

2002 No. 2899

EDUCATION, ENGLAND

**The Education (Admissions Appeals Arrangements)
(England) Regulations 2002**

Made - - - - - 18th November 2002

Laid before Parliament 2nd December 2002

Coming into force - - 20th January 2003

In exercise of the powers conferred on the Secretary of State by sections 94(5), (5A) and (5C), 95(3), (3A) and (3B) and 138(7) of the School Standards and Framework Act 1998(a), and of all other powers enabling him in that behalf, and after consulting the Council on Tribunals, the Secretary of State for Education and Skills hereby makes the following Regulations—

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Admissions Appeals Arrangements) (England) Regulations 2002 and shall come into force on 20th January 2003.

(2) These Regulations apply only in relation to England.

Interpretation

2.—(1) In these Regulations—

“the 1972 Act” means the Local Government Act 1972(b);

“the 1998 Act” means the School Standards and Framework Act 1998.

(2) Any reference in these Regulations to a numbered section is a reference to that section of the 1998 Act, unless stated otherwise.

Constitution of appeal panels

3. Where arrangements or (as the case may be) joint arrangements are made by—

(a) a local education authority under section 94(1) or (1A)(c),

(b) the governing body of a foundation or voluntary aided school under section 94(2) or (2A)(d),

(c) the governing bodies of two or more foundation or voluntary aided schools maintained by the same local education authority, in accordance with section 94(3)(e),

(a) 1998 c. 31; sections 94 and 95 were amended respectively by section 50 of, and paragraph 9 of Schedule 4 to, the Education Act 2002 (c. 32). By virtue of section 211 of the 2002 Act, the powers conferred by these provisions are exercisable by the Secretary of State only in relation to England. For the definition of “regulations” see section 142(1) of the 1998 Act.

(b) 1972 c. 70.

(c) Section 94(1A) was inserted by paragraph 8(2) of Schedule 4 to the 2002 Act.

(d) Section 94(2A) was amended by paragraph 8(3) of Schedule 4 to the 2002 Act.

(e) Section 94(3) was amended by paragraph 8(4) of Schedule 4 to the 2002 Act.

- (d) a local education authority and the governing body or bodies of one or more foundation or voluntary aided schools maintained by the authority, in accordance with section 94(4),
- (e) a local education authority under section 95(2),

an appeal shall be to an appeal panel constituted in accordance with the relevant paragraph of Schedule 1.

Duty to advertise for lay members

4.—(1) In this regulation—

- (a) “appropriate authority” means the body or (as the case may be) the bodies responsible for making the arrangements described in regulation 3;
- (b) “lay member” has the meaning given in paragraph 1(3) or 2(3) of Schedule 1.

(2) The appropriate authority shall during the periods referred to in paragraph (3), secure the publication of an advertisement for lay members of appeal panels constituted in accordance with any of the paragraphs of Schedule 1.

(3) The advertisement referred to in paragraph (2) shall be published before the end of the three year period starting when the last advertisement was published under the Education (Lay Members of Appeal Committees) Regulations 1994(a) and thereafter in every three year period following the date upon which an advertisement (or the final advertisement or series of advertisements) was last published in accordance with this regulation.

(4) The advertisement referred to in paragraph (2) above shall—

- (a) identify by name, class, or general description the schools served by the appeal panels to which the advertisement refers;
- (b) be placed in at least one local newspaper circulating in the area in which the schools identified in the advertisement are situated;
- (c) allow a period of at least 21 days from the date of publication of the advertisement for replies.

(5) Before appointing any lay members the appropriate authority shall consider any eligible persons who have applied to the authority in response to the most recent advertisement or series of advertisements placed in pursuance of paragraph (2) indicating that they wish to be considered for such appointment.

Procedure for appeals

5. An appeal to which these Regulations apply shall be made in accordance with Schedule 2.

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 in respect of the child as mentioned in section 86, and
- (b) the arrangements for the admission of pupils published by the local education authority or the governing body in accordance with regulations made under section 92.

(2) 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 shall determine that a place is to be offered to the child only if they are satisfied—

- (a) that the decision was not one which a reasonable admission authority would make in the circumstances of the case; or
- (b) that the child would have been offered a place if the admission arrangements (as published in accordance with regulations made under section 92) had been properly implemented.

(a) S.I. 1994/1303.

(3) 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.

Payment of allowances

7.—(1) For the purpose of the payment of financial loss allowance under section 173(4) of the 1972 Act(a), that provision shall apply to any member of an appeal panel constituted in accordance with any of the paragraphs of Schedule 1; and in that section as it so applies the reference to an approved duty shall be read as a reference to attendance at a meeting of an appeal panel.

(2) Section 174(1) of the 1972 Act(b) shall apply in relation to any appeal panel constituted in accordance with any of the paragraphs of Schedule 1; and in that section as it so applies, the reference to payments at rates determined by the body in question shall be read as a reference to payments at rates determined—

- (a) by the authority, in the case of an appeal panel constituted under arrangements referred to in regulation 3(a), (d) or (e);
- (b) otherwise by the governing body or bodies of the school or schools in question.

