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WELSH STATUTORY INSTRUMENTS

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**2013 No. 1141 (W.121)**

**EDUCATION, WALES**

**The School Admissions (Infant Class  
Sizes) (Wales) Regulations 2013**

<i>Made</i>	- - - -	<i>14 May 2013</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>17 May 2013</i>
<i>Coming into force</i>	- -	<i>8 July 2013</i>

The Welsh Ministers in exercise of the powers conferred on the Secretary of State by sections 1 and 138(7) and (8) of the School Standards and Framework Act 1998<sup>(1)</sup> and now vested in them<sup>(2)</sup> make the following Regulations:

**Title, commencement and application**

1.—(1) The title of these Regulations is the School Admissions (Infant Class Sizes) (Wales) Regulations 2013 and they come into force on 8 July 2013.

(2) Paragraphs 4, 11 and 12 of the Schedule to these Regulations apply in relation to the 2014/2015 school year and subsequent years.

(3) These Regulations apply in relation to any maintained school in Wales which contains an infant class<sup>(3)</sup>.

**Interpretation**

2.—(1) In these Regulations—

"the EA 1996" ("DA 1996") means the Education Act 1996<sup>(4)</sup>;

"the SSFA 1998" ("DSFfY 1998") means the School Standards and Framework Act 1998;

"child with a statement" ("plentyn sydd â datganiad") means a child in relation to whom a statement is maintained by a local authority under section 324(1) of the EA 1996<sup>(5)</sup>;

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- (1) 1998 c.31; section 1 was amended by the [Education Act 2002 \(c.32\)](#); section 215(1) and Schedule 21, paragraph 87; and [S.I. 2010/1158](#).
- (2) The functions of the Secretary of State under these sections were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 ([S.I. 1999/672](#)) and then to the Welsh Ministers by paragraph 30 of Schedule 11 to the [Government of Wales Act 2006 \(c.32\)](#).
- (3) See section 4 of the SSFA 1998 for the definition of 'infant class'.
- (4) 1996 c.56.
- (5) Section 324(1) was amended by [S.I. 2010/1158](#).

"suitable education" ("addysg addas") in relation to a child, means efficient full-time education suitable to the child's age, ability and aptitude and any special educational needs that child may have.

(2) For the purposes of these Regulations a child is to be treated as having been admitted to a school outside the normal admission round where paragraph (3) or (4) applies.

(3) This paragraph applies where, at the time the child was admitted to the school the child did not fall within an age group in which pupils are normally admitted to the school.

(4) This paragraph applies to a child where—

- (a) at the time of the child's admission to the school, the child fell within an age group in which pupils are normally admitted to the school;
- (b) the number of pupils in that age group seeking admission to the school in the school year in which the child was first admitted to the school was greater than the number of pupils which the admission authority intended to admit to the school in that age group in that year; and
- (c) the child was offered a place at the school after the time when the admission authority had determined, in accordance with the school's admission arrangements, which children in that age group were to be admitted to the school.

(5) In paragraphs (2) to (4) references to a child's admission to a school are references to the child's admission to an infant class at that school.

### **Regulations Revoked**

3. The following Regulations are revoked—

- (a) the Education (Infant Class Sizes) (Wales) Regulations 1998(6);
- (b) the Education (Infant Class Sizes) (Wales) (Amendment) Regulations 2009(7).

### **Limit on infant class sizes**

4.—(1) No infant class may contain more than 30 pupils while an ordinary teaching session is conducted by a single school teacher.

(2) Where an ordinary teaching session is conducted by more than one school teacher, the infant class may not contain more than 30 pupils for every one of those teachers.

(3) Where an infant class contains any excepted pupil (as defined by regulation 5), the limits in paragraphs (1) and (2) apply as if the excepted pupil were not included in the class.

### **Excepted pupils**

5.—(1) An excepted pupil is a child to whom any of paragraphs 2 to 14 of the Schedule applies.

(2) A child is not an excepted pupil at a school if suitable education could be provided for that child in an infant class at that school without relevant measures having to be taken.

(3) In paragraph (2) "relevant measures" ("*camau perthnasol*") means measures which would—

- (a) be required to be taken to ensure compliance with the duty imposed by section 1(6) of the SSFA 1998; and
- (b) prejudice the provision of efficient education or the efficient use of resources.

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(6) S.I. 1998/1943.

