autumn term of the year before the proposed changes would come into effect. Where they do not wish to make any changes there is no requirement to consult but they should inform the Area Admissions Authority that their preferences remain the same. If the AAA wishes to initiate changes they should notify the school (or schools) concerned in time for the proposals to be considered alongside their

³¹ 1991 No 2.

³² See also paragraph 1.3. Regulations 12 to 17 of the School Admissions Regulations 2012 cover consultation requirements.

³³ An increase to PAN, or a change to the admission arrangements to comply with the mandatory provisions of the Code or the School Admissions Regulations 2012, is not a change requiring consultation.

own review of their preferred policy. The AAA **must** publish a draft composite prospectus (including any supplementary information forms, definitions of technical terms, and arrangements to be used for banding or random allocation where these mechanisms are used) by **1st February**, taking account of all the representations from schools it has received, and indicating any changes from the previous year. Following a minimum of 5 weeks consultation, open to parents, schools, religious authorities and the local community, it must publish an addendum identifying any changes made in response to representations. *[References to re-consultation at least every seven years and LA proposals to alter PANs will be unnecessary as schools only have to consult if they wish to make changes; but the composite admissions documents is subject to full consultation every year. Footnote ³⁴ and the regulations it refers to would need to change.]*

1.43 Consultation **must** last for a minimum of 5 weeks and **must** take place for schools during the **autumn term**; and for area admission authorities between **1st January** and **15th March** in the determination year.

1.44 Schools and Area Admission Authorities **must** consult with:

- a) parents of children between the ages of two and eighteen;
- b) all (other) schools within the relevant area (except that primary schools need not consult secondary schools);
- c) in the case of faith schools, the body or person representing the religion or religious denomination.
- d) in the case of the Area Admissions Authority other persons in the relevant area who in the opinion of the authority have an interest in the proposed admissions; and
- e) in the case of the Area Admissions Authority all adjoining neighbouring local authorities / area admission authorities.

1.45 For the duration of the consultation periods, schools /area admission authorities **must** publish a copy of their full proposed admission arrangements (including the proposed PAN) on their website together with details of the person within the consulting body to whom comments may be sent *[and the areas on which comments are not sought³⁵ this regulation should be deleted]*. Schools and area admission authorities (as appropriate) **must** also send upon request a copy of the proposed admission arrangements to any of the persons or bodies listed above inviting comment. Failure to consult effectively may be grounds for subsequent complaints and appeals.

1.46 **Determination** - All area admission authorities **must** determine admission arrangements by **15 April** every year, by publishing a notice declaring that the previously published draft version is confirmed with an addendum detailing any amendments arising from consultation. *[even if they have not changed from previous years and a consultation has not been required³⁶. This statement and footnote no longer relevant]*

³⁴ A consultation on a proposal to increase or keep the same PAN by a local authority as admission authority with the governing body of voluntary controlled or community school is not a consultation for the purposes of calculating a seven year period without consultation.

³⁵ Regulation 16 of the School Admissions Regulations 2012.

³⁶ Regulation 17 of the School Admissions Regulations 2012.

1.47 Once area admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies³⁷. Schools **must** publish a copy of the arrangements determined for their institution on their website displaying them for the whole offer year (the academic year in which offers for places are made). Faith schools **must** also confirm to the body or person representing their religion or religious denomination that this has been done.

1.48 Where the determined PAN has changed from previous years, they **must** make specific reference to the change on their website.

1.49 Local authorities **must**, by **1 May**, publish on their website the proposed admission arrangements for any new school *[or Academy]* which is intended to open within the determination year, details of where the determined arrangements for all schools *[, including Academies,]* can be viewed, and information on how to refer objections to the Schools Adjudicator³⁸.

