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Department for Education

Statutory guidance

Changes to the admission appeals regulations during the coronavirus outbreak

Updated 1 February 2021

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The guidance is **non-statutory** and explains the temporary changes to the School Admission Appeal Regulations 2012 and provides guidance for managing appeals during the coronavirus (COVID-19) outbreak.

It provides guidance for all those bodies who are required to comply with the School Admission Appeals Code[footnote 1], including:

- schools and local authorities
- admission authorities
- admission appeal clerks and panel members

We recognise it may not be possible or appropriate for these bodies to comply with all the requirements of the School Admission Appeals Code (the Appeals Code) and the School Admissions (Appeals Arrangements) (England) Regulations 2012 (the 2012 regulations) during the current coronavirus (COVID-19) outbreak.

In April 2020 we made emergency regulations which temporarily amend the 2012 regulations to give admission authorities, local authorities and appeal panels some additional flexibility when dealing with appeals during the outbreak, and to ensure that appeal timetables work in light of school closures.

The emergency regulations were called The School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2020 (the 2020 regulations). They temporarily amended the 2012 regulations.

These were due to expire on 31 January 2021, however as the coronavirus (COVID-19) restrictions are likely to be in place longer than was first envisaged, we have extended these regulations so the temporary arrangements now apply until 30 September 2021.

The new regulations are called The School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2021.

The 2021 regulations will remain in force until 30 September 2021.

This guidance refers to the amendments in both sets of regulations as 'the temporary regulations'. The Appeals Code has not been amended and the vast majority of its requirements remain appropriate and must still be complied with.

Where the temporary regulations introduce or mandate a temporary change to admission appeal rules which conflicts with an aspect of the Appeals Code, the temporary regulations take precedence. For example, the temporary regulations impose new rules in relation to admission appeal timetables. This guidance sets out where the temporary regulations should be followed in preference to an Appeals Code requirement.

Where an Appeals Code obligation applies in full and is unaltered by the temporary regulations, it is not expressly discussed in this guidance.

Key changes

The overriding principles governing all appeals are procedural fairness and natural justice.

Face-to-face appeal hearings should not take place until the government guidelines on social distancing indicate it is safe to do so. Admission authorities, clerks and panels should comply with the government guidelines applicable at the time of arranging and hearing the appeal.

Where face-to-face hearings cannot take place, hearings should be conducted by telephone or video conference. Where telephone or video conference is not possible, appeals conducted entirely on the basis of written submissions are acceptable.

The temporary regulations impose some new rules relating to appeal timetables. Appeals should be determined as soon as is reasonably practicable and in accordance with the deadlines set by the temporary regulations. Admission authorities are urged to determine appeals lodged as part of the main admissions round before the start of the September term, wherever possible.

Where a panel member needs to withdraw part way through the appeals process and it is not reasonably practicable for the panel to be reconstituted in the normal way for a reason related to the incidence or transmission of coronavirus (COVID-19), a panel made up of at least 2 members may continue to consider and determine the appeal.

Admission authorities remain responsible for making arrangements for appeals against the refusal of a place at their school. They will need to review any arrangements they have already put in place to ensure they comply with the temporary regulations.

Admission authorities should clearly set out for all parties to an appeal how the appeals process will be carried out, including how appeals will be conducted and the expected timescales for each part of the process.

Appeal panels must be transparent, accessible, independent and impartial, and operate according to principles of natural justice. The clerk must keep an accurate record of proceedings.

Parents retain the right to raise a complaint of maladministration on the part of the appeal panel.

Expiry of the temporary regulations

The 2020 temporary regulations came into force on 24 April 2020 and applied until 31 January 2021. The 2021 regulations came into force on 31 January 2021 and will apply to any appeals lodged between that date and 30 September 2021.

The temporary regulations will cease to apply in most respects on 30 September 2021 and the requirements relating to appeals will revert to the rules under the Appeals Code and 2012 Regulations (without amendment).

To ensure that the expiry of the temporary regulations does not prejudice appeals that are already in progress on 30 September 2021, the temporary regulations will continue to apply to appeals lodged before that date.

