

EXPLANATORY MEMORANDUM TO
THE SCHOOL ADMISSION APPEALS CODE 2022

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Subject to parliamentary procedure, the School Admission Appeals Code 2022 (“the Appeals Code”) will revise and replace the existing School Admission Appeals Code 2012 (“the 2012 Appeals Code”).
- 2.2 The purpose of updating the Appeals Code is to allow appeal hearings to be held remotely by video conference and in limited circumstances by telephone conference, as well as in person (face to face). These changes have been made in response to positive feedback from stakeholders about the impact of the temporary flexibilities to hold appeals in this way during the COVID-19 pandemic and following a statutory consultation.

3. Matters of special interest to Parliament

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The Appeals Code applies to admission authorities, governing bodies, local authorities and admission appeal panels in England only.

5. European Convention on Human Rights

- 5.1 Not applicable.

6. Legislative Context

- 6.1 Section 84(1) of the School Standards and Framework Act (“the SSFA 1998”) requires the Secretary of State to issue or revise a Code containing such provisions as he thinks appropriate in respect of the discharge of school admissions functions, including school admission appeals. The purpose of an Appeals Code is to ensure fairness and transparency in making arrangements for, and conducting, school admission appeals. The Appeals Code applies to admission authorities of maintained schools, governing bodies and local authorities (when not admission authorities) and admission appeal panels. Academy trusts are required by their funding agreement to comply with admissions law including the Appeals Code. The School Admissions (Appeals Arrangements) (England) Regulations 2012 (“the 2012 Regulations”) contain requirements relating to the constitution of appeal panels and the payment of allowances to appeal panel members.
- 6.2 The School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2020 (“the Temporary Regulations”), introduced in April 2020 as a result of the COVID-19 pandemic, enabled appeals to continue to be heard during the pandemic by introducing a number of flexibilities which temporarily and,

in limited circumstances, overrode a small number of the requirements of the 2012 Appeals Code.

- 6.3 The Temporary Regulations were due to expire on 31 January 2021 but were extended until September 2021 by the School Admissions (England) (Coronavirus) (Appeal Arrangements) (Amendment) Regulations 2021 (the “2021 Amendment Regulations”) and further extended by the School Admissions (England) (Coronavirus) (Appeal Arrangements) (Amendment) (No.2) Regulations 2021 (the “2021 No. 2 Amendment Regulations”) to expire on 30 September 2022.
- 6.4 The School Admissions (England) (Coronavirus) (Appeals Arrangements) (Amendment) Regulations 2022 (“the 2022 Amendment Regulations”) were laid before Parliament on 16 June and will come into force on 7 July. The 2022 Amendment Regulations amend the expiry of the Temporary Regulations to the end of 30 September 2022 subject to certain savings provisions.
- 6.5 Following public consultation, the Government has laid the draft Appeals Code before Parliament. The Appeals Code, subject to parliamentary procedure, will revise and replace the 2012 Appeals Code.
- 6.6 Subject to the parliamentary procedure set out in section 85 of the SSFA 1998, the Appeals Code will come into force on 1 October 2022. It will apply to all school admission appeals lodged on or after that date.
- 6.7 The Appeals Code changes do not impact any regulations. No amendments were necessary to the 2012 Regulations as we are not changing the provisions relating to panel composition.

7. Policy background

What is being done and why?

- 7.1 The responsibility for making arrangements for school admission appeals lies with the admission authority for the school. The SSFA 1998 imposes mandatory requirements on admission authorities in order to ensure fairness and transparency.
- 7.2 The Appeals Code requires that appellants are given the opportunity to appear in person and to make oral representations. Where a panel member has to withdraw before or part way through an appeal hearing the panel must postpone the remaining hearings until the panel member returns. If they are unable to return, the admission authority must appoint a replacement and the new panel must rehear any appeals that have been part heard before the withdrawal of the panel member.
- 7.3 The Temporary Regulations enabled appeals to be considered by a panel of two members where the third member had to withdraw for a reason related to COVID-19; for hearings to be held remotely (by video or telephone conference), rather than in person, or in some cases on the basis of written submission only; and, changed the timescales relevant to appeals and replaced the fixed deadlines with “as soon as reasonably practicable”. These changes were necessary in order to enable appeals to continue to be heard during the pandemic.
- 7.4 In reviewing the effect of the Temporary Regulations with stakeholders, the department received overwhelmingly positive feedback about the impact of the flexibilities and support for making some of the flexibilities, such as the ability to hold appeal hearings remotely, permanent. Feedback suggested that the temporary arrangements were working well and provided benefits for local authorities, schools