(7) S.I. 2009/828 (W.75).

14 May 2013

*Leighton Andrews*  
Minister for Education and Skills, one of the  
Welsh Ministers

## SCHEDULE

(Regulation 5)

**Excepted Pupils****1.** In this Schedule—

- (a) "a child" ("*plentyn*") means a child who is a pupil in any infant class;
- (b) "the school" ("*yr ysgol*") means the school of which that infant class forms part;
- (c) "armed forces" ("*lluoedd arfog*") means the Royal Navy, the Royal Marines, the regular army or the Royal Air Force;
- (d) "the regular army" ("*y fyddin reolaidd*") means any of Her Majesty's military forces other than—
  - (i) the Army Reserve,
  - (ii) the Territorial Army, and
  - (iii) forces raised under the law of a British Overseas Territory.

**2.** This paragraph applies to a child with a statement admitted to the school outside a normal admission round as a result of the local authority specifying the school in the child's statement under section 324(5)(b) of the EA 1996.

**3.** This paragraph applies to a child who is looked after by a local authority (within the meaning of section 22(1) of the Children Act 1989<sup>(8)</sup>) and is admitted to the school outside a normal admission round.

**4.** This paragraph applies to a child who was previously looked after by a local authority but ceases to be so because the child was adopted<sup>(9)</sup> or became subject to a residence order<sup>(10)</sup> or a special guardianship order<sup>(11)</sup>, and who was admitted to the school outside the normal admission round.

**5.** This paragraph applies to a child admitted to a school outside a normal admission round who was initially refused admission to the school owing to a failure to properly implement the school's admission arrangements, but was subsequently offered a place by virtue of a determination by the admission authority that there had been such a failure in relation to the child.

**6.** This paragraph applies to a child admitted to the school outside a normal admission round by virtue of a determination of an appeal panel in accordance with section 94(6) of the SSFA 1998.

**7.—(1)** Subject to sub-paragraph (3), this paragraph applies to a child admitted to the school outside a normal admission round—

- (a) in relation to whom the school is the only school (apart from any school to which the child has already been refused admission or from which the child has been permanently excluded) which—
  - (i) is within a reasonable distance from the child's home, and
  - (ii) provides suitable education; and
- (b) who did not, at the relevant time, ordinarily reside at a place which was within a reasonable distance from that school.

**(2)** In sub-paragraph (1)(b) "the relevant time" ("*yr amser perthnasol*")—

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<sup>(8)</sup> 1989 c.41.

<sup>(9)</sup> Under section 46 of the [Adoption and Children Act 2002 \(c.38\)](#).

<sup>(10)</sup> Under section 8 of the Children Act 1989.

<sup>(11)</sup> Under section 14A of the Children Act 1989

- (a) in relation to a child to whom regulation 2(3) applies, means the time when the majority of pupils in the age group in which the child falls were admitted to the school; and
- (b) in relation to a child to whom regulation 2(4) applies means the time referred to in sub-paragraph (c) of that paragraph.

(3) A child is not an excepted pupil under this paragraph unless the local authority who maintain the school have confirmed in writing that they are satisfied that the child fulfils the criteria listed in sub-paragraph (1)(a).

**8.—**(1) Subject to sub-paragraph (3), this paragraph applies to a child admitted to the school outside a normal admission round—

- (a) where education at a school of a particular religious character is desired, and
- (b) the school is the only such school within a reasonable distance of the child's home.

(2) In this paragraph "a school of a particular religious character" (*"ysgol o gymeriad crefyddol penodol"*) means a school designated as having such a character by an order made under section 69(3) of the SSFA 1998.

(3) Where the admission authority for the school in question is not the local authority the child will not be an excepted pupil unless the local authority has confirmed in writing that there are no places available at another school of the particular religious character within a reasonable distance of the child's home.

**9.—**(1) Subject to sub-paragraph (3), this paragraph applies to a child admitted to the school outside a normal admission round—

- (a) where education at a school which is Welsh-speaking is desired, and
- (b) the school is the only such school within a reasonable distance of the child's home.

(2) In sub-paragraph (1) "a school which is Welsh-speaking" (*"ysgol Gymraeg"*) has the meaning given in section 105(7) of the Education Act 2002.

(3) Where the admission authority for the school in question is not the local authority the child will not be an excepted child under this paragraph unless the local authority has confirmed in writing that there are no places available at another Welsh-speaking school within a reasonable distance of the child's home.

