

**2008 No. 3092**

**EDUCATION, ENGLAND**

**The Education (Admissions Appeals Arrangements)(England)(Amendment) Regulations 2008**

*Made* - - - - *3rd December 2008*

*Laid before Parliament* *11th December 2008*

*Coming into force* *10th February 2009*

The Secretary of State for Children, Schools and Families, after consulting the Administrative Justice and Tribunals Council pursuant to paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(a), makes the following Regulations in exercise of the powers conferred by sections 94(5A), 95(3A) and 138(7) of the School Standards and Framework Act 1998(b):

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Education (Admissions Appeals Arrangements)(England)(Amendment) Regulations 2008 and come into force on 10<sup>th</sup> February 2009.

(2) These Regulations only apply in relation to England and, subject to paragraph (3), apply in relation to appeals against decisions communicated on or after 1st March 2009.

(3) Regulation 6 applies in relation to appeals against decisions communicated on or after 1st March 2010 in respect of admission to maintained schools in England in the school year 2010-2011 and subsequent years.

**Amendment of Regulations**

2. The Education (Admissions Appeals Arrangements)(England) Regulations 2002(c) are amended as follows.

3. In regulation 2(1), insert the following definitions after the definition of “the 1998 Act”—

““appropriate authority” means the body or bodies responsible for making the arrangements described in regulation 3; and

“School Admissions Code” means any code for school admissions issued under section 84(d).”.

4. In regulation 4(1), omit sub-paragraph (a).

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(a) 2007 c.15.

(b) 1998 c.31; subsection (5A) was inserted into section 94 by section 50 of the Education Act 2002 (c.32). Subsection (5A)(aa) was inserted into subsection (5A) by clause 152 of the Education and Skills Act 2008 (c. XX). Subsection (3A) was inserted into section 95 by Schedule 4 to the Education Act 2002. See section 142(1) for the definition of “regulations”.

(c) S.I. 2002/2899, amended by S.I. 2007/3206.

(d) Section 84 was amended by Schedules 4 and 22 to the Education Act 2002, and sections 40 and 50 of, and Schedule 18 to, the Education and Inspections Act 2006 (c. 40).

5. For regulation 6, substitute the following—

**“Relevant considerations in appeals brought under sections 94 and 95**

6.—(1) In relation to an appeal made under the arrangements referred to in regulation 3(a) to (d), the matters to be taken into account by an appeal panel, in considering an appeal, shall include—

- (a) any preference expressed by the appellant, and
- (b) the school’s admission arrangements.

(2) Consideration of the matter mentioned in paragraph (1)(b) may include consideration of whether those arrangements comply with any mandatory requirements of—

- (i) a School Admissions Code, or
- (ii) Part 3 of the 1998 Act.

(3) Where the decision under appeal was made on the ground that prejudice of the kind referred to in section 86(3)(a) would arise as mentioned in subsection (4) of that section, an appeal panel may determine that a place is to be offered to the child only if they are satisfied that one of the conditions mentioned in paragraph (4) applies.

(4) The conditions mentioned in this paragraph are—

- (a) the child would have been offered a place if the school’s admission arrangements had been properly implemented;
- (b) the child would have been offered a place if the school’s admission arrangements had complied with the requirements of—
  - (i) a School Admissions Code, or
  - (ii) Part 3 of the 1998 Act;
- (c) the decision was not one which a reasonable admission authority would have made in the circumstances of the case.

(5) In relation to an appeal made under arrangements referred to in regulation 3(e), an appeal panel in considering an appeal shall have regard to—

- (a) the reasons for the local education authority’s decision that the child in question should be admitted; and
- (b) any reasons put forward by the governing body as to why the child’s admission would be inappropriate.

(6) In this regulation, “preference” means a preference expressed in accordance with arrangements made under section 86(1) in relation to the school year 2009-2010, and a preference expressed in accordance with arrangements made under section 86(1) or section 86A(1)(a) in relation to the school year 2010-2011 and subsequent school years.”

