STATUTORY INSTRUMENTS

2020 No. 543

EDUCATION, ENGLAND

The School Discipline (England) (Coronavirus) (Pupil Exclusions and Reviews) (Amendment) Regulations 2020

Made - - - -	*27th May 2020*
Laid before Parliament	*28th May 2020*
Coming into force - -	*1st June 2020*

The Secretary of State makes the following regulations in exercise of the powers conferred by sections 51A(3) and (12), 210(7) and 214 of the Education Act 2002(**a**):

Citation and commencement

1. These Regulations may be cited as the School Discipline (England) (Coronavirus) (Pupil Exclusions and Reviews) (Amendment) Regulations 2020 and come into force on 1st June 2020.

Review of regulations 3 to 8

2. The Secretary of State must review the effectiveness of regulations 3 to 8 during the period starting with 1st June 2020 and ending with 24th September 2020.

Amendment of the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012

3. The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012(**b**) are amended as follows.

4. In regulation 2(1) insert, in the appropriate places—

""coronavirus" means severe acute respiratory syndrome coronavirus 2 (SARS-Cov-2);

"relevant exclusion" means an exclusion occurring—

(a) on or after 1st June 2020 but before 25th September 2020; or

(b) before 1st June 2020 but where, in respect of the exclusion, on that date—

(i) in the case of a permanent exclusion—

(aa) there has not been a concluded review of a decision not to reinstate the pupil, and

(**a**) 2002 c. 32 ("the 2002 Act"). Section 51A was inserted by section 4 of the Education Act 2011 (c. 21). See section 212 of the 2002 Act for the definitions of "prescribed" and "regulations".

(**b**) S.I. 2012/1033.

(bb) the time to apply for a review (in accordance with paragraph 2 of Schedule 1, disregarding sub-paragraph (1A) of that paragraph) has not expired or an application for review has been made;

(ii) in the case of an exclusion for a fixed period, a decision in accordance with regulation 6(2), 15(2) or 24(2) (as the case may be) has not been made;

"remote access" means access to a meeting to enable those who are not all present together at the same place to attend and participate simultaneously by electronic means, including by live audio and live video link;".

5. In regulation 6—

(a) after paragraph (3), insert—

"(3A) Paragraph (3B) applies if—

(a) for a reason related to the incidence or transmission of coronavirus, it is not reasonably practicable for the meeting referred to in paragraph (3)(c) to be held in person; and

(b) the exclusion to be considered at the meeting is a relevant exclusion.

(3B) Where this paragraph applies, the meeting referred to in paragraph (3)(c) may be held using remote access, provided the governing body are satisfied that the following conditions are met—

(a) the participants will be able fully to make representations or discharge their functions (as the case may be);

(b) the participants agree to the meeting being held using remote access;

(c) each participant has access to the electronic means to allow them to hear and be heard and (where using a live video link) see and be seen, throughout the meeting; and

(d) the meeting is capable of being held fairly and transparently.";

(b) in paragraph (7) for "Subject to paragraph" substitute "Subject to paragraphs (7A), (7B) and";

(c) after paragraph (7) insert—

"(7A) Paragraph (7B) applies where, in relation to a relevant exclusion—

(a) immediately before the applicable time limit referred to in paragraph (7)(a) or (b) expires, the meeting referred to in paragraph (3)(c) has not been held because—

(i) it has not been reasonably practicable to do so in person for a reason related to the incidence or transmission of coronavirus; and

(ii) it has not been reasonably practicable to do so by way of remote access for a reason related to the satisfaction of the conditions in paragraph (3B)(a) to (d); and

(b) that time limit expires on or after the 1st June 2020.

(7B) Where this paragraph applies, the time limit referred to in paragraph (7)(a) or, as the case may be, (7)(b), within which the governing body must take steps is extended by 10 school days, or such longer period as is reasonably necessary for a reason related to the incidence and transmission of coronavirus.".

6. In regulation 15—

(a) after paragraph (3) insert—

"(3A) Paragraph (3B) applies if—

(a) for a reason related to the incidence or transmission of coronavirus, it is not reasonably practicable for the meeting referred to in paragraph (3)(c) to be held in person; and

(b) the exclusion to be considered at the meeting is a relevant exclusion.

(3B) Where this paragraph applies, the meeting referred to in paragraph (3)(c) may be held using remote access, provided the management committee is satisfied that the following conditions are met—

(a) the participants will be able fully to make representations or discharge their functions (as the case may be);

(b) the participants agree to the meeting being held using remote access;

(c) each participant has access to the electronic means to allow them to hear and be heard and (where using a live video link) see and be seen, throughout the meeting; and

(d) the meeting is capable of being held fairly and transparently.";

(b) in paragraph (7) for "Subject to paragraph" substitute "Subject to paragraphs (7A), (7B) and";

(c) after paragraph (7) insert—

"(7A) Paragraph (7B) applies where, in relation to a relevant exclusion—

(a) immediately before the applicable time limit referred to in paragraph (7)(a) or (b) expires, the meeting referred to in paragraph (3)(c) has not been held because—

(i) it has not been reasonably practicable to do so in person for a reason related to the incidence or transmission of coronavirus; and

(ii) it has not been reasonably practicable to do so by way of remote access for a reason related to the satisfaction of the conditions in paragraph (3B)(a) to (d); and

(b) that time limit expires on or after the 1st June 2020.

(7B) Where this paragraph applies, the time limit referred to in paragraph (7)(a) or, as the case may be, (7)(b), within which the management committee must take steps is extended by 10 school days, or such longer period as is reasonably necessary for a reason related to the incidence and transmission of coronavirus.".