This is so that:

- any appeal panel that has been constituted as a panel of 2 can conclude the appeal on this basis
- where an appeal panel has started to consider an appeal on the basis of the written information only, it may continue to decide the appeal on that basis
- any time limits set or prescribed under the temporary regulations will continue to apply

It is recommended that admission authorities and those involved in appeals, prepare for appeals to be conducted in the normal way after the end of September 2021.

Section 1: the constitution of appeal panels

Section 1 of the Appeals Code continues to apply in full, except where the temporary regulations have the effect of relaxing certain rules in response to the coronavirus (COVID-19) outbreak.

Membership

Paragraph 1.5 of the Appeals Code requires that the panel must consist of a chair and at least 2 other panel members. The panel must have at least one member from each of the categories listed in **paragraph 1.5 (a) and (b)**.

Paragraph 1.9 requires that, where a panel member withdraws from a panel of 3 members, proceedings must be postponed until the return of that panel member, or a replacement must be appointed and the appeal reheard.

The temporary regulations amend these requirements.

Where it is not reasonably practicable for an admission authority to comply with **paragraphs 1.5 and 1.9** of the Appeals Code for a reason relating to the incidence or transmission of coronavirus (COVID-19), it will be permissible for the panel to continue to consider and determine the appeal where a panel member withdraws, even where there are only 2 members remaining, and irrespective of the background of those members.

The panel must always be constituted in accordance with **paragraph 1.5** of the Appeals Code at the outset. The clerk should note in the record of the proceedings the reason for a panel member withdrawing and the panel continuing with 2 members.

Where it is the chair who has withdrawn, the admission authority or the clerk acting on behalf of the admission authority must appoint one of the other panel members as chair. Decision making must remain by simple majority with the chair having the casting vote as required by **paragraph 2.23** of the Appeals Code.

If more than one member has to withdraw, leaving a panel of fewer than 2 members, new panel members should be appointed so that the panel is constituted in the normal way (that is, as a panel of at least 3 members and in compliance with **paragraphs 1.5 and 1.9** of the Appeals Code). Any part-heard appeals must be reheard.

Training

Paragraph 1.10 of the Appeals Code stipulates that panel members and clerks must not take part in appeal hearings until they have received appropriate training.

This applies equally to appeal hearings held remotely, or determined on the basis of written submissions only.

Where panel members have not yet received training, it may not be possible to provide them with the full training package they would normally receive, for example, if training is delivered in face-to-face sessions. Admission authorities should find alternative ways of ensuring panel members have received training which meets the minimum standards set out in **paragraph 1.10** of the Appeals Code, which still applies in full.

In order to comply with the obligations in **paragraph 1.10** of the Appeals Code, admission authorities should also ensure the panel and clerk have a full understanding of the temporary regulations, this guidance, and how the new process will work, whether that is by telephone or video conference, or on the basis of written submissions only.

Section 2: appeal hearings

Section 2 of the Appeals Code must be complied with in full, except where the temporary regulations have the effect of imposing new procedural rules as a result of the coronavirus (COVID-19) outbreak.

New deadlines and timescales

The temporary regulations set out revised deadlines and timescales for appeals. This has the effect that those involved with appeals can temporarily disregard timetables published and deadlines set in accordance with **paragraphs 2.1, 2.3, 2.4, 2.7 and 2.24** of the Appeals Code. They should instead follow the new timetable requirements in the temporary regulations.

The temporary regulations work to ensure that the appeals process can continue during school closures by removing references to 'school days'. Certain deadlines relating to hearing appeals have been revised and appeals must be considered as soon as reasonably practicable.

Where a local authority or an admission authority informs a parent of a decision to refuse their child a place at a school for which they have applied, the requirements to provide the information set out in **paragraph 2.5** of the Appeals Code still apply.

However, the temporary regulations mean that the local authority or admission authority must include a deadline for lodging an appeal which is at least 28 days from the date of the notification and refers to a date or calendar days, rather than making any reference to school days.

Appellants must be given at least 14 calendar days' written notice of an appeal hearing (although appellants may waive their right to this in writing).

