



Published Admission Numbers and the role of the Adjudicator

Supplementary information on the proposed framework for the setting of and objections to published admission numbers

Purpose

This note sets out the Department's proposed framework for setting published admission numbers (PANs), and handling objections to PAN, including how quality and parental preference will be central to decision-making.

This proposed framework would be set out in secondary legislation and will be subject to public consultation and Parliamentary approval.

Rationale

Children achieve and thrive when they are at high quality schools, and we want to ensure that all children have access to a great local school. The Children's Wellbeing and Schools Bill contains new measures which support greater co-operation between schools and local authorities on school admissions and place planning matters, including giving local authorities greater powers to help them deliver their functions on school admissions and ensure admissions decisions account for the needs of their communities. This includes a measure to enable the Schools Adjudicator, in cases where they uphold an objection to a school's published admission number (PAN), to specify what it should be.

Some schools – academies, voluntary aided and foundation schools – are their own admission authorities, meaning they decide on the number of students they admit. However local authorities are legally responsible for ensuring there are enough school places within their area. Some schools set PANs below the capacity of their buildings. This can mean schools not offering enough places to help meet a local need for places. Elsewhere, in areas of falling pupil rolls, schools may increase or retain PANs beyond what is needed. This can damage the quality of education that children receive and make it harder for the local authority and local school leaders to plan. Ultimately if schools cannot admit sufficient pupils, it can damage the viability including of good schools, limiting the choices available to parents.

We want to ensure that there are sufficient school places for the local community and that schools providing a great education can expand where this will increase the availability of high-quality places in an area.

What are we changing?

The Children's Wellbeing and Schools Bill contains a clause which will allow the Adjudicator to specify the PAN of a school if they uphold an objection to that school's PAN. The Adjudicator is independent and has significant expertise and experience in considering objection cases. They have in-depth knowledge of admissions law and play an integral role in ensuring that school admissions are fair and lawful.

Currently any body or person can object to the PAN of a school where the admission authority proposes to decrease their PAN. We also propose to amend the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) Regulations 2012 to allow the local authority to object to a PAN where an admission authority is proposing to increase or keep the same PAN.

Alongside this, we intend to update the School Admissions Code to set out a framework on the rules and requirements around PAN. This framework will cover the requirements on admission authorities when setting their PAN and the process of objecting to the Adjudicator and the fundamental principles to which all actors must have regard.

We also intend to create regulations which will apply to the Adjudicator's decision when specifying the PAN. Overall, these changes will create a clear and transparent legal framework for how decisions on PAN are made by admission authorities and the Adjudicator, to ensure that all local children have access to an education where they can achieve and thrive. Supporting pupil outcomes is paramount, so a combination of changes to the statutory School Admissions Code and new regulations will ensure that quality and parental preference are the key criteria in any decision on PAN.

Key Principles

The fundamental aspects of the admissions system will not change. A school's admission authority will continue to have responsibility for determining their PAN. The underlying principles that have shaped this framework are:

- **Enhanced co-operation between admission authorities and the LA** when decisions on PAN are being made, to ensure that the determined PAN works for the needs of the local community.
- **Quality and parental preference will be central considerations**, supporting the growth of good school places where they are required and retaining them as much as possible where places need to be removed from the school system. Parental preference is diverse and parents will take a variety of factors into account – including the type of provision (for instance, faith schools, single-sex schools or grammar schools), quality and distance – when making their decision about which schools to apply for.

- **No differential treatment between academies, maintained schools and schools offering a certain type of provision** with decisions based on the needs of the local community. Parental preference, quality of education provided and place planning needs will be key considerations.

A revised legal framework for published admission numbers – how does this drive positive outcomes for children?

There has been a longstanding expectation under successive governments that schools and local authorities should work together on place planning, supported by the Department and Regional Directors.

Local authorities are expected to set out medium-term forecasts of demand and engage collaboratively and constructively with schools and academy trusts. They are also expected to share their plans with the Department via Regions Group. Academy trusts are expected to work collaboratively and constructively with local authorities, other academy trusts and schools on place planning matters. The Department, via Regions Group, will work with local authorities to agree expectations regarding place planning and will work with trusts and local authorities to ensure that trusts are supported to deliver places and that they help local authorities to meet their sufficiency duty.

More information on this can be found in the Department's guidance - [Making significant changes to an academy](#).

The Children's Wellbeing and Schools Bill contains further measures to require schools and local authorities to co-operate on school admissions and place planning matters, to ensure admissions decisions account for the needs of their communities.

This collaborative place planning process will then inform the context in which PANs for individual schools are determined.

What are we proposing?

