



## Ambiguity in the School Admissions Code has reduced the Compulsory School Age in England to 4 for Summer Born children

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A new report published by the campaign group '*Flexible School Admissions for Summer Born Children*' says the **Government's 2012 Code is not fit for purpose**, and on the deadline day for all primary school admission applications, calls on the Education Secretary to amend the Code, and use his powers to intervene in all cases of unlawful, unfair and unreasonable admissions practices in the interim – before Reception places are allocated on April 16, 2014.

The 87-page *SUMMER BORN* report titled "*Compulsory School Age in England has been Lowered to 4 through an Unfair and Unlawful Summer Born Admissions Process*" was produced and published by **MICHELLE MELSON** and journalist and author **PAULINE HULL**, and explains how this state of affairs has gone legally unchallenged for years.

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Critically, the Government's 2012 Code doesn't clearly specify the compulsory school age in England, which is the term following a child's 5<sup>th</sup> birthday (for children born between April 1<sup>st</sup> and August 31<sup>st</sup> 2009 this means the term beginning September 2014), though it does define Reception as an "*entry class*" to primary school providing education suitable for children aged 5 (and any children who are under or over 5 years old whom it is expedient to educate with pupils of that age). But in reality, parents of summer born children are being forced to choose between one of two distinct 'choices':

1. If you want your child to experience Reception class, and have access to up to a full 7 years of primary school education – to include the critical Reception foundation year – you must enrol your child in school at age 4.
2. If you wait to enrol your child at compulsory school age, your child must join Year 1, with access to just 6 years of primary school education, and you take the gamble whether there will be any Year 1 places available in your preferred school at that point – *unless* you can provide 'documented evidence' of 'exceptional circumstances' to support your application for Reception class entry (and in fact special 'medical panels' have been set up in some areas to assess a child's 'eligibility' for 7 years' primary school education from age 5).

**Under this pressure, the vast majority of parents reluctantly concede to Hobson's choice 1 above, which is school entry at age 4 – and very often a full year before their child reaches compulsory school age.**

The Department for Education has admitted that its 2012 Code is "*not necessarily clear enough*", and in July 2013 published new advice on summer born children with the aim of rectifying the situation. However, even where this non-statutory advice is not being blatantly ignored, evidence is growing that it has led to an even greater misinterpretation of primary legislation locally, and resulted in further nationwide inconsistency, confusion and financial cost.

Today's report concludes that by refusing to adequately communicate and enforce the full spectrum of national and EU primary legislation as it relates to school admissions, to ensure fair and equitable access to Reception class, the DfE is failing in its lead role with responsibility for implementing the UNCRC\* in England, and failing in its September 2013 promise to "*empower parents*". In what the report authors call "*a nationwide scandal of flouted primary legislation, inconsistent policies and practices, and a detrimental 'back-door' lowering of England's compulsory school age by up to a whole year for some children*", parents have effectively been stripped of their legal duty, responsibility and right to secure education that shall cause their summer born child to receive efficient full-time education suitable to their age, ability and aptitude.

Given the now incontrovertible evidence that some summer born children are more likely to experience social, emotional and academic challenges, and to be labelled as having 'special educational needs'; plus the assertion by leading academics that experiencing formal education too early can be damaging for many children, the Government **must act urgently** to ensure that these vulnerable children are not forced\* into Year 1 at age 5, against their parents' wishes (\*especially since the DfE's 2012 Code says parents have no right of appeal if Year 1 is prescribed).

**REPORT CONTENT INCLUDES:** Numerous examples of Unlawful and Unfair Policies and Practices; Evidence of Inconsistency, Contradiction and Errors in DfE publications and Ministers' statements; an extensive Glossary of Legislation that relates to school admissions; an insightful and detailed Admissions History; and Parents' Experiences.

### The Rt Hon Michael Gove MP

The Department for Education has been aware of the admissions problems for summer born children since before the 2012 Code was published, yet when challenged publicly by the baby charity *Bliss*, the Education Secretary Michael Gove's response was simply, "*We want children to be in school learning as quickly as possible*"; and a March 2013 letter from Mr Gove to one of the report author's MP stated, "*All children must start school by the time they reach their fifth birthday*" (a subsequent letter apologised and corrected this). This entrenched, almost universally held belief that everyone starts school at age 4 in England is further evidence that 'summer born' are *the children policy makers forgot*.