1.50 Following determination of arrangements, any objections to those arrangements **must** be made to the Schools Adjudicator by **1st June**³⁹. *[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 otherwise⁴⁰. This is no longer necessary as the all this information will automatically be held by the area admissions authority via the draft version published for consultation]*

1.51 **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**⁴¹ in the offer year, which contains the admissions arrangements and any supplementary information forms 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 all parents. ***[N.B. although this requirement remains the same, compliance will be much easier and for most purposes the information will have been readily available since the previous summer term]***

³⁷ In addition to the bodies listed at paragraph 1.44 (c), (d) and (f) and so far as not covered by them, all governing bodies for community and voluntary controlled schools in the relevant area.

³⁸ Regulation 18 of the School Admissions Regulations 2012.

³⁹ Regulation 23 of the School Admissions Regulations 2012. See also 3.2-3.5 of this Code regarding objections to the Schools Adjudicator.

⁴⁰ Regulation 7 of the School Information (England) Regulations 2008 SI 2008/3093.

⁴¹ See regulations 5, 6 and Schedule 2 of the School Information (England) Regulations 2008.

Section 2: Applications and Offers

2.1 **Applying for places** - For applications in the normal admissions round, [local authorities /area admissions authorities *N.B. for the remainder of this draft references to 'local authorities' should be read as including the entity previously described as 'area admissions authorities' whether that function is discharged by LAs as presently constituted or not*] **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 – area 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 CAF. Local authorities **must** provide advice and assistance to parents when they are deciding which schools to apply for⁴².

2.3 Regardless of which schools parents express preferences for, the CAF is required to be 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 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 forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by ability for the purposes of banding [*N.B. aptitude or ability no longer allowed*]. They **must not** ask, or use supplementary forms that ask, for any of the information prohibited by paragraph 1.9 above 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 a child'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

⁴² In accordance with Section 86(1A) of the SSFA 1998.

cases they **must not** ask for any evidence that would include any of the 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. In the case of previously looked after children, admission authorities may request a copy of the adoption order, residence order or special guardianship order and a letter from the local authority that last looked after the child confirming that he or she was looked after immediately prior to that order being made.

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 the school roll they are not required to do so in order to transfer into year 12. Area admission authorities can, however, set academic entry criteria for 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 and previously looked after children who meet the academic entry criteria. As stated in paragraph 1.9 m) above, any meetings held to discuss options and courses **must not** form part of the decision process on whether to offer a place.

2.7 Allocating places - Admission authorities **must** allocate places on the basis of the determined admission arrangements for each school. *[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. This section is deleted because schools will no longer be responsible for the administration of admissions and therefore no risk of improper decision making will arise]*

2.8 If sufficient places are available the Area Admissions Authority **must** offer a place to every child who has applied for any maintained schools, including faith schools, without condition or the use of any oversubscription 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 banded 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. Schools **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 by the home local authority.

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 an offer or 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 established that the offer 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 offer may be withdrawn if they do not. Where an offer is withdrawn on the basis of misleading information, the application **must** be considered afresh, and a right of appeal offered if an offer is refused.

2.13 A school place **must not** be withdrawn 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** □ The area admission authority **must** maintain a clear, fair and objective waiting list in respect of each school 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 their application was received or their name was added to the list. Looked after children, previously 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. When casual vacancies arise schools **must** liaise with the area admissions authority to fill them; and **must not offer** places to direct applicants.

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 teacher⁴³. Additional children may be admitted under 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:

- a) children admitted outside the normal admissions round with statements of special educational needs specifying a school;
- b) looked after children and previously looked after children admitted outside the normal admissions round;

⁴³ 'Teacher' is defined in Section 4 of the SSFA 1998.

- c) children admitted, after initial allocation of places, because of a procedural error made by the admission authority or local authority in the original application process;
- d) children admitted after an independent appeals panel upholds an appeal;
- e) children who move into the area outside the normal admissions round for whom there is no other available school within reasonable distance;
- f) children of UK service personnel admitted outside the normal admissions round;
- g) children whose twin or sibling from a multiple birth is admitted otherwise than as an excepted pupil;
- h) children with special educational needs who are normally taught in a special educational needs unit⁴⁴ attached to the school, or registered at a special school, who attend some infant classes within the mainstream school⁴⁵.

