

2020 No. 446

EDUCATION, ENGLAND

The School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2020

<i>Made</i>	- - - -	<i>21st April 2020</i>
<i>Laid before Parliament</i>		<i>23rd April 2020</i>
<i>Coming into force</i>	- -	<i>24th April 2020</i>

The Secretary of State for Education, in exercise of the powers conferred by sections 94(5) and (5A), 95(3) and (3A) and 138(7) of the School Standards and Framework Act 1998(a), makes the following Regulations.

Citation, commencement and application

1. These Regulations may be cited as the School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2020 and come into force on 24th April 2020.

2. These Regulations apply to appeals to which the School Admissions (Appeals Arrangements) (England) Regulations 2012(b) apply which are lodged—

- (a) on or after 24th April 2020 but on or before 31st January 2021;
- (b) before 24th April 2020 but where the appeal has not been fully determined on or before 24th April 2020.

Review and expiry of regulations 6 to 11

3.—(1) The Secretary of State must review the effectiveness of regulations 6 to 11 during the period for which they have effect.

(2) Subject to regulation 4, regulations 6 to 11 cease to have effect on 31st January 2021.

Saving provisions

4.—(1) Regulations 6 to 11 continue to have effect for appeals to which these regulations apply which have not been decided before these Regulations cease to have effect in the following ways—

(a) 1998 c. 31; section 94(5) and (5A) were substituted by the Education Act 2002 (c. 32), section 50 and subsection (5A) was amended by the Education and Skills Act 2008 (c.25), section 152 and S.I. 2010/1158. Section 95(3) and (3A) were substituted by the Education Act 2002, section 51 and Schedule 4, paragraph 9. Subsection (3A) was amended by S.I. 2010/1158. Section 138(7) was amended by the Education and Inspections Act 2006 (c. 40), section 175 and Schedule 17, paragraph 3(1) and (4).

(b) S.I. 2012/9.

- (a) where an appeal panel is constituted to consider the appeal as a panel of two members in accordance with paragraph 1(1) of Schedule 2 it may continue to decide the appeal as so constituted;
- (b) where an appeal panel has started to decide an appeal on the written information submitted in accordance with paragraph 2(2) of Schedule 2 it may continue to decide the appeal on that basis;
- (c) any time limits prescribed in or determined under paragraphs 3 to 5 of Schedule 2 continue to apply.

(2) The expiry of these Regulations under regulation 3(2) does not affect the validity of anything done in accordance with these Regulations before the expiry date.

5. Subject to regulation 4, once regulations 6 to 11 cease to have effect in accordance with regulation 3(2), the School Admissions (Appeals Arrangements) (England) Regulations 2012 continue to apply as though these amendments had not been made to appeals lodged—

- (a) on or after 1st February 2021;
- (b) on or before 31st January 2021 and which have not been decided.

Amendment of the School Admissions (Appeals Arrangements) (England) Regulations 2012

6. The School Admissions (Appeals Arrangements) (England) Regulations 2012 are amended as follows.

7. In regulation 3 (interpretation) at the appropriate place insert—

“the admission authority” has the same meaning as in section 88(1)(a) and (b) of SSFA 1998;

“admission decision” means a decision referred to in section 94(1) to (2A) of SSFA 1998 refusing a child admission to a school or entrance to a sixth form or as to the school at which education is to be provided for a child;

“coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-Cov-2);

“coronavirus exception” is a condition which applies where, for a reason related to the incidence or transmission of coronavirus—

- (a) it is not reasonably practicable for a governing body of a foundation or voluntary aided school or a local authority to comply with the requirements of paragraph 1(1) and (2) of Schedule 1, or paragraph 1.5 and 1.9 of the SAAC (“the constitution reason”), or
- (b) it is not reasonably practicable for an admission appeal panel to comply with the requirement in paragraphs 2.12 or 6.4b) of the SAAC for appellants or representatives of local authorities or governing bodies to be allowed to appear in person (“the appeal in person reason”);

“remote access” means access to an appeal hearing to enable those who are not all present together at the same place to attend or participate simultaneously in the hearing by electronic means, including by live audio and live video link;

“the SAAC” means the School Admission Appeals Code which is the code for school admission appeals issued and published by the Secretary of State in February 2012(a) under section 84(1) and (4) of SSFA 1998;”.