Indemnity

8.—(1) Any local education authority or governing body making arrangements such as are referred to in regulation 3 shall indemnify the members of any appeal panel constituted for the purposes of those arrangements against any reasonable legal costs and expenses reasonably incurred by those members in connection with any decision or action taken by them in good faith in pursuance of their functions as members of that panel.

(2) Where any such panel is constituted by—

- (a) the governing bodies of two or more foundation or voluntary aided schools maintained by the same local education authority, or
- (b) a local education authority and the governing body or bodies of one or more foundation or voluntary aided schools maintained by the authority,

any liability arising under paragraph (1) shall be a joint and several liability of the bodies by whom the joint arrangements are made unless otherwise previously agreed in writing between those bodies.

Revocation

9. The Education (Lay Members of Appeal Committees) Regulations 1994 are hereby revoked insofar as they relate to any appeal panel constituted in accordance with any of the paragraphs of Schedule 1.

18th November 2002

David Miliband
Minister of State
Department for Education and Skills

(a) Section 173(4) was amended by paragraph 26 of Schedule 11 to the Local Government and Housing Act 1989 (c. 42).
(b) Section 174(1) was amended by section 25 of the Local Government, Planning and Land Act 1980 (c. 65).

CONSTITUTION OF APPEAL PANELS

Arrangements made by a local education authority

1.—(1) Where the arrangements are those referred to in regulation 3(a), a panel shall consist of three or five members appointed by a local education authority from—

- (a) persons who are eligible to be lay members; and
- (b) persons who have experience in education, are acquainted with educational conditions in the area of the authority or are parents of registered pupils at a school.

(2) Of the members of an appeal panel—

- (a) at least one must be a person who is eligible to be a lay member and is appointed as such; and
- (b) at least one must be a person falling within sub-paragraph (1)(b).

(3) For the purposes of this paragraph a person is eligible to be a lay member if he is a person without personal experience in the management of any school or the provision of education in any school (disregarding any such experience as a governor or in any other voluntary capacity).

(4) Sufficient persons may be appointed by the authority under this paragraph to enable two or more appeal panels to sit at the same time.

(5) No person shall be a member of an appeal panel if he is disqualified by virtue of sub-paragraph (6).

(6) The following persons are disqualified from membership of an appeal panel—

- (a) any member of the authority or governing body of the school in question;
- (b) any person employed by the authority or the governing body or governing bodies, other than a person employed as a teacher;
- (c) any person who has, or at any time has had, any connection with the authority or the school, or with any person within paragraph (b), of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to the authority or the school.

(7) A person employed as a teacher by the authority shall not be taken, by reason only of that employment, to have such a connection with the authority as is mentioned in sub-paragraph (6)(c).

(8) A person shall not be a member of an appeal panel for the consideration of an appeal against a decision if he was among those who made the decision or took part in discussions as to whether the decision should be made.

(9) A person who is a teacher at a school shall not be a member of an appeal panel for the consideration of an appeal involving a question whether a child is to be admitted to that school.

(10) Where, at any time after an appeal panel which consists of five members have begun to consider an appeal, any of the members—

- (a) dies, or
- (b) becomes unable through illness to continue as a member,

the panel may continue with their consideration and determination of the appeal so long as the number of the remaining members is not less than three and the requirements of sub-paragraph (2) are satisfied.

Arrangements made by a governing body

2.—(1) Where the arrangements are those referred to in regulation 3(b), a panel shall consist of three or five members appointed by the governing body from—

- (a) persons who are eligible to be lay members; and
- (b) persons who have experience in education, are acquainted with educational conditions in the area of the authority or are parents of registered pupils at a school.

(2) Of the members of an appeal panel—

- (a) at least one must be a person who is eligible to be a lay member and is appointed as such; and
- (b) at least one must be a person falling within sub-paragraph (1)(b).

(3) For the purposes of this paragraph a person is eligible to be a lay member if he is a person without personal experience in the management of any school or the provision of education in any school (disregarding any such experience as a governor or in any other voluntary capacity).

(4) Sufficient persons may be appointed by the governing body under this paragraph to enable two or more appeal panels to sit at the same time.

(5) No person shall be a member of an appeal panel if he is disqualified by virtue of sub-paragraph (6).

- (6) The following persons are disqualified from membership of an appeal panel—
- (a) any member of the local education authority by whom the school is maintained or of the governing body;
 - (b) any person employed by the authority or the governing body, other than a person employed as a teacher;
 - (c) any person who has, or at any time has had, any connection with the authority or the school, or with any person within paragraph (b), of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to the authority or the school.
- (7) A person employed as a teacher by the authority shall not be taken, by reason only of that employment, to have such a connection with the authority as is mentioned in sub-paragraph (6)(c).
- (8) A person who is a teacher at a school shall not be a member of an appeal panel for the consideration of an appeal involving a question whether a child is to be admitted to that school.
- (9) Where, at any time after an appeal consisting of five members have begun to consider an appeal, any of the members—
- (a) dies, or
 - (b) become unable through illness to continue as a member,
- the panel may continue with their consideration and determination of the appeal so long at the number of the remaining members is not less than three and the requirements of sub-paragraph (2) are satisfied.

