

EXPLANATORY MEMORANDUM TO
THE SCHOOL ADMISSIONS (ENGLAND) (CORONAVIRUS) (APPEALS
ARRANGEMENTS) (AMENDMENT) REGULATIONS 2021

2021 No. 14

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.

2. Purpose of the instrument

2.1 These regulations extend, from 31 January 2021 to 30 September 2021, the period during which revised constitutional and procedural rules operate for school admissions appeals to address the impact of the coronavirus (COVID-19) outbreak.

2.2 This will allow admission appeals to continue to be conducted effectively despite the on-going impacts of the coronavirus (COVID-19) outbreak on school admission appeals, including social distancing and self-isolation measures which restrict the ability of parties to meet for appeal hearings in person and creates 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 None.

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)

3.2 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 All requirements relating to school admissions appeals derive from the School Admissions (Appeal Arrangements) (England) Regulations 2012 (“the 2012 Regulations”) and the School Admissions Appeal Code (“the SAAC”). The SAAC is made under section 84 of the School Standards and Framework Act 1998.

- 6.2 In response to the coronavirus (COVID-19) outbreak, [the School Admissions \(England\) \(Coronavirus\) \(Appeals Arrangements\) \(Amendment\) Regulations 2020](#) ("the 2020 Amendment Regulations") amended the procedural and constitutional rules relating to school admission appeals for a temporary period.
- 6.3 These Regulations ("the 2021 Amendment Regulations"), which come into force on 31 January 2021, extend the duration of the changes to the rules until 30 September 2021 in response to the continuing impact of coronavirus (COVID-19) on school admissions appeal arrangements. It is not the intention to extend these regulations again unless considered necessary.
- 6.4 The 2021 Amendment Regulations amend the standalone provisions in the 2020 Amendment Regulations which govern the length of time for which the amendments made by the 2020 Amendment Regulations will apply.
- 6.5 The amendments to the rules relating to school admissions appeal panels were implemented by virtue of the 2020 Amendment Regulations 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. Given the temporary nature of the amended procedural and constitutional rules, this is still considered suitable so 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 impacts associated with the coronavirus (COVID-19) outbreak has passed. Guidance was published alongside the 2020 Amendment Regulations and this has been updated in light of the 2021 Amendment Regulations to ensure that those involved in school admission appeals will be able to clearly understand which rules apply in the relevant circumstances, and until what date.
- 6.6 As a result of the 2021 Amendment Regulations the rules introduced under the 2020 Amendment Regulations will now generally expire on 30 September 2021. However, regulation 4 of the 2021 Amendment Regulations sets out certain savings provisions which mean that appeals which are sufficiently well progressed as at the new expiry date can continue to use the rules under the 2020 Amendment Regulations where reverting to the rules set out in the 2012 Regulations would be unduly burdensome. If an appeal is sufficiently well progressed by 30 September 2021 so that: (i) the appeal panel has already been constituted as a panel of two; and/or (ii) the panel had already started to decide the appeal on the basis of written submissions, the appeal can be concluded using the appropriate rules set out in 2020 Amendment Regulations. Where an appeal is not so far progressed by the expiry date (for example, where the panel has not yet been appointed, where the panel is constituted as a panel of three, and/or where consideration of the decision has not yet started), the rules set out in the 2012 Regulations and SAAC relating to the hearing of the appeal and constitution of the appeal panel would apply under regulation 5 of the 2020 Amendment Regulations. The savings provisions in relation to deadlines or timelines mean that any time limits prescribed or determined under the 2020 Amendment Regulations in relation to an appeal underway on the 30 September 2021 will continue to apply to ensure administrative certainty.

