

**2007 No. 3206**

**EDUCATION, ENGLAND**

**The Education (Admissions Appeals Arrangements)(England)(Amendment) Regulations 2007**

<i>Made</i>	- - - -	<i>12th November 2007</i>
<i>Laid before Parliament</i>		<i>16th November 2007</i>
<i>Coming into force</i>	- -	<i>17th January 2008</i>

The Secretary of State for Children, Schools and Families, after consulting the Administrative Justice and Tribunals Council(a), makes the following Regulations in exercise of the powers conferred by sections 94(5), 94(5A), 94(5C) and 138(7) of the School Standards and Framework Act 1998(b):

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Education (Admissions Appeals Arrangements)(England)(Amendment) Regulations 2007 and come into force on 17th January 2008.

(2) These Regulations apply only in relation to England and in relation to appeals against decisions communicated on or after 1st March 2008.

**Amendment of Regulations**

2. The Education (Admissions Appeals Arrangements)(England) Regulations 2002(c) are amended as follows.

3. For regulation 6(2) substitute the following—

“(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 may determine that a place is to be offered to the child only if they are satisfied—

- (a) 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; or
- (b) that the decision was not one which a reasonable admission authority would have made in the circumstances of the case.”

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(a) The Council on Tribunals was dissolved and replaced by the Administrative Justice and Tribunals Council on 1<sup>st</sup> November 2007. Paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 requires the Secretary of State to consult the Council before making any procedural rules in respect of an appeal panel constituted under section 94 of the School Standards and Framework Act 1998 (c.31).

(b) 1998 c. 31: subsections (5) and (5A) of section 94 were substituted, for subsection (5) as originally enacted, by section 50 of the Education Act 2002 (c. 32).

(c) S.I. 2002/2899.

4. At the end of regulation 7(1) insert “or associated training”.

5. After regulation 8 insert the following—

**“Training requirements for members**

**8A.**—(1) No person shall serve as an appeal panel member unless he satisfies the training requirements mentioned in paragraph (2).

(2) The training requirements mentioned in this paragraph are as follows—

(a) within the year from 1st March 2007 to 29th February 2008, he has served as a clerk to or member of an appeal panel; or

(b) he has within the last two years been given training on the following—

(i) the requirements of these Regulations,

(ii) the contents of any Code made under section 84 of the School Standards and Framework Act 1998(a),

(iii) the role of the chair of an appeal panel,

(iv) the role of the clerk to an appeal panel,

(v) the role of panel members,

(vi) the duties of an appeal panel under the Human Rights Act 1998(b), the Sex Discrimination Act 1975(c), the Race Relations Act 1976(d), the Disability Discrimination Act 1995(e) and the Equality Act 2006(f), and

(vii) the need for the appeal panel to observe procedural fairness and the rules of natural justice.

(3) Sub-paragraph (2)(a) shall cease to have effect on 1st March 2010.

(4) Any training mentioned in sub-paragraph (2)(b) provided by an admission authority shall be provided free of charge.”

6. For Schedule 1 substitute the following—

**“SCHEDULE 1**

Regulation 3

**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—

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(a) Section 84 was amended by the Education and Inspections Act 2006 (c. 40), section 40, and the Education Act 2002 (c. 32) section 51 and Schedule 22.

(b) 1998 c. 42.

(c) 1975 c. 65.

(d) 1976 c. 74.

(e) 1995 c. 50.

(f) 2006 c. 3.

- (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 paragraph 6.

(6) 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 paragraph 6.

(6) 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) 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.

#### **Joint arrangements made by a governing body**

3. Where the arrangements are those referred to in regulation 3(c)—

- (a) paragraph 2 applies as if any reference to the governing body were a reference to the governing bodies of both or all the schools; and
- (b) paragraph 6 applies as if 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.

#### **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)—
- (a) paragraph 1 applies; and
  - (b) paragraph 6 applies in relation to those arrangements as if 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.

#### **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 applies.

(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).

#### **Disqualification from membership of an appeal panel**

- 6.—(1) The following persons are disqualified from membership of an appeal panel—
- (a) any member of the local education authority which is making the arrangements or which maintains the school in question;
  - (b) any member or former member of the governing body of the school in question;
  - (c) any person employed by the authority or the governing body of the school in question, other than a person employed as a teacher or as a teaching assistant;
  - (d) any person who has, or at any time has had, any connection with the authority or the school, or with any person within sub-paragraph (c), 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;
  - (e) any person who does not satisfy the training requirements mentioned in regulation 8A.

(2) A person employed as a teacher or as a teaching assistant by the local education authority or by the governing body of another school maintained 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 (1)(d).

(3) A person who is a teacher or a teaching assistant 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 the school.

(4) A person shall not be a member of an appeal panel for the consideration of an appeal against a decision if the person was among those who made the decision or provided information which contributed to the decision.

(5) For the purposes of this paragraph a teaching assistant is a person who carries out work under paragraph 10 of Schedule 2 to the Education (Specified Work and Registration) (England) Regulations 2003(a).”

7. In Schedule 2—

(a) for paragraph 1(5)(c) substitute the following—

“(c) if the panel so direct, any person may attend a hearing of an appeal for the following purposes—

(i) training, or

(ii) appraisal of the performance of clerks or appeal panel members.”

(b) for paragraph 2(7)(b) substitute the following—

“(b) if the panel so direct, any person may attend a hearing of an appeal for the following purposes—

(i) training, or

(ii) appraisal of the performance of clerks or appeal panel members.”

12th November 2007

*Jim Knight*  
Minister of State  
Department for Children, Schools and Families

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(a) S.I. 2003/1663.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations, which come into force on 17th January 2008, amend the Education (Admissions Appeals Arrangements) (England) Regulations 2002 (“the principal Regulations”). The principal Regulations contain requirements for the constitution and procedures of appeal panels constituted under sections 94 and 95 of the School Standards and Framework Act 1998. The appeal panels hear appeals against decisions about school admissions.

Regulation 3 amends regulation 6 of the principal Regulations. Regulation 6(2) contains two considerations for panels hearing appeals which concern infant class size. Regulation 3 reverses the order of the considerations to match the order in which they should be considered. An appeal panel may overturn a decision not to admit a child if that decision was not one which a reasonable admission authority would have made. The panel must determine whether it was unreasonable only on the basis of the information available to the admission authority at the time, or information which would have been available to it had it acted reasonably.

There is an amendment to regulation 7 of the principal Regulations to enable appeal panel members to be paid allowances for time spent on training associated with panel membership.

Regulation 5 inserts a new regulation 8A into the principal Regulations. This introduces training requirements for panel members.

A new Schedule 1 to the principal Regulations is substituted by regulation 6. The list of persons who are disqualified from membership of an appeal panel has been updated and consolidated into one separate paragraph.

The Regulations also amend Schedule 2 to the principal Regulations, so that references to the Council on Tribunals are removed. The Administrative Justice and Tribunals Council, which replaces the Council on Tribunals with effect from 1st November 2007, has an automatic right to attend hearings over which it has jurisdiction, so the omitted provisions are no longer required. In addition, observers will be permitted to attend appeal panel hearings for the purposes of appraisal and training.

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STATUTORY INSTRUMENTS

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**£3.00**

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E1568 11/2007 171568 19585