Joint arrangements made by a governing body

3. Where the arrangements are those referred to in regulation 3(c), paragraph 2 of this Schedule shall apply as if—
- (a) (except in sub-paragraph (6)) any reference to the governing body were a reference to the governing bodies of both or all the schools; and
 - (b) in sub-paragraph (6), any reference to the governing body of the school in question or to that school were a reference to any of those governing bodies or to any of those schools (as the case may be).

Joint arrangements by a local education authority and one or more governing body

4. Where the arrangements are those referred to in regulation 3(d), paragraph 1 of this Schedule shall apply in relation to those arrangements as it applies in relation to arrangements made by a local education authority such as are referred to in regulation 3(a) but as if in sub-paragraph (6) any reference to the governing body of the school in question or to that school were a reference to the governing body of any school to which the arrangements relate or to any such school (as the case may be).

Appeals by a governing body under section 95

- 5.—(1) Subject to sub-paragraph (2), where the arrangements are those referred to in regulation 3(e), paragraph 1 of this Schedule shall have effect as it has effect where the arrangements are those referred to regulation 3(a).
- (2) A person shall not be a member of an appeal panel for the consideration of an appeal under section 95(2) if he has to any extent been involved in any previous consideration of the question whether the child in question should or should not be reinstated at any school from which he has at any time been permanently excluded, or in any previous appeal relating to the child under section 95(2).

SCHEDULE 2

Regulation 5

PROCEDURE ON APPEAL

Appeals made pursuant to section 94

- 1.—(1) In this paragraph “appeal” means an appeal made under the arrangements referred to in regulation 3(a) to (d).
- (2) Particulars of the arrangements for making an appeal, including information containing the contact details for whichever body or bodies are responsible for those arrangements, shall be set out in any document containing a notification to parents of—
- (a) a decision referred to in section 94(1)(b) and (2) refusing their child admission to a school for which the parents have expressed a preference in accordance with the arrangements made under section 86(1), including any co-ordinated arrangements made in accordance with sections 89B and 89C(a);

(a) Sections 89B and 89C were inserted by section 48 of the Education Act 2002 (c. 32).

- (b) a decision referred to in section 94(1)(a) as to the school at which education is to be provided for their child; or
 - (c) a decision referred to in section 94(1A) or (2A) refusing permission for a child who has already been admitted to a school to enter the school's sixth form.
- (3) An appeal shall be by notice in writing setting out the grounds on which it is made.
- (4) 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.
- (5) 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) one member of the Council on Tribunals may attend, as an observer, any meeting of any appeal panel at which an appeal is considered.
- (6) For the purposes of sub-paragraph (5), 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.
- (7) 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.
- (8) 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, and
 - (b) 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.
- (9) For the purposes of sub-paragraph (8), 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.
- (10) Subject to sub-paragraphs (2) to (9), all matters relating to the procedure on appeals, including the time within which they are to be brought, shall be determined by the body or bodies by whom the arrangements under section 94 are made.

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) one member of the Council on Tribunals may attend, as an observer, any meeting of an appeal panel at which an appeal is considered.
- (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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe matters relating to appeals brought under sections 94 and 95 of the School Standards and Framework Act 1998, as amended by the Education Act 2002. Under section 94 arrangements are to be made by whichever of the local education authority or the governing body are the admission authority for a community, foundation or voluntary school enabling parents to appeal against school admission decisions, including decisions refusing permission to children already admitted to a school to enter the school's sixth form. Under section 95 arrangements are to be made by the local education authority enabling the governing body of a community or voluntary controlled school to appeal against the authority's decision to admit a child who, at the time decision was made, has twice been permanently excluded from a school.

These Regulations prescribe the following—

- (a) the manner in which an appeal panel is to be constituted according to whether the arrangements are made by a local education authority, a governing body or jointly by two or more governing bodies, or by the local education authority and one or more governing bodies (regulation 3 and Schedule 1);
- (b) an admission authority's duty to advertise for lay members (regulation 4); in consequence the Education (Lay Members of Appeal Committees) Regulations 1994 are revoked insofar as they relate to admission appeal panels.
- (c) the procedure an appeal panel are to adopt in hearing appeals (regulation 5 and Schedule 2);
- (d) relevant considerations which an appeal panel are to take into account when hearing an appeal (regulation 6);
- (e) the payment of allowances to appeal panel members by the body or bodies responsible for making the arrangements in respect of financial loss, and travel and subsistence expenses (regulation 7);
- (f) the duty of the body or bodies responsible for making the arrangements to indemnify appeal panel members against expenses or legal costs incurred in respect of any decision they make (regulation 8).

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