

GUIDANCE DOCUMENT

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

This guidance is produced by Lawyers in Local Government (LLG) and the Association of Democratic Services Officers (ADSO). for the purpose of highlighting the changes brought in by the above regulations for the benefit of its members. It does not constitute legal advice and should not be relied upon in that capacity.

The Appeal Amendment Regulations 2020 amend the School Admissions (Appeals Arrangements) (England) 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.

The effect of these regulations is to provide flexibility for panel hearings to take place either in person, by telephone, video conference or through paper-based appeals where all parties can make representations in writing. It relaxes the rules on what happens if one panel member withdraws to enable the remaining two panel members to continue and conclude the appeal and amends timings and deadlines and provides flexibility for Admission Authorities to set revised reasonable deadlines for matters such as the submission of additional evidence.

General

- r.1** The regulations came into force on 24th April 2020.
- r.2** They amend appeals under the School Admissions (Appeals Arrangements) (England) Regulations 2012 (the “2012 Regulations”) which are lodged on or after 24th April 2020 but before or on 31st January 2021. It also applies to appeals lodged before the 24th April 2020 commencement date where they have not yet been ‘fully determined’.
- r.3** Provides a positive obligation for the Secretary of State to review the effectiveness of regulations 6 to 11 throughout the period in which they remain in force. (see r6-r11 below)

Savings Provisions

- r.4** Provides a savings provision for regulations 6 to 11 to continue post 31st January 2021 in three circumstances:-

1. Where a panel of two members were originally convened, it may continue to consider the appeal as a panel of two.
2. Where a panel has started to decide an appeal on written information it may continue to do so.
3. Time limits prescribed or determined under paras 3-5 of schedule 2 continue to apply (see section on Time Limits below)

r.5 Subject to regulation 4 above, this reasserts that regulations 6 to 11 cease to have effect and that the School Admissions (Appeals Arrangements) (England) Regulations 2012 apply for appeals lodged either on or after 1st February 2021 or on or before 31st January 2021 which have not been decided.

Note the terminology difference between those appeals lodged before the commencement date of 24th April 2020 which are not 'fully determined' being caught by the new regulations but those made on or before 31st January 2021 which have not yet been 'decided'.

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

r.6 Amends the above regulations as follows:-

Interpretation

Inserts interpretation into regulation 3 to include:-

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

“admission decision” (that referred to in 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” (SARS-Cov-2)

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

r7(a) inserts after regulation 3 of the 2012 Regulations “it is not ‘reasonably practicable’ to comply with the requirements to appoint an appeal panel of 3 eligible members (para 1(1) and (2) of Schedule 1) or the arrangements required under the School

Admissions Appeal Code (SAAC) including postponement were a panel reduces to 2 members **or**

r7(b) “is not ‘reasonably practicable’ to comply with the requirement to allow parties to appear in person” (paragraphs 2.12 or 6.4b) of the SAAC).

Remote Access

“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.

SAAC

“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 and is available to view at <https://www.gov.uk/government/publications/school-admissions-appeals-code>.

r8 This substitutes ‘the Schedule’ in reg 5 of the 2012 Regulations with the new ‘Schedule 1 (subject to para 1 of Schedule 2 which deals with panels of two members – see rule 11 below).

Procedure for appeals where coronavirus exception applies

r9 This inserts (after regulation 6 in the 2012 regulations) a 7th and 8th regulation which applies the appeal provisions (paragraph 2 of Schedule 2 -see below) and time limits (paragraphs 3 and 5 of Schedule 2- see below) to appeal arrangements made by local authorities, foundation or voluntary aided schools under sections 94 and 95 of the SSFA 1998.

r10 Amends the title ‘Schedule’ in the 2012 Regulations to ‘Schedule 1’ and inserts before paragraph 1, that arrangements made under 1(1) and 1(2) pertaining to the constitution of appeal panels apply subject to the new regulations (see r11) at paragraph 1 of Schedule 2.

