
WELSH STATUTORY INSTRUMENTS

2020 No. 479 (W. 110)

EDUCATION, WALES

**The Education (Admission Appeals Arrangements)
(Wales) (Coronavirus) (Amendment) Regulations 2020**

<i>Made</i>	- - - -	<i>30 April 2020</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>1 May 2020</i>
<i>Coming into force</i>	- -	<i>4 May 2020</i>

The Welsh Ministers in exercise of the powers conferred on the Secretary of State by sections 94(5) and (5A), 95(3) and (3A) and 138(7) of the Schools Standards and Framework Act 1998⁽¹⁾ and now vested in them⁽²⁾ make the following Regulations:

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020 and they come into force on 4 May 2020.

(2) These Regulations apply to appeals to which the 2005 Regulations⁽³⁾ apply which are lodged—

- (a) on or after 4 May 2020 but on or before 31 January 2021;
- (b) before 4 May 2020 but where the appeal has not been fully determined on or before 4 May 2020.

(3) In these Regulations, “the 2005 Regulations” means the Education (Admission Appeals Arrangements) (Wales) Regulations 2005.

Review and expiry of regulations 5 to 12

2.—(1) The Welsh Ministers must review the effectiveness of regulations 5 to 12 during the period for which they have effect.

(2) Subject to regulation 3, regulations 5 to 12 cease to have effect on 31 January 2021.

(1) 1998 c. 31; see section 142(1) for the definitions of “the Assembly”, “prescribed” and “Regulations”. Subsection (5A) was inserted into section 94 by section 50 of the Education Act 2002 (c. 32). Subsection (3A) was inserted into section 95 by paragraph 9 of Schedule 4 to the Education Act 2002.

(2) The functions of the Secretary of State under these sections were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and then to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(3) S.I. 2005/1398 (W. 112), amended by S.I. 2009/823 (W. 73), S.I. 2010/1142 (W.101) and S.I. 2013/2535 (W. 250).

Saving provisions

3.—(1) Regulations 5 to 12 continue to have effect for appeals to which these Regulations apply which have not been decided before these Regulations cease to have effect in the following ways—

- (a) where an appeal panel is constituted to consider the appeal as a panel of two members in accordance with paragraph 1(1) of Schedule 3 to the 2005 Regulations it may continue to decide the appeal as so constituted;
- (b) where an appeal panel has started to decide an appeal on the written information submitted in accordance with paragraph 2(2) of Schedule 3 to the 2005 Regulations it may continue to decide the appeal on that basis;
- (c) any time limits prescribed in or determined under paragraphs 3 to 5 of Schedule 3 to the 2005 Regulations continue to apply.

(2) The expiry of these Regulations under regulation 2(2) does not affect the validity of anything done in accordance with these Regulations before the expiry date.

4. Subject to regulation 3, once regulations 5 to 12 cease to have effect in accordance with regulation 2(2), the 2005 Regulations continue to apply as though these amendments had not been made to appeals lodged—

- (a) on or after 1 February 2021;
- (b) on or before 31 January 2021 and which have not been decided.

Amendment of the 2005 Regulations

5. The 2005 Regulations are amended as follows.

6. In regulation 2(1) (interpretation) at the appropriate places insert—

““the admission authority” (“*yr awdurdod derbyn*”) has the same meaning as in section 88(1)(a) and (b);”;

““admission decision” (“*penderfyniad derbyn*”) means a decision referred to in section 94(1) to (2A) refusing a child admission to a school or entrance to a sixth form or as to the school at which education is to be provided for a child;”;

““coronavirus” (“*coronafeirws*”) means severe acute respiratory syndrome coronavirus 2 (SARS-Cov-2);”;

““coronavirus exception” (“*eithriad y coronafeirws*”) is a condition which applies where, for a reason related to the incidence or transmission of coronavirus—

- (a) it is not reasonably practicable for a local authority or a governing body of a foundation or voluntary aided school to comply with the requirements of paragraph 1(1) and (2) or 2(1) and (2) of Schedule 1 (as the case may be), (“the constitution reason”), or
- (b) it is not reasonably practicable for an appeal panel to comply with the requirement in paragraph 1(6) of Schedule 2, or paragraphs 4.13, 4.14 or 7.5 of the School Admissions Appeals Code for appellants or representatives of local authorities or governing bodies to be allowed to appear in person (“the appeal in person reason”);”;

““remote access” (“*mynediad o bell*”) means access to an appeal hearing to enable those who are not all present together at the same place to attend or participate simultaneously in the hearing by electronic means, including by live audio link and live video link;”;

““the School Admission Appeals Code” (“*y Cod Apelau Derbyn i Ysgolion*”) means the School Admission Appeals Code which is the code issued under section 84 relating to admission appeals;”.

7. In regulation 3 (constitution of appeal panels), for “Schedule 1” substitute “Schedule 1 or, where the constitution reason of the coronavirus exception applies, the relevant paragraphs of Schedule 1, subject to paragraph 1 of Schedule 3”.

8. In regulation 5 (procedure for appeals), for “Schedule 2” substitute “Schedule 2 or, where the appeal in person reason of the coronavirus exception applies, the relevant paragraphs of Schedule 2, subject to paragraph 2 of Schedule 3”.

9. After regulation 8 (indemnity) insert—

“Time limits

9.—(1) Paragraphs 3 and 4 of Schedule 3 have effect for the purposes of determining the timetable in respect of an appeal pursuant to arrangements made by a local authority or governing body of a foundation or voluntary aided school under section 94.

(2) Paragraph 5 of Schedule 3 has effect for the purposes of determining the timetable in relation to an appeal pursuant to arrangements made by a local authority under section 95.”

