

MANAGING COMPLIANCE WITH THE INFANT CLASS SIZE DUTY

CONTENTS

Introduction

What is infant class size duty?

How does this affect the admissions process?

Permitted exceptions to the infant class size limit

Monitoring compliance

- **Completion of School Census return**
- **Local authority monitoring**
- **Secretary of State – Power to Direct**

Q+A - Infant Class Duty and the Appeals Process

Annex A - Definition of a 'school teacher' for infant class size purposes

Annex B – Summary of roles and responsibilities of schools and LAs

Introduction

Infant classes are those in which the majority of children turn 5, 6 or 7 during the course of the school year i.e. reception and Key Stage 1 classes. Legislation limits the size of an infant class during an ordinary teaching session to 30 pupils per school teacher. However there are permitted exceptions to the limit (see paragraph 6).

In 1997, 29% of infants were taught in classes of more than 30. That figure has dropped to 1.8% for 2008.

The number of unlawfully large classes was only 0.4% of the 2008 total.

These were mainly short-term breaches of the law or due to misunderstandings of class size legislation.

The intention of this guidance is to:

- explain the infant class size duty
- set out the respective roles and responsibilities of LAs and schools in monitoring and ensuring compliance with the duty
- provide clarification on issues identified as sources of misunderstanding by LAs and schools.

What is infant class size duty?

1. Section 1 of the School Standards & Framework Act 1998 (as amended by the Education Act 2002) and the Education (Infant Class Sizes) (England) Regulations 1998 limit the size of an infant class during an ordinary teaching session to 30 pupils per school teacher.
2. An 'ordinary teaching session' is defined by Section 4 of the School Standards and Framework Act 1998 and does not include a school assembly or other school activity usually conducted with large groups of pupils e.g. PE/games, music, singing, drama, watching television or listening to the radio.
3. There is evidence to suggest that there is often confusion over who can or cannot teach an infant class unsupervised. A 'school teacher' is defined by Section 122 of the Education Act 2002 and the Education (School Teachers' Prescribed Qualifications, etc) Order 2003. This definition is provided in [Annex A](#).

How does this affect the admissions process?

4. Schools must admit pupils up to their published admission number (PAN) - even if the effect of this might be that they would have to employ another teacher or restructure classes in order to comply with the class size duty e.g. a school with an admission number of 40 might employ two teachers, or combine Reception and Year 1 and have 80 pupils split between 3 teachers.
5. Although there is an expectation that schools will maintain numbers in each year group as it progresses through school, in line with its original admission number, this is not a statutory requirement. Admission authorities may refuse admission for places in any year other than the normal year of entry i.e. Reception, if offering a place would result in them having to employ an additional teacher or create another classroom. This may apply even if these measures would not have to be taken until the following academic year e.g. because a child will no longer be treated as a 'permitted exception' (see paragraph 6).

Example

A school has an admission number of 30. It has 31 children in Reception (one was a 'permitted exception' for that year only); 29 in Year 1 and 30 in Year 2.

A parent applies for a place in Year 1.

The school refuses admission as admitting an additional pupil to the Year 1 class would have meant the school having to take measures to comply with the class size duty in the next academic year.

Permitted exceptions to the infant class size limit

6. Regulations (the Education (Infant Class Sizes) (England) Regulations 1998 as amended by the Education (Infant Class Sizes) (England) (Amendment) Regulations 2006) prescribe the limited circumstances in which pupils may be admitted as exceptions to the infant class size limit. These exceptions are:

- a) children with statements of special educational needs who are admitted to the school outside the normal admissions round;
- b) children moving into the area outside the normal admissions round for whom there is no other available school within a reasonable distance (the regulations require that admission authorities must check with local authorities before determining that a child falls into this category);
- c) children admitted after the initial allocation of places because the person responsible for making the decision recognizes that an error was made in implementing the school's admission arrangements and a place ought to have been offered;
- d) looked after children admitted outside the normal admissions round;
- e) children admitted where an independent appeal panel upholds an appeal on the grounds that the child would have been offered a place if the admission arrangements had been properly implemented, and/or the admission authority's decision to refuse a place was not one which a reasonable admission authority would have made;
- f) children who are registered pupils at special schools and who, by arrangement with another school which is not a special school, receive part of their education at that other school;
- g) children with special educational needs who are registered pupils at a school which is not a special school and are normally educated in a special educational needs unit attached to that school, and attend an infant class in the mainstream school (i.e. not in the unit) where this has been deemed as beneficial to the child.