8. In regulation 5 (constitution of appeal panels) for “the Schedule” substitute “Schedule 1 or, where the constitution reason of the coronavirus exception applies, the relevant paragraphs of Schedule 1, subject to paragraph 1 of Schedule 2”.

9. After regulation 6 (payment of allowances) insert—

(a) The SAAC was published on 1st February 2012, and is available at: <https://www.gov.uk/government/publications/school-admissions-appeals-code>. Hard copies can also be provided by writing to: the Admissions, Academies Portfolio and School Organisation Team, Department for Education, Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT.

“Procedure for appeals where coronavirus exception applies

7. Paragraph 2 of Schedule 2 has effect in relation to an appeal pursuant to arrangements made by a local authority or governing body of a foundation or voluntary aided school under section 94 or a local authority under section 95 of SSFA 1998 where the appeal in person reason of the coronavirus exception applies.

Time limits

8.—(1) Paragraphs 3 and 4 of Schedule 2 have effect for the purposes of determining the timetable in respect of an appeal pursuant to arrangements made by a local authority or governing body of a foundation or voluntary aided school under section 94 of SSFA 1998.

(2) Paragraph 5 of Schedule 2 has effect for the purposes of determining the timetable in relation to an appeal pursuant to arrangements made by a local authority under section 95 of SSFA 1998.”.

10. In the Schedule—

- (a) in the heading, for “Schedule” substitute “Schedule 1”;
- (b) before paragraph 1, insert—

“(A1) Paragraphs 1(1) and (2) apply subject to paragraph 1 of Schedule 2.”.

11. After Schedule 1 (constitution of appeal panels), insert—

“SCHEDULE 2

Regulations 5, 7 and 8

Temporary amendments of Constitution of Appeal Panels and Procedure Rules

Arrangements made by a local authority or governing body: when coronavirus exception applies

1.—(1) Where one or more members of an appeal panel has to withdraw from membership of the panel, the appeal panel may continue to consider and determine the appeal provided there remains a panel of at least two members, regardless of whether those members meet the requirements of paragraph 1(2) of Schedule 1.

(2) Where sub-paragraph (1) applies, and the member withdrawing is the panel Chair, the admission authority must appoint (or arrange for the clerk to the appeal panel to appoint) one of the remaining members of the panel as the Chair.

Appeal hearings

2.—(1) An appeal panel may decide to hold an appeal hearing using remote access provided—

- (a) the parties are able to present fully their case;
- (b) each participant has access to the electronic means to allow them to hear and be heard and (where using a live video link) see and be seen, throughout the appeal hearing; and
- (c) the panel considers that the appeal is capable of being heard fairly and transparently.

(2) Where any of the conditions prescribed in sub-paragraph (1)(a) to (c) are not met, an appeal panel may make their decision on the appeal based on the written information submitted.

(3) Where sub-paragraph (2) applies, the appeal panel must ensure that the parties are able to present fully their case, in order for the panel to make a decision on the appeal which is fair and transparent.

Time limits

3.—(1) Where the admission authority or local authority sends an admission decision the deadline for an appeal specified in that admission decision must be—

- (a) at least 28 days from the date of the notification of the admission decision, and
- (b) expressed by reference to a fixed date or a number of calendar days.

(2) In respect of an admission decision sent after 28th February 2020 which contains a deadline for an appeal that is not in accordance with the requirements of sub-paragraph (1)(a) or (b), the admission authority must review the existing deadline for the appeal and, where the conditions in sub-paragraph (3) are satisfied, set a new deadline for the appeal which must be—

- (a) at least 28 days from the date of the notification of the new deadline, and
- (b) expressed by reference to a fixed date or a number of calendar days.

(3) The conditions are that—

- (a) no appeal has already been lodged in response to the admission decision,
- (b) the existing deadline refers to school days, or the admission authority otherwise considers that the existing deadline is unclear in all the circumstances; and
- (c) the existing deadline has not already expired.