[N.B. there is a case for doing away with the legalistic regulation of class size in KS1. The educational benefit of this policy aim is more a function of the overall ratio of skilled adults to children in the school as a whole rather than the number of individual pupils in one room at any particular time. If more resource is available the position will improve and cuts have the reverse effect irrespective of regulations. There is however little knock-on effect - apart from admissions appeals – whether this provision stays or goes.]

2.16 Admission of children below compulsory school age and deferred entry to school – Area admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority **must** make it clear in their arrangements that:

- a) parents can request that the date their child is admitted to school is deferred until later in the academic year or until the term in which the child reaches compulsory school age, and
- b) parents can request that their child takes up the place part-time until the child reaches compulsory school age.

Once the initial allocation of reception age children has been made by the area admissions authority, administration of this aspect of the process may be delegated to individual schools; subject to parents' right of to appeal to the AAA if schools do not comply with reasonable requests.

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

⁴⁴ A special educational needs unit forms part of a maintained school and is specially organised to provide education for pupils with special educational needs.

⁴⁵ The School Admissions (Infant Class Sizes) (England) Regulations 2012. Previously looked after children are not excepted pupils for the purpose of these regulations until school year 2013/14.

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 (UK Armed Forces) - For families of service personnel with a confirmed posting to their area, or crown servants returning from overseas to live in that area, admission authorities **must**:

- a) allocate a place in advance of the family arriving in the area provided the application is accompanied by an official letter that declares a relocation date and a Unit postal address or quartering area address when 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;
- b) 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 Home Office rules for non-European Economic Area nationals. Guidance on this is available on the website of the Department for Education.

2.20 Co-ordination - Each year all local authorities **must** formulate and publish on their website a scheme by **1 January** in the relevant determination year to co-ordinate admission arrangements for all publicly funded schools within their area⁴⁶. Where the scheme is substantially different from the scheme adopted for the previous academic year or the local authority has not consulted on a scheme in the previous seven years, the authority **must** consult schools in the area and any other local authorities it determines. Following any such consultation, which **must** be undertaken with a view to ensuring the admission of pupils in different local authorities is, as far as reasonably practicable, compatible with each other, the local authority **must** determine the qualifying scheme and **must** take all reasonable steps to secure its adoption. A local authority **must** inform the Secretary of State whether they have secured the adoption of a qualifying scheme by **15 April**. The Secretary of State may impose a scheme where a scheme has not been adopted. *["All admission authorities⁴⁷ **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." The removal of school level admissions authorities makes this bit unnecessary and the whole coordination process easier as the arrangements themselves will have been*

⁴⁶ Regulations 26 to 32 and Schedule 2 of the School Admissions Regulations 2012 cover the requirements for such schemes.

⁴⁷ 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, University Technical Colleges (UTCs) and Studio Schools will provide that they may choose whether they wish to participate in the local qualifying scheme.

determined with a view to compatibility and coherence.] Local authorities **must** make application 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 The area admissions authority must co-ordinate in-year applications for all schools in its area and **must** provide in the composite prospectus how in-year applications can be made and will be dealt with. Local authorities **must**, on request, provide information to a parent about the places still available in all schools within its area, and a suitable form for parents to complete when applying for a place for their child at any school. Any parent can apply for a place for their child at any time for any school outside the normal admissions round.

2.22 [*“Own admission authority schools **must**, on receipt of an in-year application, notify the local authority of ...” - this bit is unnecessary as there are no own admission authority schools*] The area admission authority **must** inform parents of their right to appeal against the refusal of a place sought outside the normal admissions round.

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

- a) only one offer per child is made by the local authority;
- b) for secondary school applications, all offers **must** be made on the same secondary National Offer Day i.e. **1 March or the next working day**, and.
- c) for primary school applications, all offers **must** be made on the same primary National Offer Day - i.e. **16 April or the next working day**. The primary National Offer Day will apply to schemes for entry in 2014/15 and all subsequent years.