Children achieve and thrive best when they are at high quality schools. We want all children to have access to a great local school. This document sets out the framework to enable this to happen with regards to the PAN set. Throughout this document parental preference and the quality of school places will be key considerations.

In areas of falling rolls, without some coordination there is a risk that even good schools may face reducing pupil numbers and therefore finances, while the quality of education suffers. In some cases, a managed reduction of places – with a strong focus on ensuring the quality of available places – can help to provide certainty for parents and school leaders, and keep good places available for children who need them both now and if pupil numbers should increase again in future – maintaining high standards and high levels of parental preference.

The clause on PAN and the role of the Schools Adjudicator represents the final stage of a process for agreeing what PAN may be right for an area – it will only be used once an admission authority has set a PAN, an objection has been made to it, and that objection has been upheld. This measure will not allow LAs or the Adjudicator to prevent a new school from opening or to circumvent the existing processes for opening or closing a school.

Our proposed changes will provide greater clarity on the process of setting a school's PAN and what admission authorities should consider when they are doing so, making it easier for schools and local authorities to work together on place planning. Our aim is for admission authorities in collaboration with their LA to set PANs from the outset which work for both their school and community, reducing the need for any subsequent objections, and ensuring that the process is fair, with all types of schools, including academies, maintained schools and faith schools, being treated equally.

What will the proposed legal framework look like?

Quality of education and parental preference will be key considerations at each of the following stages of the process for setting and objections to PAN:

1. Admission authorities set the PAN for their schools, in line with a statutory framework set out in the School Admissions Code and regulations and with reference to the views of the LA, local schools and any other consultees, such as any relevant faith body. Admission authorities and LAs should work to address any concerns locally.
2. Once the PAN is set, if LAs still have concerns, they can object to the Adjudicator, who will decide whether to uphold the objection by deciding whether the PAN is lawful, according to the requirements of admissions law and the circumstances of the case.
3. Only where they uphold the objection, will the Adjudicator then be able to specify what the PAN should be. New regulations will set out further requirements on what they must consider when taking this decision.

Our proposed framework, set out below, will require changes to regulations and the Code, and is subject to public consultation and parliamentary approval. We will conduct this following Royal Assent of the Children's Wellbeing and Schools Bill.

Stage 1 – Admission authorities set their schools' PANs

Factors the admission authority should consider when setting the PAN

Admission authorities will retain their ability to set the PAN for their school. In doing so, we want them to take a rounded view, including considering parental demand and the quality of education.

We propose to **set out key factors that admission authorities must consider when setting their PAN** in the School Admissions Code. These will ensure they can continue to take account of factors which will be important to them, such as the quality of education they provide and use of resources at the school, whilst also supporting them to consider their role in meeting the wider needs of their community, for example by considering parental demand for places and whether they are able to offer more places in areas of need. We propose requiring admission authorities to consider the following:

- a) Whether the PAN set supports the provision of efficient education or the efficient use of resources. This will encompass physical factors such as capacity but also factors such as school finances and staffing.
- b) The demand for places at the school, taking into account recent, current and projected levels of oversubscription or surplus, including requirements for in-year admissions.
- c) The number of pupils previously admitted at the school and whether their PAN accurately reflects the numbers of pupils the school intends to admit.
- d) Any representations made by the LA on local place planning during the consultation period, including any expected impact on children and families.
- e) Where the school has a religious designation, the views of the person or body representing the religious denomination on their PAN.
- f) In areas where there is a need for more places, the physical capacity of the school and whether it is possible to admit more children within the existing capacity.

We also propose to update the current requirement in the Code that “*admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective*” to make clear that **the PAN of the school must also be ‘fair, clear and objective’**, to encourage admission authorities to consider the impact of their PAN locally. With this, it is proposed that the PAN which the school sets should be fair given the local circumstances. This will allow the Adjudicator to consider the impact of a PAN in its local context, in line with the presumptions regarding considerations of quality of provision in the local area (see stage 2).

Consultation requirements

We want to improve co-operation between LAs and admission authorities when PANs are being set, by ensuring there are clear routes for the LA to share their views. This will help to ensure that the route of objection is used as a last resort.

Currently admission authorities must consult when they are proposing to decrease their PAN. It is important that where places are removed from the system, relevant stakeholders (including the LA and local parents) can have their say. In addition, we propose to amend regulations to **require admission authorities to consult when they are increasing their PAN**. This will allow all affected parties to express their views.

Similarly, we also intend to amend regulations to the effect that **where an admission authority intends to retain the same PAN as the previous year, they must notify the LA by a specified date**, so that the LA can make evidenced representations if they want the admission authority to make changes to the PAN, and allow the admission authority to consult on any proposed changes. This will encourage dialogue between LAs and admission authorities so that, where possible, concerns over proposed PANs can be resolved without recourse to the Adjudicator. We consider that where the admission authority does not intend to change the PAN, a requirement to notify the LA will be less burdensome than requiring a full consultation, given that in the majority of cases the LA may be content with the proposed PAN.