(4) Where a new deadline has been set in accordance with sub-paragraph (2), notification of the new deadline must be sent to the recipient of the original admission decision within 28 days of 24th April 2020 or seven days from the date of an admission decision which does not comply with the requirements of sub-paragraph (1) whichever is later.

(5) The notification of the new deadline must be sent by—

- (a) the admission authority where that admission authority sent the relevant admission decision, or
- (b) the local authority where that authority sent the relevant admission decision on behalf of another admission authority.

(6) The requirement in sub-paragraph (5)(b) only applies once the local authority has been informed of the new deadline by the relevant admission authority.

4.—(1) The admission authority must provide appellants with at least 14 days' written notice of an appeal hearing.

(2) The admission authority may set new or revised reasonable deadlines for—

- (a) an appellant to submit additional evidence;
- (b) the admission authority to submit their evidence; and
- (c) the clerk to send relevant appeal papers to the appeal panel and the parties.

(3) An appeal panel must send decision letters on appeals to the parties within 7 days of the hearing, or finalisation of the determination of the appeal, wherever possible.

(4) All appeals which have been lodged, whether in time or not, must be heard and determined by an appeal panel as soon as reasonably practicable.

5.—(1) Where the governing body of a school receives a written decision to admit to the school a child to whom, at the time when the decision is made section 87(2) of SSFA 1998 applies, any appeal must be made within 21 days from—

- (a) the date of notification of the decision where that date is on or after 24th April 2020; or
- (b) the 24th April 2020 where—

- (i) the decision was notified before 24th April 2020,
- (ii) no appeal has been lodged in response to the decision before 24th April 2020, and
- (iii) an existing appeal deadline relevant to the decision has not already expired before 24th April 2020.

(2) All appeal hearings to which sub-paragraph (1) applies must be held, and appeals determined, as soon as reasonably practicable.”.

21st April 2020

Nick Gibb
Minister of State
Department for Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the School Admissions (Appeals Arrangements) (England) Regulations 2012 (“the 2012 regulations”) for appeals brought under sections 94 and 95 of the School Standards and Framework Act 1998 (as amended) and lodged—

- on or after 24th April 2020 but on or before 31st January 2021;
- before 24th April 2020 but where the appeal has not been fully determined on or before that date.

Regulation 4(1) provides that regulations 6 to 11 will continue to have effect following the expiry of these Regulations in prescribed, limited circumstances. Otherwise, as provided for by regulation 3(2), these Regulations will expire on 31st January 2021. Regulation 5 sets out that, on expiry, the 2012 regulations will then apply again to appeals lodged from 1st February 2021 and to appeals ongoing on the date of expiry and which have not been decided by an appeal panel.

Regulation 7 introduces a new definition into regulation 3 of the 2012 regulations: the “coronavirus exception”. That operates in two main ways under these Regulations—

(1) where it is not reasonably practicable for a governing body or a local authority to comply with the appeal arrangements in paragraph 1 of Schedule 1 and the SAAC requirements for a reason related to the incidence or transmission of coronavirus, paragraph 1 of new Schedule 2 (inserted by regulation 11) applies instead to allow panels of two members to decide appeals (see regulation 8);

(2) where it is not reasonably practicable for an admission appeal panel to comply with the requirements in the SAAC on appeals in person for a reason related to the incidence or transmission of coronavirus, paragraph 2 of new Schedule 2 applies to enable appeal panels to hold hearings by remote access or decide appeals on the basis of the written information provided (see regulation 9).

Paragraphs 3 to 5 of new Schedule 2 make provision for various timelines to apply in respect of appeals to ensure that the admission authorities and governing bodies can set reasonable timelines during the period of operation of these Regulations.

A full regulatory impact assessment has not been prepared as this instrument will have no impact on the costs of business and the voluntary sector.

An Explanatory Memorandum is published alongside the Regulations on www.legislation.gov.uk.

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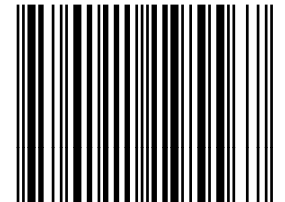
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