2.24 **Right to appeal** - When an admission authority informs a parent of a decision to refuse their child a place at a school for which they have applied, it **must** include the reason why admission was refused; information about the right to appeal; the deadline for lodging an appeal and the contact details for making an appeal. Parents **must** be informed that, if they wish to appeal, they **must** set out their grounds for appeal in writing. Admission authorities **must not** limit the grounds on which appeals can be made.

2.25 **School closure** - Where a maintained school [*or Academy*] is to be closed, the local authority **must** collaborate with all schools in their area to consider the best way to secure 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 the Adjudicator comply with the Code and the law relating to admissions. An Adjudicator's determination is binding and enforceable and any specified amendments to arrangements take effect immediately, or at such later time specified by the Adjudicator. The area admissions authority and the school concerned **must**, where necessary, publish the revised version of their admission arrangements without delay.

3.2 [*“Local authorities **must** refer an objection to the Schools Adjudicator if they are of the view or suspect that the admission arrangements that have been determined by other admission authorities are unlawful.” The proposed alteration removing school based admissions authorities renders this duty redundant – although they retain the right to object to arrangements outside their own area under 3.3 below - instead it becomes:】 Schools that believe the area admissions authority has failed properly to take their preferred admissions policy into account when determining their arrangements, may refer an objection to the Schools Adjudicator. If requested by the Schools Adjudicator, area admission authorities and schools **must** provide the information set out in Schedule 1 to the School Admissions Regulations⁴⁸.*

3.3 Any person or body who considers that any maintained school or Academy's arrangements are unlawful, or not in compliance with the Code or relevant law relating to admissions, can make an objection to the Schools Adjudicator⁴⁹. Anonymous objections cannot be entertained; but, in certain circumstances, the Adjudicator may agree to keep the identity of an objector confidential.

[*“ The following types of objections cannot be brought⁵⁰:*

- a) *objections that seek to remove selective arrangements at a maintained school (which are permitted under Section 105 to 109 of the SSFA 1988) or a selective Academy;*
- b) *objections about own authority admission's decision to increase or keep the same PAN;*
- c) *objections about a decision by the admission authority of a voluntary-controlled or community to school to increase or keep the same PAN, unless the objection is brought by the governing body of the school;*
- d) *objections in respect of an agreed variation from the Code in relation to admission arrangements for an Academy;*
- e) *objections to arrangements which raise the same or substantially the same matters as the adjudicator has decided on for that school in the last 2 years⁵¹; and*
- f) *anonymous objections⁵².*

These exclusions are all rendered unnecessary by other proposed changes or incorporated in other paragraphs.]

⁴⁸ Regulation 25 of the School Admissions Regulations 2012.

⁴⁹ Section 88H of the SSFA 1998.

⁵⁰ Regulation 21 of the School Admissions Regulations 2012.

⁵¹ Regulation 22 of the School Admissions Regulations 2012.

⁵² Regulation 24 of the School Admissions Regulations 2012. The person or body referring the objection must provide their name and address to the adjudicator.

3.4 The Adjudicator may also consider arrangements that come to the Adjudicator's attention by other means which the Adjudicator considers may not comply with mandatory requirements.

3.5 Objections **must** be referred to the Adjudicator by **1st June** in the determination year⁵³. Further information on how to make an objection can be obtained from the Office of the Schools Adjudicator:

<http://www.schoolsadjudicator.gov.uk>

3.6 **Variations** - Once admission arrangements have been determined for a particular academic year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements⁵⁴. Admission authorities may propose other variations where they consider such changes to be necessary in view of a major change in circumstances⁵⁵. Such proposals **must** be referred to the Schools Adjudicator for approval, and the appropriate bodies notified⁵⁶. The area admissions authority **must** consult the governing body of the school before making any reference. A variation to increase a school's PAN is not required to be referred to the Schools Adjudicator⁵⁷.

3.7 Area admissions authorities **must** notify the appropriate bodies⁵⁸ of all variations and **must** display a copy of the full varied admission arrangements on their website until they are replaced by different admission arrangements. Local authorities **must** display the varied admission arrangements on their website where a PAN has been raised.