Furthermore, where the LA is making any representations to the admission authority about the PAN, we propose **that the Code will require the LA to provide relevant evidence for their concerns, relating to that school in particular**. Examples of relevant evidence may include forecasts of the number of pupils that need places in the area and the impact of the school's PAN on other schools. This will support transparency and help the admission authority to understand the LA's concerns, so they can make a more informed decision about whether to change their proposed PAN.

In their representations to the admission authority, the LA will need to have regard to the overarching principles set out on pages 8-9 below. Similarly, the admission authority will need to have regard to these principles when determining their final PAN.

Stage 2 - Objecting to the Adjudicator and the Adjudicator's decision-making process

The process set out in Stage 1 should improve co-operation between admission authorities and LAs when PANs are being set. However, where agreement cannot be reached, an objection can be referred to the independent Adjudicator for an impartial decision, as a last resort.

Currently any body or person can object to a PAN reduction, but objections cannot be brought where a PAN is retained or increased. We **propose to enable LAs to also object where a PAN is retained or increased**, to support their place planning functions.

We propose to introduce principles into the system, via the School Admissions Code, **relating to quality of provision, to which admission authorities, local authorities and the Adjudicator must have regard**. These will be linked to school performance and aim to retain, and promote the growth of, high quality school places. These will apply to admission authorities when they are setting their PAN and to local authorities when they are making any representations to the admission authority or when they are considering whether to object to the Adjudicator.

The Adjudicator's decision on whether to uphold an objection to a PAN will be taken with regard to these principles and whether the PAN complies with the requirements of admissions law and the Code. This means that the requirements on admission authorities

and LAs set out at Stage 1 would be taken into account in the Adjudicator's decision. Adjudicators will also need to consider the arguments of both the objector and the admission authority.

The Adjudicator will also consider the local context and the circumstances of the case. Whilst performance metrics will undoubtedly play a key role in the Adjudicator's decision making, they will not be guided by these factors alone and they will have the flexibility to consider the circumstances of the case and the local context, such as the type of, and demand for, a certain type of provision. Factors such as the local demographics and intake (for instance, whether the school admits greater numbers of disadvantaged pupils or those with SEN) will be taken into account by the Adjudicator when they considering any objection to PAN. Likewise, the Adjudicator may also take into account the impact of any new PAN on the school, including whether the school is on a school improvement journey and the impact which a new PAN may have on this.

In this way, we intend that Adjudicators (as well as LAs and others) will take a rounded view of school performance rather than one based on a single metric, and that their view would be contextual, taking into account the performance of the school relative to other schools locally¹. We intend to set out in the Code a clear explanation of what metrics should be considered when determining quality for these purposes (this might, for example, include attainment / progress data, as well as Ofsted reporting), although these will need to be considered in the local context and relative to other local schools. We are considering what metrics would be most appropriate, and will test further with stakeholders, including through consultation.

The proposed principles, to which admission authorities, local authorities and the Adjudicator must have regard are:

1. That **where they are able to, higher performing schools should increase their PAN to meet an evidenced basic need for places.**

This will set a clear expectation that high performing schools should grow where there is local basic need. It would apply where a school has capacity to admit more pupils and where the LA has provided evidence that places are demonstrably needed in an area, not simply where there is demand for a particular school.

This would help to ensure sufficiency in the school system and encourage the growth of good schools where places are needed. Where an LA asks an admission authority to increase a school's PAN, with evidence of a need for places in an area, and of why they consider that school in particular should change its PAN, the admission authority will need to have regard to this in taking its final decision. Where a LA has objected to a

¹ When considering the quality of school places, we would expect LAs and the Adjudicator to consider this holistically and contextually. We would not expect adjudicators to use one single metric when determining whether a school is higher or lower performing. Further details will be set in the final version of the Code.

school increasing their PAN, it will also help the admission authority to justify the increase, where there is an evident need for places in an area.