Admission authorities may set new or revised reasonable deadlines relating to the parties submitting evidence and for the clerk to send the relevant appeal papers to the appeal panel and parties. These deadlines may be set on a case by case basis and can take account of the circumstances of each appeal case. It is recommended that all parties are notified of deadlines as soon as is reasonably possible.

Hearings should take place (where a hearing is being held), and cases should be decided as soon as is reasonably practicable.

Decision letters should be sent within 7 calendar days of the hearing or, in the case of an appeal conducted on the basis of written submissions only, within 7 calendar days of the appeal panel making their decision, wherever possible.

Effect of the temporary regulations on hearing appeals

Paragraphs 2.11 and 2.12 of the Appeals Code require that appellants and presenting officers are given the opportunity to appear in person and make oral representations.

Where it is not reasonably practicable to hold an appeal hearing in person for a reason relating to the incidence or transmission of coronavirus (COVID-19), the temporary regulations allow for:

- appeal hearings to be conducted remotely (that is, by telephone or video conference)
- appeals to be determined on the basis of written submissions only

Face-to-face appeal hearings should not take place until the government guidelines on social distancing indicate it is safe to do so and the admission authority considers it is reasonably practicable to hold an appeal in person.

In line with the temporary regulations, where a face-to-face appeal is not possible, the appellant should be offered a hearing by telephone or video conference wherever possible.

The appeal panel can decide to hold the hearing remotely if they are satisfied that:

- the parties will be able to present their cases fully
- each participant has access to video or telephone facilities allowing them to engage in the hearing at all time
- the appeal hearing is capable of being heard fairly and transparently in this way

Where these conditions cannot be met, the temporary regulations allow an appeal panel to make their decision on the basis of written information submitted only. In order for the panel to make a decision which is fair and transparent, they must ensure that the parties are able to fully present their case by way of written submissions.

Where an appeal is being heard remotely or on the basis of written information, the requirements relating to the appeal venue set out in **paragraph 2.14** of the Appeals Code do not need to be followed.

It is recommended that the clerk contacts appellants as soon as possible to explain the temporary arrangements for appeals and to establish whether they have access to the necessary equipment for telephone or video conference. Where possible, the clerk should contact the appellant by telephone.

Appeals conducted by telephone or video conference

It is recommended that admission authorities consider the security of the remote access platforms they are using. They should read the privacy terms and conditions and ensure that, where possible, they enable any security features. If they have any concerns, they should consult their IT provider or staff for support.

Where appeals are to be heard by telephone or video conference, it is recommended that panel members are only appointed if they have, or can be provided with, the necessary equipment and facilities.

The admission authority must provide a presenting officer for a remote access hearing but, as set out in **paragraph 2.11** of the Appeals Code, if no presenting officer attends the hearing, the panel can resolve the case using the evidence submitted by the admission authority if it is satisfied that to do so will not disadvantage the appellant.

As set out in **paragraph 2.12** of the Appeals Code, where an appellant fails or is unable to take part in the hearing at the arranged time, and it is impractical to offer an alternative date, the appeal may go ahead and be decided on the written information submitted. The appellant retains the right to be represented or accompanied by a friend in a remote access hearing.

Appeal panels must comply with their duties under the Equality Act 2010 when conducting remote access appeals, including when considering an appellant's attendance and representation at the hearing. This includes a duty to consider any reasonable adjustments that may be needed. It is recommended that the clerk ensures that any decisions taken in relation to requests for reasonable adjustments are recorded as part of the appeal record and confirmed with the appellant in writing prior to the appeal hearing.

Paragraphs 2.15 to 2.17 of the Appeals Code continue to apply in relation to remote-access appeals. The chair should ensure the remote access appeal is held in private, all the parties can hear everything that is said and have an equal chance to participate. It is recommended that appeal panels bear in mind that appellants may be less familiar with this kind of meeting.

Where there are multiple appeals for the same school, the principles set out in **paragraphs 2.18 to 2.20** of the Appeals Code continue to apply in relation to remote access appeals. These principles should be considered by the admission authority, clerk and appeal panel in deciding whether it is possible for multiple appeals to be heard on a remote access basis, and how they should be organised.