3.8 **Children with challenging behaviour and those who have been excluded twice** - Admission authorities **must not** refuse to admit children in the normal admissions round on the basis of their poor behaviour elsewhere. Where a child has been permanently excluded from two or more schools there is no need for an admission authority to comply with parental preference for a period of two years from the last exclusion⁵⁹. 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 (or would have been had it been practicable to do so)⁶⁰, and children with special educational needs statements.

⁵³ Regulation 23 of the School Admissions Regulations 2012. The Schools Adjudicator has discretion to consider late referrals if it was not reasonably practicable for such a referral to have been received in time.

⁵⁴ Regulation 19 of the School Admissions Regulations 2012.

⁵⁵ Section 88E of the SSFA 1998. Academies do not have to refer proposed variations to their admission arrangements to the Schools Adjudicator, but instead seek agreement with the Secretary of State.

⁵⁶ In addition to the bodies listed at paragraph 1.44 (c), (d) and (f) and so far as not covered by them, all governing bodies for community and voluntary controlled schools in the relevant area.

⁵⁷ Regulation 20 of the School Admissions Regulations 2012.

⁵⁸ See footnote 57.

⁵⁹ Section 87 of the SSFA 1998.

⁶⁰ Following changes made to the exclusions review framework (Section 51A of the Education Act 2002 will be inserted by Section 4 of the Education Act 2011), in addition to these exceptions, the twice excluded rule will also not apply where, following a permanent exclusion, a review panel has quashed a decision of a governing body not to reinstate a pupil.

3.9 **Fair Access Protocols** - Each local authority **must** have a Fair Access Protocol, determined following consultation with the majority of schools in its area to ensure that - outside the normal admissions round - unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. In agreeing a protocol, the local authority **must** ensure that no school - including those with available places - is asked to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour. The protocol **must** include how the local authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met.

3.10 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.

3.11 Area admission authorities and schools **must** participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly. There is no duty for local authorities or area admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.

3.12 Where a governing body does not wish a child with challenging behaviour to be admitted 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 Protocol⁶¹. 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. This provision will not apply to a looked after child, a previously looked after child or a child with a statement of special educational needs naming the school in question, as these children **must** be admitted.

3.13 Schools **must not** ask area admission authorities to refuse to admit a child thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first to be assessed for special educational needs.

3.14 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.

3.15 The list of children to be included in a Fair Access Protocol is to be determined following consultation with the majority of schools in the area but **must**, as a minimum, include the following children of compulsory school age who have difficulty securing a school place:

- a) children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education;
- b) children who have been out of education for two months or more;

⁶¹ Where in the case of an Academy it cannot agree with the local authority over admitting a child, only the Secretary of State can direct the Academy to admit the child.

- c) children of Gypsies, Roma, Travellers, refugees and asylum seekers;
- d) children who are homeless;
- e) children with unsupportive family backgrounds for whom a place has not been sought;
- f) children who are carers; and
- g) children with special educational needs, disabilities or medical conditions (but without a statement).

3.16 Local authority powers of direction (general) – *[A local authority has the power⁶² to direct the admission authority for any maintained school in its area to admit a child even when the school is full. The local authority can only make such a direction in respect of a child in the local authority's area who has been refused entry to, or has been permanently excluded from, every suitable school within a reasonable distance. The local authority **must** choose a school that is a reasonable distance from the child's home and from which the child is not permanently excluded. It **must not** choose a sixth-form that selects by ability unless the child meets the selection requirements, or a school that would have to take measures to avoid breaking the rules on infant class sizes if those measures would prejudice the provision of efficient education or the efficient use of resources. **The removal of school based admissions authorities renders this power redundant – except where it wishes to place a child outside its own area, see 3.17 below.]***

3.17 Before deciding to admit a child to a school which is already full, the local authority /area admissions authority **must** consult the governing body of the school, the parent of the child and the child if they are over compulsory school age. If, following consultation, the local authority decides to admit, it **must** inform the governing body and head teacher of the school. The governing body can appeal by referring the case to the Schools Adjudicator within 15 days. If it does this, the governing body **must** tell the local authority. The local authority **must not** make a decision until the 15 days have passed and the case has not been referred. If a local authority wishes to seek a place in a school outside its own area it **must** proceed in consultation with the relevant area admissions authority which should not unreasonably refuse to assist.