6. For Schedule 2, substitute the following—

**“SCHEDULE 2**

Regulation 5

**Procedure on Appeal**

**Appeals made pursuant to section 94**

1.—(1) In this paragraph—

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(a) Section 86A was inserted into the School Standards and Framework Act 1998 by section 150 of the Education and Skills Act 2008.

“appeal” means an appeal made under the arrangements referred to in regulation 3(a) to (d); and

“a decision about sixth form education” means a decision—

- (a) made in relation to a preference expressed in accordance with arrangements made under section 86A(1) as to where education should be provided for a child, or
- (b) refusing permission for a child to enter the sixth form of the school to which he has been admitted.

(2) The appropriate authority must send the following information to parents—

- (a) particulars of the arrangements for making an appeal, and
- (b) the contact details for the appropriate authority.

(3) In the case of a decision about sixth form education, the appropriate authority must send the following information to the child and his parents—

- (a) particulars of the arrangements for making an appeal,
- (b) the contact details for the appropriate authority; and
- (c) a statement explaining that where a child and any parent of his make separate appeals in respect of the same school, the appeals must be heard together.

(4) Where a child and any parent of his make separate appeals in respect of the same decision about sixth form education, the appeals must be heard together.

(5) An appeal shall be by notice in writing setting out the grounds on which it is made.

(6) An appeal shall give the appellant an opportunity of appearing and making oral representations, and may allow him to be accompanied by a friend or to be represented.

(7) An appeal shall be heard in private except where the body or bodies by whom the arrangements under section 94 are made direct otherwise; but—

- (a) if the panel so direct, one member of the local education authority may attend, as an observer, any hearing of an appeal by an appeal panel constituted in accordance with paragraph 1 of Schedule 1;
- (b) if the panel so direct, one member of the governing body of the school in question may attend, as an observer, any hearing of an appeal by an appeal panel constituted in accordance with paragraph 1 or 2 of Schedule 1 (or in accordance with paragraph 2 as it applies by virtue of paragraph 3 of that Schedule); and
- (c) if the panel so direct, any person may attend a hearing of an appeal for the following purposes—
  - (i) training, or
  - (ii) appraisal of the performance of clerks or appeal panel members.

(8) For the purposes of sub-paragraph (7), an appeal to an appeal panel constituted in accordance with paragraph 1 of Schedule 1, as it applies by virtue of paragraph 4 of that Schedule, shall be treated—

- (a) as an appeal to an appeal panel constituted in accordance with paragraph 1 of that Schedule if it relates to a community or voluntary controlled school; and
- (b) as an appeal to an appeal panel constituted in accordance with paragraph 2 of that Schedule, if it relates to a foundation or voluntary aided school.

(9) In the event of a disagreement between the members of an appeal panel, the appeal under consideration shall be decided by a simple majority of the votes cast and, in the case of an equality of votes, the chairman of the panel shall have a second or casting vote.

(10) The decision of an appeal panel and the grounds on which it is made shall be communicated by the panel in writing to—

- (a) the appellant and the local education authority,
- (b) in the case of an appeal heard jointly with another appeal in accordance with paragraph 1(4), to the appellant in the other appeal; and

- (c) in the case of an appeal to an appeal panel constituted in accordance with paragraph 2 of Schedule 1, (or in accordance with that paragraph as it applies by virtue of paragraph 3 of that Schedule), to the governing body by whom or on whose behalf the decision appealed against was made.

(11) For the purposes of sub-paragraph (10), an appeal to an appeal panel constituted in accordance with paragraph 1 of Schedule 1, as it applies by virtue of paragraph 4 of that Schedule, shall be treated as an appeal to an appeal panel constituted in accordance with paragraph 2 of that Schedule, if it relates to a foundation or voluntary aided school.

(12) Subject to sub-paragraphs (2) to (11), all matters relating to the procedure on appeals, including the time within which they are to be brought, shall be determined by the appropriate authority.

### **Appeals made pursuant to section 95**

2.—(1) In this paragraph “appeal” means an appeal made under the arrangements referred to in regulation 3(e).

(2) Where any such decision as is mentioned in section 95(2) is made by or on behalf of the local education authority, the authority shall give the governing body of the school notice in writing—

- (a) of that decision; and
- (b) of the governing body’s right to appeal against the decision in accordance with sub-paragraph (3).

