

**EXPLANATORY MEMORANDUM TO**  
**THE SCHOOL ADMISSIONS (ENGLAND) (CORONAVIRUS) (APPEALS**  
**ARRANGEMENTS) (AMENDMENT) (NO. 2) REGULATIONS 2021**

**2021 No. 992**

**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 30 September 2021 to 30 September 2022, the period during which more flexible requirements are being made available for school admission appeals, where it is not reasonably practicable for them to be held in line with the usual requirements, for a reason related to the incidence or transmission of coronavirus (COVID-19).

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

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

3.1 None.

**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 admission appeals derive from the School Admissions (Appeals Arrangements) (England) Regulations 2012 (“the 2012 Regulations”) and the School Admissions Appeals Code.

6.2 In response to the COVID-19 pandemic, the School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2020 (“the 2020 Amendment Regulations”), which came into force on 24 April 2020, amended the rules relating to school admission appeals for a temporary period. These regulations were extended until 30 September 2021 by the School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2021 (“the 2021 Amendment Regulations”), which came into force on 31 January 2021. These new regulations (“the 2021 (No.2) Amendment Regulations”), which come into force on 30 September 2021, further extend the duration of the changes to the rules until 30 September 2022. These regulations were implemented under sections 94(5) and (5A), 95(3) and (3A) and 138(7) of the School Standards and Framework Act 1998.

6.3 Regulation 4 of the 2020 Amendment Regulations retains certain provisions to prevent disruption to appeals that are already underway at the new expiry date (30 September 2022). Where an appeal panel has already been constituted as a panel of two or the panel has already started to decide the appeal on the basis of written submissions, the appeal can be concluded using the rules set out in the 2020 Amendment Regulations. Any time limits already prescribed or determined under the 2020 Amendment Regulations will also continue to apply.

## **7. Policy background**

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

7.1 Prior to the 2020 Amendment Regulations, appeals were required to be held in person and heard by a panel of at least three members. The 2020 Amendment Regulations introduced some flexibility allowing, where required by circumstances related to COVID-19, appeals to be considered by a panel of two members, for hearings to be held remotely or on the basis of written submissions, and for more flexibility in relation to the deadline for the determination of appeals. In addition, the deadlines were revised to refer to calendar days or a fixed date rather than “school days” given the period of school closures. These flexibilities supported the rights of the parents, admission authorities and appeal panels, while maintaining certain requirements to safeguard procedural fairness and natural justice.

7.2 Although the government has lifted most restrictions, self-isolation measures remain in place for those testing positive for COVID-19. In addition, there remains a risk that further control measures may be applied should there be an resurgence in infection rates or to manage a new variant of concern. Admission authorities are concerned that the possibility of further control measures puts at risk their ability to guarantee parents’ right of appeal in line with the usual requirements, and in a timely way. These regulations provide certainty that regardless of the situation around COVID-19, parents retain the right of appeal. By their design, they act purely as a contingency because, where it is reasonably practicable to comply with the usual appeal requirements, admission authorities must do so.

7.3 30 September 2022 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 2022/23 academic year, heard between April and July after the National Offer Days.

## **8. European Union Withdrawal and Future Relationship**

8.1 This instrument does not relate to the 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.

## **10. Consultation outcome**

10.1 We have continued to review the 2020 Amendment Regulations since they came into force, including a recent survey of local authorities, representatives of some academy trusts, the National Association of School Admission Appeal Clerks, the Catholic Education Service and the Church of England Education Service. Respondents were unanimous in supporting a further extension of the 2020 Amendment Regulations. In addition, respondents reported that although the temporary arrangements had initially

taken some time to implement, they worked efficiently and effectively and that, without the flexibility provided, many parents would have had delayed appeals or not been able to have an appeal hearing at all.

## **11. Guidance**

- 11.1 Guidance for admission authorities and appeal clerks and panel members is available here: [Changes to school admission appeals due to coronavirus - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/changes-to-school-admission-appeals-due-to-coronavirus).

## **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 setting up appeal panels. These regulations apply directly to maintained schools and indirectly to academies by virtue of their funding agreements.
- 12.3 A full Impact Assessment has not been prepared for this instrument because there is no, or no significant impact on business, charities or voluntary bodies.

## **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 impact of the 2020 Amendment Regulations and of COVID-19 on the administration of admission appeals will continue to be monitored through stakeholder engagement.
- 14.2 A statutory review clause is included in the 2020 Amendment Regulations and places an obligation on the Secretary of State to review the effectiveness of the regulations during the period for which they have effect. The next review will be in April 2022.

## **15. Contact**

- 15.1 Taslima Miah at the Department for Education Telephone: 01325 340672 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, School Organisation and Transport, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt Hon Nick Gibb MP, Minister for State for School Standards, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.