3.18 If the case is referred to the Adjudicator, the Adjudicator may either uphold the decision to admit or determine that another maintained school **must** admit the child. The Adjudicator's decision is binding. The Adjudicator **must not** direct a school to admit a child if this would *[require the school to take measures to avoid breaking the rules on infant class sizes and those measures would]* prejudice the provision of efficient education or the efficient use of resources.

3.19 **[Local authority powers of direction (looked after children)** - *A local authority also has the power⁶³ to direct the admission authority for any maintained school in England to admit a child who is looked after by the local authority, even when the school is full. **Similar to 3.16]** Where the local*

⁶²Sections 96 and 97 of the SSFA 1998.

⁶³ Sections 97A-C of the SSFA 1998.

authority / area admissions authority wishes to admit a child who is looked after by the local authority, even when the school is full **must not** choose a school from which the child is permanently excluded but may choose a school whose infant classes are already at the maximum size⁶⁴.

3.20 Before deciding to make such a decision in respect of school within its area, the local authority **must** consult the governors of the school it proposes the child should attend. The admission authority **must** tell the local authority within 7 days whether it is willing to accept the child. If, following consultation, the local authority decides to admit, it **must** inform the governing body and the head teacher. The school can appeal by referring the case to the Schools Adjudicator within 7. The governing body **must not** refer the case unless it considers that admitting the child would seriously prejudice the provision of efficient education or the efficient use of resources. If the governing body does refer the case, it **must** notify the local authority that looks after the child. The local authority **must not** make a decision to admit until the 7 days have passed and the case has not been referred. If a local authority wishes to seek a place in a school outside its own area it **must** proceed in consultation with the relevant area admissions authority which should not unreasonably refuse to assist.

3.21 If the case is referred to the Adjudicator, the Adjudicator may either uphold the decision to admit or determine that another maintained school in England **must** admit the child. The Adjudicator's decision is binding. The Adjudicator **must not** direct an alternative school to admit a child unless the local authority that looks after the child agrees, nor if the child is permanently excluded from that school, nor if the admission of the child would seriously prejudice the provision of efficient education or the efficient use of resources.

3.22 *“Secretary of State’s power of direction (Academies) - Where a local authority considers that an Academy will best meet the needs of any child, it can ask the Academy to admit that child but has no power to direct it to do so. The local authority and the Academy will usually come to an agreement, but if the Academy refuses to admit the child, the local authority can ask the Secretary of State to intervene. The Secretary of State has the power under an Academy’s Funding Agreement to direct the Academy to admit a child, and can seek advice from the Adjudicator in reaching a decision⁶⁵.” If academies are brought back within the maintained system no separate arrangements will be necessary. However, if not, this paragraph should be revised to reflect current practice which is that the Secretary of State routinely seeks advice from the Adjudicator and acts in accordance with it.]*

3.23 **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 and sent to the Adjudicator by **30 June** following the admissions round. The report **must** cover as a minimum:

⁶⁴ Looked after children are excepted pupils outside of the normal admissions round under the School Admissions (Infant Class Sizes) (England) Regulations 2012.

⁶⁵ Section 25(3A) of the SSFA 1998.

- a) information about how admission arrangements in the area of the local authority serve the interests of looked after children and previously looked after children, children with disabilities and children with special educational needs, including any 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 other issues the local authority may wish to include.

Appendix – Relevant Legislation

1. This appendix sets out the primary legislation and regulations most relevant to admissions decisions. Admission authorities, Schools Adjudicators, appeal panels, local authorities and 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 Academies 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 **must** have due regard to their obligations under the Act 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. This 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.