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

r11 Amends the 2012 Regulations to insert after Schedule 1 (constitution of appeal panels), the following provisions:-

1(1) The continuation of an appeal panel where one member withdraws to enable 2 members to continue regardless of whether between them they meet the eligibility of a lay person or have experience in education, are acquainted with educational conditions in the area or are parents of registered pupils at school.

1(2) Where 1 above applies and the member withdrawing was the Chair, the admissions authority must arrange (or direct the clerk) to appoint one of the remaining members as the Chair

This means that should a panel member need to withdraw part way through the appeals process, if it is not practical to appoint another member in the normal way, then, as long as the panel is made up of at least two members, they can consider and determine the appeal.

Appeal Hearings

2. An appeal panel can hold an appeal remotely provided:-

- (a) the parties are able to present their full case
- (b) each participant has electronic means to allow them to hear and be heard and where using a live video link, see and be seen for the whole appeal hearing
- (c) the panel considers the appeal can be heard fairly and transparently

2(2) Where an appeal panel cannot be held remotely, the appeal panel may make their decision based on written information submitted.

2(3) Any decision based on written information must ensure that the parties are able to present their full case and any decision taken is 'fair and transparent'.

The Admission Authority, should therefore ensure that they have suitable means to conduct the hearings in a way that allow access to all and does not disadvantage any appellants. In the case of group appeals, it is essential that all appellants have the same rights of access.

These provisions anticipate that Admission Authority clerks ascertain, at an initial stage, the capacity of appellants to participate in hearings by electronic means and to assist the Panel to make an appropriate decision as to the means by which the Hearing shall be conducted.

Please refer to the guidance produced by LLG and ADSO on Remote Meetings Protocol and Procedure Rules which contain useful information on virtual meetings.

Please note:- Appeal hearings should not take place face-to-face until such time that the government guidelines on social distancing advise it is safe to do so and it is reasonably practical for them to take place in this way, whilst adhering to the current guidance.

Time Limits

3(1) Provides that the deadline for appeal to an 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.

3(2) Admissions decisions sent after 28th February 2020 not in accordance with (1)(a) and (b) above, must review the existing deadline for the appeal and set a new deadline for the appeal. If the conditions at 3(3)(a)(b) and (c) below are satisfied, a new deadline for the appeal must be set 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(3) The conditions are;

(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.

3(4) Where a new deadline has been set in accordance with 3(2) above, the recipient of the original admission decision must be sent notification of the new deadline within 28 days of 24th April 2020 **or** seven days from the date of an admission decision which does not comply with sub-paragraph 3(1).

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 3(1) above – **whichever is later.**

In practice, if an offer was made on National Offer Day and provided at least 28 days with a specific date for the appeal to be lodged then the deadline would not need to be revisited. The requirement to review the existing deadline and revise a new deadline may apply where offers were not sent on National Offer Day (as applicable to primary or secondary schools) or notice was calculated with reference to school days. **This is because the regulations now refer to ‘calendar days’. Admission Authorities and Local Authorities should check deadlines in admission decisions. Should deadlines have already expired or appeals have already been lodged, a new deadline is not required.**

3(5) 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, **but** only where the local authority has been informed of the new deadline by that admission authority (r11,3(6)).

4(1) Provides that 14 days written notice must be provided to the appellants or an appeal hearing.

4(2) Provides flexibility for the admission authority to 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

4(3) Stipulates that 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(4) Provides that all appeals lodged, whether in time or not, must be heard and determined by an appeal panel as soon as reasonably practicable.

This would require a reasonable assessment as to whether a late appeal could be heard during the summer and not automatically deferred to September as a matter of course.

5(1) Stipulates that where a governing body receives a written decision to admit a child where (at the time of making the decision), they have been permanently excluded from two schools (under s87(2) SSFA 1998), 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.

5(2) Provides that all appeal hearings to which sub-paragraph 5(1) applies must be held, and appeals determined, '**as soon as reasonably practicable**'

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[School Admissions Appeals Code](#)

[The School Admissions \(Appeal Arrangements\) \(England\) Regulations 2012](#)

[The School Admissions \(England\) \(Coronavirus\) \(Appeals Arrangements\) \(Amendment\) Regulations 2020](#)

[School Standards and Framework Act 1998](#)

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