7. In regulation 24—

(a) after paragraph (3) insert—

"(3A) Paragraph (3B) applies if—

(a) for a reason related to the incidence or transmission of coronavirus, it is not reasonably practicable for the meeting referred to in paragraph (3)(c) to be held in person; and

(b) the exclusion to be considered at the meeting is a relevant exclusion.

(3B) Where this paragraph applies, the meeting referred to in paragraph (3)(c) may be held using remote access, provided the proprietor is satisfied that the following conditions are met—

(a) the participants will be able fully to make representations or discharge their functions (as the case may be);

(b) the participants agree to the meeting being held using remote access;

(c) each participant has access to the electronic means to allow them to hear and be heard and (where using a live video link) see and be seen, throughout the meeting; and

(d) the meeting is capable of being held fairly and transparently.";

(b) in paragraph (7) for "Subject to paragraph" substitute "Subject to paragraphs (7A), (7B) and";

(c) after paragraph (7) insert—

"(7A) Paragraph (7B) applies where, in relation to a relevant exclusion—

(a) immediately before the applicable time limit referred to in paragraph (7)(a) or (b) expires, the meeting referred to in paragraph (3)(c) has not been held because—

(i) it has not been reasonably practicable to do so in person for a reason related to the incidence or transmission of coronavirus; and

(ii) it has not been reasonably practicable to do so by way of remote access for a reason related to the satisfaction of the conditions in paragraph (3B)(a) to (d); and

(b) that time limit expires on or after the 1st June 2020.

(7B) Where this paragraph applies, the time limit referred to in paragraph (7)(a) or, as the case may be, (7)(b), within which the proprietor must take steps is extended by 10 school days, or such longer period as is reasonably necessary for a reason related to the incidence and transmission of coronavirus.".

8. In Schedule 1—

(a) after paragraph 2(1) insert—

"(1A) In relation to relevant exclusions the reference in sub-paragraph (1) to 15 school days is to be read as a reference to 25 school days.";

(b) in paragraph 10, after sub-paragraph (2) insert—

"(3) Sub-paragraph (4) applies if—

(a) for a reason related to the incidence or transmission of coronavirus, it is not reasonably practicable for the meeting referred to in sub-paragraph (1) to be held in person; and

(b) the review to be considered at the meeting relates to a relevant exclusion.

(4) Where this sub-paragraph applies, the meeting referred to in sub-paragraph (1) may be held using remote access, provided the arranging authority is satisfied that the following conditions are met—

(a) the participants will be able fully to make representations or discharge their functions (as the case may be);

(b) the participants agree to the meeting being held using remote access;

(c) each participant has access to the electronic means to allow them to hear and be heard and (where using a live video link) see and be seen, throughout the meeting; and

(d) the meeting is capable of being held fairly and transparently.

(5) Sub-paragraph (6) applies where, in relation to a relevant exclusion—

(a) immediately before the time limit referred to in sub-paragraph (2) expires, the meeting referred to in sub-paragraph (1) has not been held because—

(i) it has not been reasonably practicable to do so in person for a reason related to the incidence or transmission of coronavirus; and

(ii) it has not been reasonably practicable to do so by way of remote access for a reason related to the satisfaction of the conditions in sub-paragraph (4)(a) to (d); and

(b) that time limit expires on or after the 1st June 2020.

(6) Where this sub-paragraph applies, the time limit referred to in sub-paragraph (2) is extended to the twenty-fifth school day after the date on which an application for a review is made, or such later date as is reasonably necessary for a reason related to the incidence and transmission of coronavirus.".

Nick Gibb
Minister of State
27th May 2020 Department for Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 (S.I. 2012/1033) (the '2012 Regulations'). The 2012 Regulations set out procedures in relation to exclusions under section 51A of the Education Act 2002, from maintained schools, pupil referral units and academies (Academy schools and alternative provision Academies) in England.

The amendments made by these Regulations to the 2012 Regulations apply to relevant exclusions, which is defined in the amendments made by regulation 4 as an exclusion occurring on or after the date these Regulations come into force but before 25th September 2020, as well as an exclusion occurring before these Regulations come into force but in respect of which a review has not been concluded, and either the time to apply for a review has not expired before the Regulations came into force, or an application for review has been made. Regulations 3 to 8 are required to be kept under review during the period starting with 1st June 2020 and ending with 24th September 2020 (regulation 2).

The Regulations contain amendments to some of the usual procedural rules, in response to the coronavirus pandemic.

Regulations 3 to 8 enable certain meetings at which the relevant exclusion will be considered, to be held by remote access only where certain conditions are met and where it is not reasonably practicable for a reason related to the incidence of transmission of coronavirus, for the meeting to be held in person.

They also extend by 10 school days the time limits for decisions to be made about whether a pupil should be reinstated and for steps to be taken (including the arrangement of meetings) in relation to the exclusion and for reviews of that exclusion. The time limits are so extended where immediately before the expiry of the time limit it has not been reasonably practicable for the relevant meeting to be held in person for a reason relating to the incidence or transmission of coronavirus, or by way of remote access for a reason related to the satisfaction of the conditions relating to remote access meetings.

If a meeting cannot be held within the new time limits, those time limits are extended as far as is reasonably necessary for a reason related to the incidence or transmission of coronavirus.

Regulation 8(a) extends the time limit within which an application for a review must be made, from 15 school days to 25 school days.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

An explanatory memorandum is published alongside these Regulations on www.legislation.gov.uk. Hard copies are available from the Department of Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

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