### DfE Inconsistency

Communication to its 152 local education authorities and around 7,500 individual school admission authorities is very often contradictory. The DfE insists on abdicating responsibility and allowing decisions on year group for summer born entry to school to be made at a local level, yet also claims, "*We are absolutely clear that parents should be able to say to a school, 'We want our child, who is aged five, to enter reception', if they feel that that is in the best interests of their child... [We want] to empower parents*". It wants its July 2013 advice to 'encourage' all schools and councils to make a decision "*based on the circumstances of the case*", factoring in "*the needs of the child and the possible impact on them of entering year 1 without having first attended the reception class*", but does not cite other key primary legislation\* (which supersedes the 2012 Code itself), and is making the whole unnecessarily complicated. Campaigners say Reception class entry should be a default choice at compulsory school age. There have been a few success stories, where the DfE's *Working Group on Admissions* has managed to convince some local authorities to change their stance, but this ad hoc approach is slow, inconsistent and (given the examples on p.40-44), very likely in breach of its UNCRRC State obligations:

### \*United Nations Convention on the Rights of the Child

These are just some highlighted extracts (see full details in Glossary on p.19-26 of the report):

- (a) *The obligation [for States parties] to **ensure that the child's best interests are appropriately integrated and consistently applied in every action taken** by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children;*
- (b) *The obligation to ensure that all judicial and administrative decisions as well as policies and legislation concerning children demonstrate that the child's best interests have been a primary consideration. This **includes describing how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision.***
- States Parties undertake to make the principles and provisions of the Convention **widely known, by appropriate and active means**, to adults and children alike.
- In all actions concerning children... undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration.**
- The development of the child's personality, talents and mental and physical abilities to their **fullest potential**;
- **If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen.**
- [ALSO SEE] The 1996 Education Act (section 9): **Pupils to be educated in accordance with parents' wishes.**

### Unfair and Discriminatory Admissions Process

Parents of summer born children must go through additional steps in the admissions process over and above those of parents of children born at any other time of the year – all because the DfE has declared it necessary for the "*circumstances of the case*" to be considered with each individual application. This fundamentally different (often unclear), inconsistent, inequitable and unfair treatment has resulted in immense stress and anguish for parents, who – in practical terms, – face taking a huge (and usually unacceptable) gamble if they decide to submit an application for Reception class for the September term following their summer born child's 5th birthday. Particularly in over-subscribed areas, if the local school or council admission authority – against the parent's wishes – decides in the April, when all

places are allocated, to decline a place in Reception class, and insist on Year 1 entry instead, there will very likely be no places available in Year 1. The child misses out on a place in the parent's preferred school entirely. Therefore, in reality, how many parents are going to take that risk? Admission authorities know this, and it is precisely this implied or actual threat that results in so many parents succumbing to the pressure of applying to enrol their child in school at age 4.

Astoundingly, the onus is on *parents* to demonstrate why their summer born child should have access to 7 years of primary school instead of 6 – with no right of appeal – while every other parent has a full right of appeal during the annual round of applications for Reception places, and there is no requirement to justify a child's *early* entry to school.

#### Summer Born Problem Too Long Ignored

The Government's abdication of responsibility and failure to intervene is not new, as this report highlights. Thirty years ago, in 1984, it was already apparent that summer born children waiting to start school at compulsory school age were being forced to join Year 1 rather than Reception class, but when challenged, "*What action will the Government take to end such blatant discrimination against children who apparently have the misfortune to be born in the summer, so that they have a chance of decent infant education?*", it too insisted, "*these are matters for local education authorities.*"

The full report can be downloaded from [summerbornchildren.org](http://summerbornchildren.org) (see *PRESS RELEASES* tab)

**Report authors Pauline Hull and Michelle Melson:** "*It is irrefutable that summer born children can lawfully start school at age 5 in Reception class and experience a full primary school education, but by failing in its responsibility to ensure that **all** primary legislation and EU law is fully communicated and adhered to by every admission authority, the Government is allowing admissions discrimination and unfairness to continue. This postcode lottery has to stop.*"

**The British Association for Early Childhood Education** (AGM Resolution Number 2, September 2013)

*"Since it is now well established that summer born children are too young to benefit from the greater formality of most reception classes and are disadvantaged throughout their school lives and beyond, we call on the government... to enable parents of summer born children to choose to delay for a year the start of schooling and that these summer born children enter the reception class and can stay in the cohort where they are oldest in the class throughout their schooling."*

**Early Childhood Action** (Manifesto for action 2012/13)

*"All children should have the right to have their school starting date deferred at least until the legal date of entry, and without losing any of the rights accorded to other families. Parents also should not be pressurised in any way to bring forward school commencement before statutory school age."*

**Stone King Solicitors** (quote from its Summer Born online article, September 2013)

*"Our strong view is that at primary level a request in respect of a summer-born child to defer a year should be agreed to unless there are compelling reasons why the child should start school sooner... At secondary level, we consider that parents of a child in Y6, no matter what the background is to the child's presence in Y6, should be dealt with through the co-ordinated admissions process for entry into Y7 irrespective of the child's date of birth. Acting otherwise seems to us to be irrational and challengeable, even though the Admissions Code suggests otherwise..."*

**Office of the School Adjudicators** (Adjudicator Mrs. Carol Parsons, November 4, 2013)

*"It is for parents to make a decision about what is in the best interests of their child rather than for the school to make a decision on their behalf."* (paragraph 30, ADA2555: Pencombe CE Primary School)

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