7. Admission authorities are also subject to the Public Sector Equality Duty and therefore **must** have due regard to the need to 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

10. 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

[this section would need to reflect necessary changes most of which would be effected by amendment to SSFA 1998 – and regulations made thereunder]

11. 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.
12. Section 86 of the SSFA 1998 provides that the admission authority for a maintained school (with the exception 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.
13. Section 94 of the SSFA 1998 provides that parents (and in some circumstances children) may appeal against a decision to refuse admission to the school. Two or more admission authorities in the same local authority area may make joint arrangements.
14. The Codes largely include the provisions relating to school admissions made in regulations. The most relevant regulations are:
 - a) The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012;
 - b) The School Admissions (Infant Class Sizes) (England) Regulations

2012;

c) The School Admissions (Appeals) (England) Regulations 2012; and

d) The School Information (England) Regulations 2008

Appendix - Sample Admission Arrangements - *The example arrangements provided in the current Code are very poor in that they do not cover a lot of issues that are necessary in most cases.*

The removal of school based 'own admissions authorities' will also massively reduce the number of people who need to engage with the process of drafting legally sound admissions arrangements who will all be located in the area authorities. They will be well placed to develop a suitable cadre of skilled professionals and therefore will not need this appendix

The Admissions Timeline

The timetable and procedures for admissions are set out in both this Code and the School Admissions Regulations.

The example timeline included in the current Code would need to be recast in line with major proposed change requiring schools to consult on their 'preferred policy' in the autumn and the new area admissions authority to consult on turning school's aspirations into a consistent and coherent set of arrangements in the spring term with opportunities to object to the adjudicator in the summer term. But it has not been fleshed out in this draft.

Glossary

Academic Year

A period commencing with 1 August and ending with the next 31 July, as defined by the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012.

Admission Authority

The body responsible for setting and applying a school's admission arrangements. For community or voluntary controlled schools, this body is the local authority unless it has agreed to delegate responsibility to the governing body. For foundation or voluntary aided schools, this body is the governing body of the school. For Academies, this body is the Academy Trust.

Admission Arrangements

The overall procedure, practices and oversubscription criteria used in deciding the allocation of school places including any device or means used to determine whether a school place is to be offered.

Admission Number (or Published Admission Number – (PAN))

The number of school places that the admission authority must offer in each relevant age group of a school for which it is the admission authority. Admission numbers are part of a school's admission arrangements.

Banding

A system of oversubscription criteria in which all children applying for a place

at a banding school are placed into ability bands based on their performance in a test or other assessment. Places are then allocated so that the school's intake either reflects the ability profile of those children applying to the school, those children applying to a group of schools banding jointly, the local authority ability profile or the national ability profile.

Catchment Area

A geographical area, from which children may be afforded priority for admission to a particular school. A catchment area is part of a school's admission arrangements and must therefore be consulted upon, determined and published in the same way as other admission arrangements.

Common Application Form (CAF)

The form parents complete, listing their preferred choices of schools, and then submit to local authorities when applying for a school place for their child as part of the local co-ordination scheme, during the normal admissions round. Parents must be allowed to express a preference for a minimum of three schools on the relevant common application form as determined by their local authority. Local authorities may allow parents to express a higher number of preferences if they wish.

Composite prospectus

The prospectus that a local authority is required to publish by 12 September in the offer year. This prospectus must include detailed admission arrangements of all maintained schools in the area (including admission numbers and catchment areas).

Conditionality

Oversubscription criterion that stipulates conditions which affect the priority given to an application, for example taking account of other preferences or giving priority to families who include in their other preferences a particular type of school (e.g. where other schools are of the same religious denomination). Conditionality is prohibited by this Code.

Co-ordination / Co-ordinated Scheme

The process by which local authorities co-ordinate the distribution of offers of places for schools in their area. All local authorities are required to co-ordinate the normal admissions round for primary and secondary schools in their area. Schools can take in-year applications directly from parents, provided they notify their local authority of each application and its outcome.

Determination Year

The academic year immediately preceding the offer year. This is the academic year in which admission authorities determine their admission arrangements.