In the case of f) and g), the child will remain an exception for **any** time they spend in an infant class at the mainstream school or outside the special unit. However in **all** other circumstances the child will only remain an exception for the remainder of the school year in which they are admitted. Measures **must** be taken the following year to ensure the class falls within the infant class limit.

Example relating to exception b)

Tony moved into a new rural area in October and needed a place in Reception. His local school was full and couldn't offer a place without exceeding the class size limit, and the next nearest school with places available was 10 miles away.

He was admitted to the local school as a 'permitted exception', so did not count as a 31st child in his class for the remainder of that academic year i.e. the school did not have to restructure or to employ another teacher. If no other infant leaves by the beginning of the next academic year, then the school will have to take measures to comply with the class size duty.

Example relating to exception g)

Sarah is on roll of a unit for children with hearing difficulties, co-located with a primary school. Two mornings a week, she joins a Year 1 class. She is treated as a permitted exception and so should not be recorded as a 31st child for any of the time she spends in this class while she is in Key Stage 1 (not just that academic year).

How is compliance with the duty monitored?

Completion of School Census returns

7. Schools provide information (via LAs) in the January School Census on the number of pupils per school teacher during an ordinary teaching session. Guidance on completion of the School Census return can be found on Teachernet at: www.teachernet.gov.uk/docbank/index.cfm?id=12764

Local Authority monitoring

8. LAs have a responsibility to verify School Census returns before forwarding them to DCSF. It is important that LAs ensure they have systems in place which enable them to:

- Check the accuracy of returns e.g. the count been carried out during an ordinary teaching session
- Contact schools where infant classes appear to be in breach of infant class size duty and ensure that urgent remedial action is taken;
- Refer cases to the DCSF Fair Access Team (information.peu@dcsf.gsi.gov.uk) if a school is in breach of infant class size duty but refuses to take remedial

action.

9. LAs must also ensure that they have approved admission of any child as a permitted exception under the '*no other available school within reasonable distance*' category (see paragraph 6 b), and that their schools are aware that they should seek approval to admit.

10. [Annex B](#) provides a summary of schools' and LAs' roles and responsibilities.

DCSF powers

11. The DCSF will contact any LA or primary school which appears to be in breach of the infant class size limit and where necessary the Secretary of State has the power to direct schools to comply.

Q+A: Infant class size duty

Q *Can a child can be a permitted exception for admission to a faith school if there is no other school of that faith within a reasonable distance?*

No - regulations refer to there being no other schools with places available within a reasonable distance of the child's home which provide a 'suitable education'. 'Suitable education' means efficient full time education suitable to the child's age, ability, aptitude and any special educational needs he may have. It does not mean a particular type of school. Additionally, a child should not be admitted as a permitted exception under this category unless the local authority has first given its approval. (See paragraph 6b above)

Q *If a class goes over 30 and we put another adult in to support the teacher will we meet the class size duty?*

Not necessarily. They must be a 'school teacher' as set out in Annex A.

Q *Can any child admitted outside the normal admissions round be treated as an exception to the class size limit?*

No - only those listed in paragraph 6 may be treated as permitted exceptions.

Q *Does the class size limit apply to mixed nursery/reception or Year 2/Year 3 classes?*

The duty applies to classes where the majority of children will reach the age of 5, 6 or 7 within the school year. So, if the majority of the children within a class will be aged 5, 6 or 7 by the end of the school year, the class must comply with the statutory limit.

Q *Are twins or other multiple birth children classed as permitted exceptions?*

No - admission authorities could choose to give these children priority within their published admission arrangements, but they are not permitted exceptions.

Q *Is there any funding to ensure that schools comply with the class size limit?*

Separate funding was put aside when the class size duty was first introduced to help schools reorganise e.g. to create additional classrooms and to employ additional teachers. Funding to help local authorities meet the class size duty is now included within Dedicated Schools Grant allocations. Local authorities (in consultation with their Schools Forum) can choose to include a factor in their funding formula to direct resources to schools with infant classes to enable them to meet the class size duty.

Q *Could we refuse admission if admitting another child meant we'd have to move to mixed age teaching to comply with class size limits?*

When dealing with applications for admission at normal point of entry i.e. Reception, the school must admit up to its published admission number.

For Year 1 or Year 2 applications, the admission authority could refuse admission if it would be necessary to employ another teacher or incur some other cost in order to comply with the class size limit but, given the number of schools which have successfully adopted mixed-age teaching, it would be extremely difficult to justify this as a reason for refusing admission.