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. With continued social distancing and self-isolation measures in place, they remain concerned that the coronavirus (COVID-19) outbreak will continue to make it very difficult to meet the usual procedural and constitutional admission appeal requirements set out in the SAAC and the 2012 Regulations without the flexibilities made available as part of the 2020 Amendment Regulations in response to the coronavirus (COVID-19) outbreak. 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 heard for entry at the start of the academic year 2019/20 was 48,113 (12,465 for primary and 35,658 for secondary).
- 7.2 Prior to the 2020 Amendment Regulations, appeals were required to be held in person, with all the parties and panel members physically present. Additionally, each panel required three appeal panel members to continue. Many local authorities run several panels concurrently from March through to September to manage the high numbers of appeals.
- 7.3 The 2020 Amendment Regulations, which came into force on 24 April 2020, introduced 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 supported 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). These temporary flexibilities have allowed 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.
- 7.4 We have continued to review the 2020 Amendment Regulations since they came into force and the feedback has been overwhelmingly positive. Our survey of a sample of local authorities showed that approximately 7000 appeals had been heard under the temporary arrangements and two thirds of local authorities reported that the appeals made on time had all been held before September. It was important to reduce the risk that significant numbers of appeals were held in the autumn term which 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. Respondents unanimously supported an extension to the 2020 Amendment Regulations in order to ensure that appeals can continue to be held on time.
- 7.5 In addition, the 2020 Amendment Regulations revised 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 was necessary due to the fact that schools were subject to different and unpredictable levels of operation as a result of coronavirus (COVID-19). It may have been difficult in practice for parents and admission authorities to get a clear picture of when schools were in session or not,

which could create uncertainty about when appeal deadlines will actually fall. On 4th January 2021 the government took the decision to close all schools to most pupils, and this is expected to last until late February and possibly longer. At the point when schools across England do return there will remain a risk of localised disruption to school sessions as a result of coronavirus (COVID-19) infections. As a result, it is useful and prudent to retain calendar days or fixed dates rather than school days as part of appeal deadlines to provide certainty in all eventualities. Additionally, the use of calendar days or fixed days has been in place since the enactment of the 2020 Amendment Regulations and has been working efficiently; to revert to the use of school days in the middle of an academic year, (while keeping other flexibilities in place) would cause unnecessary disruption to the appeal process.

- 7.6 Where parents consider there is evidence of maladministration on the part of the admission authority in carrying out their admission appeal, they can refer their complaint to the local Government Ombudsman, or for academy schools to the Secretary of State for Education. The introduction of the temporary regulations has not seen a significant rise in maladministration complaints related to the temporary changes, indicating that despite the changes, parents using the appeal system have generally not experienced significant issues.
- 7.7 The 2021 Amendment Regulations extend the duration of operation of the amendments made by the 2020 Amendment Regulations which now expire on 30 September 2021, rather than 31 January 2021. 30 September 2021 is considered a suitable expiry date because it should allow sufficient time to deal efficiently with the next annual peak in appeals relevant to children starting new schools at the beginning of the academic year 2021/2022 and will conclude with the start of the new school year.
- 7.8 The 2020 Amendment Regulations as amended by the 2021 Amendment Regulations contain a review clause and will remain 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 extend the duration of the amendments made under the 2020 Amendment Regulations which will now have temporary effect until 30 September 2021, subject to certain savings.

10. Consultation outcome

- 10.1 There is no statutory requirement for us to consult on the 2021 Amendment Regulations. However, we have continued to review the 2020 Amendment Regulations since they came into force and it is clear that admission authorities need continued flexibility in order to continue to administer admission appeals. 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 Service. We have also consulted our National Admissions

stakeholder group who is representative of many of these organisations as well as local authorities across England through our reviews of the regulations. Stakeholders have been very clear that the 2020 Amendment Regulations and guidance had worked well and without the flexibility provided, many parents would have had delayed appeals or not been able to have an appeal hearing. We also consulted this group and other stakeholders with admission appeal responsibilities via a short questionnaire. The results clearly showed that although the temporary arrangements had initially taken some time to implement, once up and running they worked efficiently. There were a small number of problems concerning technology for remote hearings, but these issues are now reported as largely resolved and we do not envisage them occurring again once the regulations are Guidance extended.

- 10.2 The feedback has been positive and the proposed flexibilities around how an appeal is administered, have been welcomed. All of the representatives we consulted are unanimous about providing an extension to the 2020 Amendment Regulations so appeals for the 2021/22 intake can be carried out under the temporary arrangements if necessary.

11. Guidance

- 11.1 Guidance for admission authorities is available here [\[link\]](#).

