

**EXPLANATORY MEMORANDUM TO**  
**THE SCHOOL ADMISSIONS (ENGLAND) (CORONAVIRUS) (APPEALS**  
**ARRANGEMENTS) (AMENDMENT) REGULATIONS 2020**

**2020 No. 446**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 These Regulations (“the Appeal Amendment Regulations 2020”) amend the School Admissions (Appeals Arrangements) (England) Regulations 2012 (“the Appeal Regulations 2012”). The Appeal Amendment Regulations 2020 amend certain procedural and constitutional requirements that are set out in the Appeal Regulations 2012 and in the School Admission Appeals Code (“the SAAC”) relating to school admissions appeal panels until 31 January 2021.<sup>1</sup> This change is being made to allow these appeals to continue to be conducted despite significant practical difficulties caused by measures needed to limit the spread of coronavirus (COVID-19). Those measures include the social distancing guidance introduced by the Government and Public Health England, which restrict the ability for parties to meet in person, and the guidance on self-isolation, which cause difficulties in securing sufficient panel members for appeal hearings.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 It is not possible in the case of this instrument to comply with the 21-day rule which requires relevant instruments to be laid before Parliament for at least 21 days prior to coming into force. The Appeal Amendment Regulations 2020 will come into force the day after it is laid.
- 3.2 This is necessary due to the urgent need to amend constitutional and procedural requirements for admissions appeal panels in response to the significant practical impacts of coronavirus (COVID-19). The months of April to June represent the busiest months for appeal panels as significant numbers of appeals arising from school offers being made to children due to start a new school in September 2020 are lodged during these months. Secondary National Offer Day was on 1 March and there is already a backlog of secondary appeals. Primary National Offer Day on 16 April has added to the number of appeals that need to be carried out before September (or as soon as possible at the start of the academic year). This is why it is of particular importance to re-align the deadlines and amend requirements without delay to help appeal panels conduct this peak volume of business. The impact of coronavirus

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<sup>1</sup> The SAAC was published on 1st February 2012, and is available at:  
<https://www.gov.uk/government/publications/school-admissions-appeals-code>.

(COVID-19) and the associated social distancing requirements are significantly compromising the immediate availability of appeal panel members and other people involved in administering appeals and have rendered in-person appeal hearings prohibited.

- 3.3 If the Appeal Amendment Regulations 2020 were to comply with the 21-day rule it is likely that the appeal system would be paralysed for that period as a number of the current requirements cannot be complied with as a result of coronavirus (COVID-19), which will result in undesirable additional delays for appellants who are likely to be seeking to resolve appeals in time for children starting a new school in September 2020 (or with minimal delays).
- 3.4 It was not possible to make these Regulations sooner. On 18th March, the Government announced that schools were to remain open for vulnerable children and the children of critical workers only at the end of the school day on Friday 20th March. The Government announced social distancing guidance on 16th March, then introduced 'stay at home' rules on 23rd March. The Department was not in a position to assess the extent and impact of the lockdown on admissions appeals immediately and needed to consult with the sector to understand the impact and practical difficulties Admission Authorities would have in administering their appeals.
- 3.5 We know from stakeholder feedback that having these amended rules come in to force quickly will be welcomed by those working to provide these appeals. The new arrangements will also be welcomed by parents who will continue to have the right of appeal should they not be happy with the school they have been offered. Safeguards have been built into the Appeal Amendment Regulations 2020 to ensure that appellants still have adequate time and notice to lodge appeals, and that their appeals will continue to be heard fairly, as quickly as possible in the circumstances, and in line with the requirements of natural justice. See the policy background section at paragraph 7 for further detail.
- 3.6 To ensure both the sector and parents had notice of these changes, the Government published guidance on 14th April in advance of Primary School National Offer Day, which explained what changes the Government were planning to address and advised these Regulations would be laid and come in to force by 24th April. We have also emailed the sector daily with coronavirus (COVID-19) updates since 2 March.

***Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)***

- 3.7 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only.

#### **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **6. Legislative Context**

- 6.1 The Appeal Amendment Regulations 2020 amend the Appeal Regulations 2012 to change procedural and constitutional requirements in relation to school admission appeals in response to the impact of coronavirus (COVID-19) on school admissions appeal arrangements.
- 6.2 Requirements relating to school admissions appeals have been and will continue to be set out in both the Appeal Regulations 2012 (as amended by the Appeal Amendment Regulations 2020) and the SAAC. The SAAC is made under section 84 of the School Standards and Framework Act 1998.
- 6.3 The amendments to the procedural and constitutional rules relating to school admissions appeal panels have been implemented by virtue of the Appeal Amendment Regulations 2020 under sections 94(5) and (5A), 95(3) and (3A) and 138(7) of the School Standards and Framework Act 1998 in preference to any amendment to the SAAC. This is because the procedure for amending the SAAC set out in section 85 of the School Standards and Framework Act 1998 would necessitate a longer delay to the new procedural and constitutional rules coming into force, which is undesirable due to their urgency. The SAAC and the Appeal Regulations 2012 will continue to be read alongside each other. Where the Appeal Amendment Regulations 2020 amend procedure that is set out in the SAAC, the Appeal Amendment Regulations 2020 will take precedence. Guidance has been published alongside the Appeal Amendment Regulations 2020 to ensure that those involved in school admission appeals will be able to clearly understand which rules apply in the relevant circumstances. Given the temporary nature of the amended procedural and constitutional rules, it is also considered suitable that the SAAC remains intact and unamended enabling those involved in school admissions appeals to easily revert to a clear and known set of rules once the coronavirus (COVID-19) outbreak has passed.
- 6.4 The Appeal Amendment Regulations 2020 come in to force on 24 April 2020. They will apply to the procedure for appeals lodged between this date but before 31 January 2021, as well as appeals that are already underway but which have not yet concluded at the time the Regulations come into force.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Admission authorities are the bodies responsible for setting and applying a school's admission arrangements. They are governing bodies of voluntary aided and foundation schools, academy trusts and local authorities. They are concerned that the coronavirus (COVID-19) outbreak will make it impossible to meet the procedural and constitutional admission appeal requirements set out in the SAAC and the Appeal Regulations 2012.
- 7.2 The SAAC currently requires appeals to be held in person, with all the parties and panel members physically present. Government and Public Health England restrictions relating to social distancing and self-isolation will limit panel members' physical availability. Each panel currently requires three appeal panel members and the appeal cannot continue without a panel of three. Many local authorities run several panels concurrently over the summer months to manage the high numbers of appeals. The fact that some schools may have closed temporarily (or may close in the future) has also impacted on effectiveness of deadlines set out in the SAAC.

- 7.3 It is important that those parents who are unhappy with the school they have been offered for their child are given the right of appeal when they need it. The total number of appeals for entry at the start of the academic year 2019/20 was 45,855 (14,086 were for infant and other primary and 31,769 were secondary appeals). Anecdotal evidence from LAs suggests that about 70% of all appeals are held between April and mid-July. To delay all appeals into the autumn or even later would not be fair on parents or children who may have to start at one school and then move to another if their appeal is upheld.
- 7.4 The Appeal Amendment Regulations 2020 introduce some constitutional and procedural flexibility allowing, in some circumstances, appeal panels to consider appeals as a panel of two (rather than three,) hearings to be held remotely on the basis of written submissions (rather than in person) and giving more flexibility in relation to the deadline for the determination of appeals. This will support both the rights of parents, admission authorities and appeal panels while maintaining certain requirements to safeguard procedural fairness and natural justice (including retaining the requirement for the panel to be supported by a trained clerk). This will allow admission authorities to effectively and fairly continue to deal with school admission appeals where it is not reasonably practicable for them to comply with existing requirements due to the coronavirus (COVID-19) outbreak. In addition, the Appeal Amendments Regulations 2020 revise the deadlines relevant to the appeal process so that they refer to calendar days or a fixed date rather than “school days” (which is the term used in the SAAC). This has been necessary due to the fact that schools may be subject to different and unpredictable levels of closure as a result of coronavirus (COVID-19). Schools may not be able to give clear predictions about when they will be in session and when they will not. It may be difficult in practice for parents and admission authorities to get a clear picture of this, which could create uncertainty about when appeal deadlines will actually fall. Moreover, if a school has closed, the appeals process may be undesirably paused for the duration of the school closure. These impacts are exceptional and were unforeseeable.
- 7.5 These Regulations are time limited and expire on 31 January 2021. This is considered a suitable expiry date because it should allow sufficient time to deal with the annual peak in appeals relevant to children starting new schools at the beginning of the academic year 2020/2021. It will also support handling of appeals that are delayed into the autumn, which is also a busy period for appeals from in-year applications, often for year groups other than reception or year 7. The Appeal Amendment Regulations 2020 are subject to review for the time that they are in force.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.
- 9. Consolidation**
- 9.1 There is no plan to consolidate. This instrument will have temporary effect until 31st January 2021, subject to certain savings.