Q+A: Infant class size appeals

Q *If the admission authority says that it can't admit an applicant without breaching the class size limit, can an appeal panel uphold an appeal?*

The admission authority may put forward a case to an appeal panel stating that they refused admission because this would have breached the infant class size limit, but it is up to the panel to determine whether this would have been the case.

If the panel agrees that admission would have breached the limit, it can then only uphold an appeal if the child would have been offered a place if the admission arrangements had been properly implemented or if the decision to refuse admission was one which no reasonable authority would have made i.e. it was unreasonable or wholly irrational.

An unreasonable or wholly irrational decision is one which is "perverse in the light of the admission arrangements" or "a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it". We would expect only very exceptional cases to be upheld on this basis.

Q *Can Year 2 appeals be automatically upheld because, if admitted on appeal, a child would be a permitted exception for the remainder of that year and the class size duty won't apply after that?*

No - admission has been refused because to do so would result in a breach of the class size limit. The appeal panel's job is to consider (a) would admission have resulted in class size exceeding the limit? (b) If so, was the decision made correctly? (c) Was it an unreasonable decision, as described above?

Q *Can a panel allow appeals on the basis that pupil mobility at the school is such that the class is not likely to exceed the class size limit for a significant period of time?*

No - the panel cannot know exactly what changes will occur, and shouldn't anticipate that other children may leave.

Annex A

Definition of a 'school teacher' for infant class-size purposes

1. Schools will meet the infant class size requirements if an infant group of no more than 30 is taught by a 'school teacher'. School teachers include:

- Head teachers
- Qualified teachers
- Overseas trained teachers
- Instructors with special qualifications or experience
- Staff on an employment-based teacher training scheme
- Graduate teachers
- Registered teachers
- Student teachers
- Teacher trainees yet to pass the skills tests

2. 'School teachers' **do not** include teaching assistants, higher level teaching assistants or other support staff. However, support staff may carry out 'specified work', such as delivering lessons to pupils, within infant classes in certain circumstances¹. In each case:

- the headteacher must be satisfied of the support staff's skills, expertise and experience to carry out such work;
- the work carried out must be in order to assist or support the work of a 'school teacher'; and
- s/he must be subject to the direction and supervision of a 'school teacher'.

3. In practice this means that, although a school with infant classes must have sufficient school teachers to be able to teach its infants in groups of 30 or fewer per teacher, support staff, providing they meet the above criteria, may 'teach' infant groups when teachers are not available (e.g. when a teacher is away from their class on their Planning, Preparation and Assessment time).

4. Support staff must not be the main 'teacher' for an infant group and, where support staff are undertaking the more demanding aspects of "specified work" – particularly where they are working with whole classes – head

¹ See the Education (Specified Work and Registration) (England) Regulations 2003)

teachers should have regard to the higher level teaching assistant (HLTA) standards in determining whether those staff have the necessary level of skills and expertise.

5. If a school were to use support staff instead of teachers to lead its infant groups, either as a permanent arrangement or for the majority of the school week on a regular basis, it would be in default of its class size duty. Consequently, a school must employ sufficient teachers to enable it to teach its infant classes in groups of no more than 30 per school teacher.

Annex B

Summary of roles and responsibilities of schools and LAs

All Schools:

- To complete the Schools Census return accurately

Foundation, Voluntary Aided schools and Academies

- To ensure that they do not set admission numbers or make decisions on admission which result in breaches of the infant class size limit;
- To make necessary organisational or staffing changes to ensure that the class size duty is met;
- To check with the LA before admitting children as permitted exceptions under the 'no other available school within reasonable distance' category (see paragraph 6);
- To provide suitable and timely training for admission appeal panel members, clerks and presenting officers in the skills required to consider, record and present appeals and on School Admission Codes and relevant legislation (including the limited scope for upholding infant class size appeals). This can be done in collaboration with LAs, diocesan authorities etc.

Local Authorities:

- Ensure that relevant staff understand the class size duty;
- To check Census returns and follow up on any apparent breaches of the class size duty;
- If a school refuses to take qualifying measures to comply with the class size limit, to refer the case to the DCSF Fair Access Team;
- To provide suitable and timely training for admission appeal panel members, clerks and presenting officers in the skills required to consider, record and present appeals and on School Admission Codes and relevant legislation (including the limited scope for upholding infant class size appeals);
- It is good practice for LAs to facilitate this training for all involved in an area's appeal panels – to ensure greater fairness and consistency in decision-making. Further information is available at www.governors.uk.com
- **For community and voluntary controlled schools** - To ensure that

they do not set admission numbers or make decisions on admission which result in breaches of the infant class size limit.