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 2021 Amendment Regulations apply directly to maintained schools and indirectly to academies by virtue of their funding agreements. As a result of the 2021 Amendment Regulations, the bodies involved in school admission appeals will continue to 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 continues to be welcomed by the sector, including by 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 2021 Amendment Regulations have effect for a temporary period up to 30 September 2021.

13. Regulating small businesses

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

14. Monitoring & review

- 14.1 The 2020 Amendment 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 (and as extended by the 2021 Amendment Regulations). Reviews were carried out in August 2020 and October 2020. The next review will be in April 2021 by which time the new peak in appeals will be starting.

- 14.2 The department will continue to engage 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: [Statistics: admission appeals - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/statistics-admission-appeals) . It is not the intention to extend these regulations further unless considered necessary.

15. Contact

- 15.1 Alison Powell at the Department for Education Telephone: 07469031673 or email: 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.

(ANNEX TO BE DELETED IF NOT NEEDED)

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The [Title of Minister, name, OR Name of Authority] has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“[In [my/our] view the [Title of instrument] should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: [Free text - *if referring to previous explanations in the Legislation or Policy Sections in this template, please give specific sub-Section references*]

If the Minister is disagreeing with a sifting committee recommendation:

“[I am/we are] of the opinion that, although the [SLSC and/or European Statutory Instruments Committee] has/have recommended that this instrument should not be made unless a draft of the instrument has been laid before, and approved by a resolution of each House of Parliament (i.e. the draft affirmative procedure), that the [Title of instrument] should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.3 This is the case because: [free text - *if referring to previous explanations in the Legislation or Policy Sections in this template, please give specific sub-Section references*].

2. Appropriateness statement

- 2.1 The [Title of Minister, name] has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“[In [my/our] view the [Title of instrument] does no more than is appropriate”.

- 2.2 This is the case because: [Free text - *if referring to previous explanations in the Legislation or Policy Sections in this template, please give specific sub-Section references*].

3. Good reasons

- 3.1 The [Title of Minister, name] has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“[In [my/our] view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are: [Free text - *if referring to previous explanations in the Legislation or Policy Sections in this template, please give specific sub-Section references*].

4. Equalities

- 4.1 The [Title of Minister, name] has made the following statement(s):

“The [draft] instrument [does *or* does not] (*delete as necessary*) amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

[The effect of ... is...(*delete if unnecessary*)”].

4.2 [Free text] (*If the text in 4.1 states that the instrument does amend, repeal or revoke, the Minister must make a second statement of the effect of each such change and the reason for it, and both statements are published in the EM).*

4.3 The [Title of Minister, name] has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

[“In relation to the [draft] instrument, [I, Name of Minister **OR** we, Name of Authority] have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”].

4.4 [Free text] (*See separate ‘guidance on equalities and delegated powers statements’, Annex B, for what further statements/sections/Annexes should be included after this first sentence, in line with good practice – particularly if there is evidence of limited or significant impact on equalities.*)

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

6. Criminal offences

6.1 The [Name of Minister] has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In [my/our] view there are good reasons for the creation of a criminal offence and for the penalty in respect of it in [Title of instrument].”

6.2 These are: [Free text - *if referring to previous explanations in the Legislation or Policy Sections in this memorandum, please give specific sub-Section references*]

7. Legislative sub-delegation

7.1 The [Title of Minister, name] has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

[“In [my/our] view it is appropriate to create a relevant sub-delegated power in [Title of instrument].”

7.2 This is appropriate because: [Free text - *if referring to previous explanations in the Legislation or Policy Sections in this memorandum, please give specific sub-Section references. N.B. a “relevant sub-delegated power for the purpose of this statement is one which is exercisable to make legislation other than by a Minister of the Crown or a Devolved Authority making Statutory Instruments, so your explanation will be along the lines of either:*

- “It is appropriate to delegate a legislative power to [ALB X] because...,” or
- “It is appropriate for the Minister to exercise this legislative power by [rules/x] rather than by SI, because...”

or both.]

8. Urgency

8.1 The [Title of Minister, name] has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

["In [my/our] view by reason of urgency, it is necessary to make [Title of instrument], without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament.”

8.2 This is because: [Free text - *if referring to previous explanations in the Legislation or Policy Sections, please give specific sub-Section references.*]