2. That **where there is not an evidenced basic need for places, such as in areas of excessive surplus, the LA (when considering whether to object), and the Adjudicator (when considering an objection) must have regard to the quality of provision.** This proposed requirement would ensure that the quality of provision is a key factor in deciding objections where there is limited basic need for places, whilst enabling them to be considered case by case. The Adjudicator would take a decision as they currently do, based on the requirements of admissions law and the circumstances of the case, balancing relevant factors such as the admission authority's views on the benefits of expansion, demand for places at the school, and the educational needs of other children in the community, but in every case ensuring that the quality of provision was taken into account.
3. That **where places need to be removed from the system, higher performing schools should only be required to reduce places where the LA can demonstrate that they have considered reasonable alternatives and that these would not meet the needs of the community, or be sustainable for long-term sufficiency.** We want to protect and retain places at the best schools wherever possible, and we want their removal only to happen as a last resort. This presumption will help ensure that reduction of good school places would occur as a last resort. It will also encourage LAs to consider all other options before asking high-performing schools to reduce their PAN.

In practice, this might mean, for example, the LA instead deciding to reduce (or proposing to reduce) PANs at poorly performing schools where possible, or considering rationalisation or closure of weaker schools if this does not endanger the long-term sufficiency of places in the area.

Where possible, the Adjudicator will aim to resolve objections in good time for the school, local authority, and importantly parents applying to have clarity about the number of places available. The deadline for objections to be submitted to the Adjudicator is 15 May each year, ahead of the deadline for applications in Autumn/ Winter. This is about 18 months before pupils are admitted to the school in the following September on the basis of those arrangements. This will give schools sufficient time to make any necessary changes as a result of the PAN set by the Adjudicator, where an objection is upheld.

Stage 3 – The Adjudicator specifying the PAN of a school following an upheld objection

Where the Adjudicator upholds an objection, under the new power in the clause in the Children's Wellbeing and Schools Bill, they can then determine the PAN that is to be specified in the admission arrangements. They will also be able to specify how long the school must keep this PAN for, up to a maximum of two years.

To ensure all parties have clarity, we propose to **set out in regulations factors that the Adjudicator will consider when making a determination on PAN**, to give due consideration to the relevant impacts on the admission authority.

The clause in the Children's Wellbeing and Schools Bill enables the Secretary of State to set out in regulations what the Adjudicator must, or must not, consider when specifying the PAN, and preventing the Adjudicator from making a decision which has specified effects. Within these regulations we propose **requiring the Adjudicator to consider**:

- a) The impact of their decision on the quality of provision and on current and future parental demand for places in the school itself as well as other schools
- b) The views of the LA and the admission authority
- c) The views of the home LA, if different from the objector (for example, in cases where a neighbouring LA whose pupils may cross LA borders to attend the school, has objected)
- d) The views of any other party the Adjudicator considers relevant
- e) The views of the school's religious authority, where relevant.
- f) The physical capacity of the school, and any commitments that the LA has made towards increasing the physical capacity of a school, (for example, to consider whether or not a school would have capacity to increase places – we would not expect the Adjudicator to set a PAN which would require a school to expand its physical capacity)
- g) The local authority's forecasts of the number of pupils that need places in the area

We also propose the following **requirements on the specified PAN**:

- a) The PAN set should have regard to the original decision to uphold the objection and any evidence or considerations used to come to that decision (i.e. the final PAN should be set at a level which is consistent with the Adjudicator's determination).
- b) The PAN should not endanger the viability of the school (for example, by creating financial consequences for school income that could reasonably foreseeably cause the school to close)
- c) The PAN must not breach or require the school to breach any relevant statutory or legal requirements (for example, setting a PAN which would make it difficult for the school to comply with the statutory infant class size limit)
- d) The PAN cannot be set at zero, unless the Adjudicator can demonstrate that a PAN of zero would not affect the viability of the school. (In the vast majority of cases, we would not expect that a PAN of zero would be appropriate, but there may be cases – for example where a school has an additional intake of a small number of pupils at an atypical age group – where setting a PAN of zero may be appropriate in the particular circumstances of the case)

- e) The PAN cannot be used to initiate or affect a school opening, closing or changes to a school's premises (i.e. to ensure that this power cannot be misused to circumvent the existing routes for such changes).

What is the process for making the changes to the Code/Regulations?

The proposals above represent our current proposals for the framework for setting and objections to PAN. All proposed changes set out above will require amendments to secondary legislation (the School Admissions Code and regulations) and as such are subject to the relevant statutory procedures².

The changes we intend to make to the Code and regulations will be subject to a full public consultation following the passage of the Children's Wellbeing and Schools Bill, which will allow all interested parties to share their views. We expect this consultation to take place later this year. We will consider and respond to these views to ensure that the changes to the Code are reasonable and reflective of the needs of all parties.

The final draft of the proposed revised Code will then be laid before Parliament for 40 days, along with the relevant regulations. We will continue to engage with stakeholders as the Bill progresses, as well as on the changes to secondary legislation and the Code that are needed to ensure this works effectively.

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² Section 85 of the School Standards and Framework Act 1998 sets out the statutory procedure for making and approval of the School Admissions Code.