and appeal panels in both time and cost savings. There was also a perception that the arrangements were enabling parents to more easily access the appeals system without, for example, having to take significant time off work and/or incur additional costs such as arranging additional childcare.

- 7.5 We held a statutory consultation on making permanent changes to the Appeals Code when the Temporary Regulations cease to have effect at the end of 30 September 2022. The revised Appeals Code will allow appeals to be held remotely, by video conference and in some circumstances by telephone, as well as in person. The Appeals Code will also allow for hybrid appeals, where one or more participants join remotely and one or more attend in person. This is a change in approach to the 2012 Appeals Code which only allows appeals hearings to take place face to face.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There is no plan to consolidate.

10. Consultation outcome

- 10.1 We consulted on changes to the Appeals Code for 8 weeks between 7 February and 3 April 2022 to make some of the flexibilities available through the Temporary Regulations permanent after the Temporary Regulations expire at the end of 30 September 2022.
- 10.2 The proposed changes included introducing the ability to hold appeal hearings remotely as well as in person; and to allow a panel of two members to conclude an appeal hearing where the third member has to withdraw and where postponing or rescheduling the appeal would cause unreasonable delay to the determination of the appeal.
- 10.3 93% of respondents were in favour of allowing remote hearings. 91% agreed that video conference allowed for a fair and transparent appeal hearing and 60% agreed that telephone appeals allowed for a fair and transparent hearing. 62% of respondents were in favour of hybrid appeals, where one or more participants join remotely and one or more attend in person.
- 10.4 Although a large majority of respondents (82%) were in favour of allowing a panel of two members to continue hearing and concluding an appeal hearing where the third member has to withdraw, significant issues were raised by those who were opposed. Concerns were raised that a panel of two could be unfair or perceived as unfair by parents; that in cases where the remaining panel members disagreed and the chair had a casting vote the appeal would effectively be decided by one person; and a mix of lay and educational members was necessary to ensure a balanced discussion and breadth of experience. We have therefore decided not to proceed with permanently allowing a panel of two to continue hearing appeals where the third member has to withdraw.
- 10.5 We have published the [Government's consultation response](#).

11. Guidance

- 11.1 The department will publish an update in September to existing advice for admission authorities, clerks and appeal panels and parents before the new Appeals Code comes into force on 1 October 2022. The current guidance can be found here: [Admission appeals for school places - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/admission-appeals-for-school-places)

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is to bring further flexibility to the format for holding appeal hearings to include the ability to hold hearings remotely by video conference and in limited circumstances by telephone as well as in person, or a combination of both (“hybrid”) where one or more participants join remotely and one or more attend in person.
- 12.3 A full Impact Assessment has not been prepared for this instrument.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The Department will continue to monitor the impact of the Appeals Code through informal contact with schools, local authorities and parents, and through regular meetings with key stakeholders.
- 14.2 The Department will review whether admission authorities are choosing to take up the additional flexibility introduced to enable appeal hearings to be conducted remotely and whether this is improving access for parents to the appeals process.
- 14.3 The Department will review the response to and impact of the changes and, if necessary, consider publishing supplementary advice to provide additional support to the sector, or consider whether further changes to legislation or the Appeals Code are needed.

15. Contact

- 15.1 Jane Whitfield at the Department for Education email: jane.whitfield@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Kim Sibley, Deputy Director for Admissions, School Organisation and Transport, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Barran MBE, Parliamentary Under Secretary of State for the Schools System at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.