Appeals decided on the basis of the written submissions only

The requirements and principles relevant to appeal hearings in sections 1 and 2 of the Appeals Code must be applied as far as possible to appeals decided on the basis of written submissions only. However, those requirements that can only apply to hearings where the parties are present (either in person or remotely) may be disregarded and/or modifications may be made in order that they can be applied to appeals decided on the basis of written submissions only.

Making a decision on an appeal based on written submissions only

The following process may be used to decide an appeal on the basis of written submissions only, however admission authorities and appeal panels must exercise their own judgement in the circumstances of any particular appeal being considered. This is to determine that the approach ensures the parties are able to fully present their case and allow the panel to make a decision which is fair and transparent.

1. The clerk should contact the appellant and presenting officer, in line with the amended timetable. The presenting officer should be provided with a copy of the appeal lodged and asked to submit the admission authority's arguments and evidence; the appellant should be given the chance to submit additional evidence if they wish. All submissions should be in writing – preferably by email but, where this is not possible, by post.

2. The panel and clerk should meet by telephone or video conference to consider the submissions and formulate questions for the appellant and presenting officer. The aim should be to clarify points made and solicit further relevant information. They should bear in mind that appellants, in particular, may be less familiar with the kind of information and arguments that are required, and may have less experience preparing written submissions.

3. The clerk should send the questions and all the papers to each of the parties, for example, the presenting officer's submission will be sent to the appellant along with both sets of questions, and vice versa.

4. Both parties should reply with answers to the questions, and any further points they wish to make. On receipt, the clerk should send each party's submission to the other party. The parties should be informed that any information or evidence not submitted by any relevant deadline set for submitting evidence might not be considered in the appeal panel's decision.

5. The panel should meet by telephone or video conference, with the clerk, to consider all the information and reach a decision in the same way as prescribed in the Appeals Code.

Section 6: appeals by governing bodies against local authority decisions to admit twice-excluded children

Section 6 of the Appeals Code must be complied with in full, except where the temporary regulations have the effect of imposing new procedural rules as a result of the coronavirus (COVID-19) outbreak.

The temporary regulations set out revised deadlines for appeals by governing bodies against local authority decisions to admit twice-excluded children. This has the effect that those involved with appeals can temporarily disregard deadlines set out in **paragraphs 6.2 and 6.3** of the Appeals Code. They should instead follow the new deadlines in the temporary regulations.

New deadlines and timescales

Governing bodies must make these appeals in writing within 21 calendar days after the day it is given notice of a decision that a twice-excluded child is to be admitted to the school.

These appeals must be determined as soon as is reasonably practicable.

The modifications to the method of determining an appeal made by the temporary regulations (such as an appeal that can be determined using remote access or on the basis of written submissions only) also apply to appeals by governing bodies against local authority decisions to admit twice-excluded children.

As a result, the requirement for parties to appear and make oral representations as set out in **paragraph 6.4** of the Appeals Code may be disregarded in certain circumstances. The relevant paragraphs of section 2 of this guidance apply.

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1. The School Admission Appeals Code (the Appeals Code) imposes mandatory requirements and includes guidelines setting out aims, objectives and other matters in relation to the discharge of functions by the admission authorities of maintained schools as defined in Section 88(1)(a) and (b) of the School Standards and Framework Act 1998, governing bodies and local authorities (when not admission authorities) and admission appeal panels. The Appeals Code also applies to Academies (Academy Schools as defined in Section 1A of the Academies Act 2010, and including those that are Free Schools, University Technical Colleges and Studio Schools). These are state-funded, non-fee-paying independent schools set up under a funding agreement between the Secretary of State and the proprietor of an Academy (commonly referred to as an Academy Trust). Academies are required by their funding agreements to comply with the Appeals Code and the law relating to admissions and admissions appeals. That includes the 2012 regulations as amended by the 2020 and the 2021 regulations (the temporary regulations). This guidance is therefore relevant to academies. ↩

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