First Preference First

Oversubscription criterion that giving priority to children according to the order of other schools named as a preference by their parents, or only considering applications stated as a first preference. The First Preference First oversubscription criterion is prohibited by this Code.

Governing Bodies

School governing bodies are bodies corporate responsible for conducting schools with a view to promoting high standards of educational achievement. Governing bodies have three key roles: setting strategic direction, ensuring accountability, and monitoring and evaluation.

Grammar Schools (designated)

These were the 164 schools that were designated under Section 104(5) of the SSFA 1998 as grammar schools. A 'grammar school' is defined by Section 104(2) of that Act as a school which selects all (or substantially all) of its pupils on the basis of general (i.e. academic) ability. At the time of publication, most grammar schools have converted to Academy status.

Home Local Authority

A child's home local authority is the local authority in whose area the child resides.

Infant Class Size Exceptions

The School Admissions (Infant Class Sizes) (England) Regulations 2012 permit children to be admitted as exceptions to the infant class size limit. These are set out in paragraph 2.15.

Infant Class Size Limit

Section 1 of the SSFA 1998 limits the size of an infant class (i.e. a class in which the majority of children will reach the age of five, six and seven during the school year) to 30 pupils per school teacher.

Local Government Ombudsman

An independent, impartial and free service that investigates complaints about maladministration of certain public bodies.

Looked After Children (see also Previously Looked After Children)

Children who are in the care of local authorities as defined by Section 22 of the Children Act 1989. In relation to school admissions legislation a 'looked after child' is a child in public care at the time of application to a school.

Maintaining Local Authority

The area in which a school is located is referred to as the maintaining local authority.

National Offer Day

The day each year on which local authorities are required to send the offer of a school place to all parents of secondary age pupils in their area. For secondary pupils, offers are sent out by the home local authority on 1 March. For primary pupils, this will be on a locally determined date in 2013, then on 16 April from 2014 onwards.

Normal Admissions Round

The period during which parents are invited to express a minimum of three

preferences for a place at any state-funded school, in rank order on the common application form provided by their home local authority. This period usually follows publication of the local authority composite prospectus on 12 September, with the deadlines for parental applications of 31 October (for secondary places) and 15 January (for primary places), and subsequent offers made to parents on National Offer Day as defined above.

Offer Year

The academic year immediately preceding the academic year in which pupils are to be admitted to schools under the admission arrangements in question. This is the academic year in which the offers of school places are communicated.

Oversubscription

Where a school has a higher number of applicants than the school's published admission number.

Oversubscription Criteria

This refers to the published criteria that an admission authority applies when a school has more applications than places available in order to decide which children will be allocated a place.

Previously Looked After Children

Previously looked after children are children who were looked after, but ceased to be so because they were adopted (or became subject to a residence order or special guardianship order).

Reception Class

Defined by Section 142 of the SSFA 1998. An entry class to primary schools providing education suitable for children aged five and any children who are under or over five years old whom it is expedient to educate with pupils of that age.

Relevant Age Group

The age group to which children are normally admitted. Each relevant age group must have admission arrangements, including an admission number. Some schools (for example schools with sixth forms which admit children into the sixth form) may have more than one relevant age group.

Relevant Area

The area for a school (determined by its local authority and then reviewed every two years) within which the admission authority for that school must consult all other prescribed schools on its admission arrangements.

Schools Adjudicator

A statutory office-holder who is appointed by the Secretary of State for Education, but is independent. The Adjudicator decides on objections to published admission arrangements of all state-funded schools and variations of determined admission arrangements for maintained schools.

School Year

The period beginning with the first school term to begin after July and ending with the beginning of the first such term to begin after the following July, as defined by Section 579 of the Education Act 1996.

Statement of Special Educational Need (SEN)

A Statement of Special Educational Need is a statement made by the local authority under Section 324 of the Education Act 1996, specifying the special educational provision required for that child

Twice Excluded Pupils

A child who has been permanently excluded from two or more schools.

Waiting Lists

A list of children held and maintained by the admission authority when the school has allocated all of its places, on which children are ranked in priority order against the school's published oversubscription criteria.