(3) An appeal by the governing body against any such decision must be made not later than the 15th school day after the day on which they are given notice under sub-paragraph (2).

(4) An appeal shall be by notice in writing setting out the grounds on which it is made.

(5) The appeal panel shall meet to consider an appeal on such date as the local education authority may determine but the date so determined must not be later than the 15th school day after the day on which the appeal is lodged.

(6) On an appeal the panel shall allow—

- (a) the local education authority and the governing body to make written representations;
- (b) an officer of the authority nominated by the authority, and a governor nominated by the governing body, to appear and make oral representations; and
- (c) the governing body to be represented.

(7) Appeals shall be heard in private except when the local education authority direct otherwise; but—

- (a) if the panel so direct, one member of the local education authority may attend, as an observer, any hearing of an appeal by an appeal panel; and
- (b) if the panel so direct, any person may attend a hearing of an appeal for the following purposes—
  - (i) training, or
  - (ii) appraisal of the performance of clerks or appeal panel members.

(8) Two or more appeals may be combined and dealt with in the same proceedings if the appeal panel consider that it is expedient to do so because the issues raised by the appeals are the same or connected.

(9) In the event of a disagreement between the members of an appeal panel, the appeal under consideration shall be decided by a simple majority of the votes cast and, in the case of an equality of votes, the chairman of the panel shall have a second or casting vote.

(10) The decision of an appeal panel and the grounds on which it is made shall—

- (a) be communicated by the panel in writing to the local education authority and the governing body; and
- (b) be so communicated by the end of the second day after the conclusion of the hearing of the appeal.

(11) Subject to sub-paragraphs (2) to (10), all matters relating to the procedure on appeals shall be determined by the local education authority.”

3rd December 2008

*Sarah McCarthy-Fry*  
Parliamentary Under Secretary of State  
Department for Children, Schools and Families

## EXPLANATORY NOTE

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

These Regulations are made under section 94(5A), 95(3A) and 138(7) of the School Standards and Framework Act 1998 and come into force on 10<sup>th</sup> February 2009. They apply to arrangements for appeals in respect of decisions communicated on or after 1<sup>st</sup> March 2009 (the majority of which will relate to admission for the school year beginning in September 2009), except for regulation 6, which only applies to in relation to appeals against decisions communicated on or after 1<sup>st</sup> March 2010 in respect of admission to maintained schools in England in the school year 2010-2011 and subsequent years. They make amendments to the Education (Admissions Appeals Arrangements) (England) Regulations 2002 (“the 2002 Regulations”).

The 2002 Regulations make provision for the procedure on appeals against decisions about admission to maintained schools in England, and the grounds on which certain appeals may be upheld. Regulations 3 and 4 move a definition into regulation 2 of the 2002 Regulations so that it applies generally, and insert a new definition.

Regulation 5 substitutes a new regulation 6 in the 2002 Regulations. The new regulation provides that appeal panels may consider whether admission arrangements are unlawful, because they do not comply with either the requirements of the 1998 Act, or the mandatory provisions of any school admissions code (issued under section 84 of the 1998 Act). When a child is refused a place at school on the basis that to admit the child would breach the statutory limit on infant class sizes unless measures were taken to avoid that breach, panels may only uphold appeals on certain, limited grounds. The new regulation 6 provides that a panel may uphold such appeals if they are satisfied either that the child would have been offered a place if the relevant admission arrangements had been properly implemented, or if they had been lawful, or if the panel is satisfied that the decision of the admission authority was unreasonable.

Regulation 6 substitutes a new Schedule 2 to the 2002 Regulations. The new Schedule makes provision arising out of changes to the law contained in the Education and Skills Act 2008. Starting from the school year beginning in September 2010, children as well as their parents will be able to apply for a place in a school sixth form, or, in the case of children over compulsory school age, for a place to study education other than sixth form education. They will also be able to appeal against decisions refusing their applications. Schedule 2 makes provision for the procedure on such appeals. In cases where the child and any parent of his make appeals in respect of the same school, the appeals must be heard together.

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STATUTORY INSTRUMENTS

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