## **10. Consultation outcome**

- 10.1 There is no statutory requirement for us to consult on the Appeal Amendment Regulations 2020. However, over the a three week period leading up to the laying of the Appeal Amendment Regulations 2020, we have engaged with a number of stakeholders, including a number of local authority officers responsible for appeals, the National Association of School Admission Appeal Clerks, representatives from some academy trusts, the Catholic Education Service and Church of England Education. The feedback has been positive and the proposed flexibilities around how an appeal is administered, have been welcomed.

## **11. Guidance**

- 11.1 Guidance is provided for admission authorities and is available at <https://www.gov.uk/government/publications/school-admissions-appeals-code/changes-to-the-school-admission-appeals-code-regulations-during-the-coronavirus-outbreak>. A statement was issued to interested parties and published on GOV.UK on 14th April 2020 in advance of Primary School National Offer Day. This set out the headline proposals and provided a frequently asked questions section. This announcement assisted local authorities and admission authorities to advise parents about their proposed admission appeal process.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is on the state-funded schools sector including local authorities, governing bodies and academy trusts to the extent that these bodies are responsible for appeal panels. The Appeal Amendments Regulations 2020 apply directly to maintained schools and indirectly to academies by virtue of their funding agreements. As a result of these amending Regulations, the bodies involved in school admission appeals will have more flexibility as to how they can respond and deploy their resources in relation to school admissions appeals during the coronavirus (COVID-19) outbreak. This flexibility is welcomed by the sector, including parents who will not face delays around uncertainty of where their child will attend school.
- 12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant impact on business, charities or voluntary bodies is foreseen and, because the Appeal Amendment Regulations 2020 have effect for a temporary period up to 31 January 2021.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The Regulations place an obligation on the Secretary of State to review the effectiveness of regulations 6 to 11 during the period for which they have effect.
- 14.2 The Department will continue engagement with stakeholders to monitor the impact of the amended procedural and constitutional rules and the continued impact of coronavirus (COVID-19) on the administration of school admission appeals and appellants. The Department collects annually, data from local authorities on the number of appeals and the rates of these being upheld. This data is published each

year in August here [www.gov.uk/government/collections/statistics-admission-appeals](http://www.gov.uk/government/collections/statistics-admission-appeals). Further regulations may be introduced to reduce or extend the time period or application of the flexibilities if this is deemed necessary in light of events connected to the coronavirus (COVID-19) outbreak.

## **15. Contact**

- 15.1 Alison Powell at the Department for Education Telephone: 07469031673 or email: [Queries.ADMISSIONS@education.gov.uk](mailto:Queries.ADMISSIONS@education.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Kim Sibley, Deputy Director for Admissions, Academies Portfolio and School Organisation, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nick Gibb, Minister of State for School Standards at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.