**10.** This paragraph applies to a child where—

- (a) at the time of the child's admission to the school, the child fell within an age group in which pupils are normally admitted to the school;
- (b) the number of pupils in that age group seeking admission to the school in the admission school year was fewer than the number of pupils which it was intended to admit to the school in that age group in that year;
- (c) the child was offered a place at the school after the first day of the relevant school year; and
- (d) the school has organised its classes for children in that age group seeking admission to the school in the admission school year and, unless suitable education could be provided for the child in another infant class at that school, the admission of the child would require relevant measures to be taken.

**11.** This paragraph applies to a child whose parent is in the armed forces and who was admitted to the school outside a normal admission round.

**12.** This paragraph applies to a child whose twin or other sibling from a multiple birth is admitted to the school in the same age group otherwise than as an excepted pupil.

13. This paragraph applies to a child who is a registered pupil at a special school(12) but by arrangement between the school and the special school, receives part of their education at the school.

14. This paragraph applies to a child who is normally educated in a unit which forms part of the school and is specially organised to provide education for pupils with special educational needs, but spends a minority of their time in the infant class.

15. Paragraphs 3 to 12 do not apply to a child with a statement.

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### EXPLANATORY NOTE

*(This note is not part of the Order)*

These Regulations impose, for the purpose of section 1 of the School Standards and Framework Act 1998, a limit on class sizes for infant classes at maintained schools in Wales. They revoke and replace the Education (Infant Class Sizes) (Wales) Regulations 1998 and the Education (Infant Class Sizes) (Wales) (Amendment) Regulations 2009 (regulation 3), adding new categories to the excepted pupils and changing the circumstances in which pupils cease to be excepted.

The limit imposed is the maximum of 30 pupils in an infant class at anytime while an ordinary teaching session is conducted by a single school teacher (or, where the session is conducted by more than one school teacher, a maximum of 30 pupils for every teacher) (regulation 4).

However, where certain types of children ("excepted pupils") cannot be provided with education at the school in an infant class in which the limit is not exceeded without a relevant measure being taken which would prejudice efficient education or the efficient use of resources, those children are not to be counted for the purposes of ascertaining whether or not the limit of 30 pupils is exceeded (regulation 5 in the Schedule).

Excepted pupils are—

- (a) children whose statements of special educational needs specify that they should be educated at the school concerned and who were admitted to the school outside the normal admission round;
- (b) children who are looked after by local authorities, or who have ceased to be looked after ("previously looked after children") as a result of being adopted or being placed with a family or given a special guardian and are admitted to the school outside a normal admission round;
- (c) children initially refused admission to a school but subsequently offered a place outside a normal admission round by direction of an Admission Appeal Panel, or because the person responsible for making the original decision recognises that an error was made in implementing the school's admission arrangements;
- (d) children who the maintaining local authority confirmed cannot gain a place at any other suitable school within a reasonable distance of their home because they have moved into the area outside the normal admission round, or they desire a religious education, or a Welsh speaking education and the school in question is the only suitable school within a reasonable distance;

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(12) 'Special school' is defined in section 337 of EA 1996. Section 337 was amended by the [Education and Skills Act 2008 \(c.25\)](#), section 142(1) and [S.I. 2010/1158](#).

- (e) children who were admitted to the school outside the normal admission round after which the school has arranged its classes the effect of which would mean that the school would have to take a relevant measure if such children were not excepted pupils;
- (f) children of armed forces personnel who are admitted outside the normal admission round;
- (g) children whose twin or other siblings from a multiple birth are admitted as non-excepted pupils;
- (h) children who are registered pupils at special schools, but who receive part of their education at a mainstream school; and
- (i) children with special educational needs who are normally educated in a special unit in a mainstream school, who receive part of their lessons in a non-special class.

If at any time it becomes possible for an excepted pupil to be provided with education at the school in an infant class in which the limit is not exceeded (for example, because a non-excepted child leaves the class, an additional infant class is created, or an additional teacher is appointed) that child ceases to be an excepted pupil (regulation 5(2)).

The exceptions in respect of previously looked after children, children of armed forces personnel and twins or other siblings from multiple births will apply in respect of admissions from the 2014/2015 school year. All other exceptions will apply from the 2013/2014 school year.