

GUIDANCE

School admission appeals: coronavirus (COVID-19)

This guidance explains the school admission appeals process during the coronavirus pandemic.

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Overview

The coronavirus (COVID-19) outbreak will impact on the ability of admission authorities (that is local authorities or school governing bodies, depending on the

type of school) to carry out admission appeals. This is because appeal panels are held in person which would break the current restriction on gatherings of more than two people. There may also be problems securing sufficient independent panel members to undertake appeals and partial school openings and closures may impact on meeting certain appeal deadlines.

Parents must continue to have the right to appeal an admission authority's decision to refuse their child a place at a school. We will therefore be making regulatory changes that will come into force as soon as possible. The new regulations will relax some of the current requirements set out in the The Education (Admission Appeals Arrangements) (Wales) Regulations 2005 and the School Admission Appeals Code 2013 and enable admission authorities to proceed with their admission appeals.

Our aim is to give admission authorities as much flexibility as possible to manage appeals in a way that best suits local circumstances, while also ensuring parents appealing an admission decision this year are supported and are not disadvantaged by the measures in place to protect public health.

What changes are we proposing?

The new regulations, which will be in force until 31 January 2021, will:

- Put beyond doubt that appeals do not have to take place face-to-face. The legislation currently provides that an appeal must give the appellant “an opportunity of appearing and making oral representations” which in our view gives flexibility. However, we will amend the current regulations to expressly provide the flexibility to meet virtually or by telephone.
- Disapply the normal requirements relating to the venue for admission appeals where they are happening remotely or on paper instead of in person.
- Relax the rules with regard to what happens if one of the three panel members (where a panel has been reduced from five members) withdraws (temporarily or permanently) to make it permissible for the panel to continue with and conclude the appeal as a panel of two.
- Amend the deadlines for admission authorities to undertake appeals for the time that the new regulations are in force to allow sufficient time to deal with the annual peak in appeals for children due to start new schools at the

beginning of September 2020. Admission authorities will be required to review their existing timetable and submit a new timetable with revised deadlines.

Details of the deadlines will be set out in the regulations and associated guidance.

We will not however be removing any of the clerking duties for admission appeals. Clerks carry out a key role in relation to appeal hearings in providing advice on admissions law as well as keeping an accurate record of proceedings and ensuring that the appeal hearing is fair.

We will publish guidance to support admission authorities and local authorities in carrying out admission appeals over the coming months that will provide further details on these regulations.

When will the new regulations come into force and when will they expire?

We expect these regulations to come into force as soon as possible. The regulations will be time limited and will expire on 31 January 2021. This will allow admission authorities sufficient time to deal with the annual peak in appeals for children due to start new schools at the beginning of September 2020. The regulations will be subject to review, and we can make amending legislation to bring forward this date if the impact of coronavirus is less significant than anticipated. Transitional provision will mean the new regulations will continue to apply to appeals that are already underway but which have not yet concluded on or before 31 January 2021.

Would it be better to just postpone admission appeals until the autumn term or cancel all appeals?

Parents must continue to be able to submit an admission appeal if they believe the school place they have been offered is unsuitable for their child, and it is right that we provide clarity on this situation now rather than asking parents and the sector to wait until the autumn. Delay would also be very disruptive for children who may need (if their appeal is upheld) to move school after the start of the autumn term,

and would lead to further instability for children who may have already missed some schooling. Making these amendments now ensures families appealing an admission decision this year will not be disadvantaged by the measures in place to protect public health.

How will the new flexibilities maintain fairness for the appeals process?

The new regulations will relax current requirements but will maintain obligations around natural justice and procedural fairness. We will not be relaxing any of the requirements on clerking and our accompanying guidance will reinforce the importance of training, clerking, following correct procedure and ensuring fairness.

Who will decide whether appeals will be heard in person, by telephone, video conference or on paper?

If appeals cannot be safely heard in person due to social distancing measures, the clerk should contact all parties and explain the temporary arrangements for appeals and establish whether everyone has access to the necessary equipment for a telephone or video conference hearing. The clerk should establish not only whether the appellant is able to participate in, but also whether they consent to, a hearing by telephone or video conference. Where a telephone or video conference hearing is not reasonably practicable, the panel should decide the case using the parties' written submissions. Where that happens, the appeal panel must take steps to ensure that the parties are able to fully present their cases in writing, and be satisfied that the appeal is capable of being determined fairly and transparently.

Will these changes apply to all admission appeals?

The new regulations are aimed at supporting admission authorities with both primary and secondary admission appeals over the summer and into the autumn. This is when the majority of all admission appeals take place. They will apply to appeals submitted on or after the day the regulations come into force, but before 31 January 2021. They will also apply to appeals submitted before the regulations

come into force but where the appeal has not been completed.

Will parents still be able to lodge a maladministration complaint if they are unhappy with the way their appeal has been administered?

Yes, it is important that parents are able to lodge a complaint if they have evidence of maladministration. We will not be relaxing any of the requirements in the School Admissions Appeals Code which cover complaints about appeals.

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