10. In Schedule 1 (constitution of appeal panels), before paragraph 1, insert—

“A1. Paragraphs 1(1) and (2) and 2(1) and (2) apply subject to paragraph 1 of Schedule 3.”

11. In Schedule 2 (procedure on appeal), before paragraph 1, insert—

“A1. Paragraphs 1 applies subject to paragraphs 2 to 4 of Schedule 3 and paragraph 2 applies subject to paragraphs 2 and 5 of Schedule 3.”

12. After Schedule 2 insert—

“SCHEDULE 3

Regulations 3, 5 and 9

Temporary amendments of Constitution of Appeal Panels and Procedure on Appeal

Arrangements made by a local authority or governing body: when coronavirus exception applies

1.—(1) Where one or more members of an appeal panel has to withdraw from membership of the panel, the appeal panel may continue to consider and determine the appeal provided there remains a panel of at least two members, regardless of whether those members meet the requirements of paragraph 1(2) or 2(2) (as the case may be) of Schedule 1.

(2) Where sub-paragraph (1) applies, and the member withdrawing is the panel chair, the admission authority must appoint (or arrange for the clerk to the appeal panel to appoint) one of the remaining members of the panel as the chair.

Appeal hearings

2.—(1) An appeal panel may decide to hold an appeal hearing using remote access provided—

- (a) the parties are able to present fully their case,
- (b) 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 appeal hearing, and
- (c) the panel considers that the appeal is capable of being heard fairly and transparently.

(2) Where any of the conditions prescribed in sub-paragraph (1)(a) to (c) are not met, an appeal panel may make their decision on the appeal based on the written information submitted.

(3) Where sub-paragraph (2) applies, the appeal panel must ensure that the parties are able to present fully their case, in order for the panel to make a decision on the appeal which is fair and transparent.

Time limits

3.—(1) Where the admission authority or local authority sends an admission decision the deadline for an appeal specified in that admission decision must be—

- (a) at least 28 days from the date of the notification of the admission decision, and
- (b) expressed by reference to a fixed date or a number of calendar days.

(2) In respect of an admission decision sent after 28 February 2020 which contains a deadline for an appeal that is not in accordance with the requirements of sub-paragraph (1)(a) or (b), the admission authority must review the existing deadline for the appeal and, where the condition in sub-paragraph (3) is satisfied, set a new deadline for the appeal which must be—

- (a) at least 28 days from the date of the notification of the new deadline, and
- (b) expressed by reference to a fixed date or a number of calendar days.

(3) The condition is that—

- (a) no appeal has already been lodged in response to the admission decision,
- (b) the existing deadline refers to school days, or the admission authority otherwise considers that the existing deadline is unclear in all the circumstances, and
- (c) the existing deadline has not already expired.

(4) Where a new deadline has been set in accordance with sub-paragraph (2), notification of the new deadline must be sent to the recipient of the original admission decision within 28 days of 4 May 2020 or 7 days from the date of an admission decision which does not comply with the requirements of sub-paragraph (1) whichever is later.

(5) The notification of the new deadline must be sent by—

- (a) the admission authority where that admission authority sent the relevant admission decision, or
- (b) the local authority where that authority sent the relevant admission decision on behalf of another admission authority.

(6) The requirement in sub-paragraph (5)(b) only applies once the local authority has been informed of the new deadline by the relevant admission authority.

4.—(1) The admission authority must provide appellants with at least 14 days' written notice of an appeal hearing.

(2) The admission authority may set new or revised reasonable deadlines for—

- (a) an appellant to submit additional evidence,
- (b) the admission authority to submit its evidence, and
- (c) the clerk to send relevant appeal papers to the appeal panel and the parties.

(3) An appeal panel must send decision letters on appeals to the parties within 7 days of the hearing, or finalisation of the determination of the appeal, wherever possible.

(4) All appeals which have been lodged, whether in time or not, must be heard and determined by an appeal panel as soon as reasonably practicable.

5.—(1) Where the governing body of a school receives a written decision to admit to the school a child to whom, at the time when the decision is made section 87(2) applies, any appeal must be made within 21 days from—

(a) the date of notification of the decision where that date is on or after 4 May 2020, or

(b) 4 May 2020 where—

(i) the decision was notified before 4 May 2020,

(ii) no appeal has been lodged in response to the decision before 4 May 2020, and

(iii) an existing appeal deadline relevant to the decision has not already expired before 4 May 2020.

(2) All appeal hearings to which sub-paragraph (1) applies must be held, and appeals determined, as soon as reasonably practicable.”

30 April 2020

Kirsty Williams
Minister for Education, one of the Welsh
Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 (“the 2005 Regulations”) for appeals brought under sections 94 and 95 of the School Standards and Framework Act 1998 and lodged—

- (a) on or after 4 May 2020 but on or before 31 January 2021, or
- (b) before 4 May 2020 but where the appeal has not been fully determined on or before that date.

Regulation 3(1) provides that regulations 5 to 12 will continue to have effect following the expiry of these Regulations in prescribed, limited circumstances. Otherwise, as provided for by regulation 2(2), these Regulations will expire on 31 January 2021. Regulation 4 sets out that, on expiry, the 2005 Regulations will then apply again to appeals lodged from 1 February 2021 and to appeals ongoing on the date of expiry and which have not been decided by an appeal panel.

Regulation 6 introduces a new definition into regulation 2(1) of the 2005 Regulations: the “coronavirus exception”. That operates in two main ways under these Regulations—

- (a) where it is not reasonably practicable for a governing body or a local authority to comply with the appeal arrangements in paragraph 1 of Schedule 1 for a reason related to the incidence or transmission of coronavirus, paragraph 1 of new Schedule 3 (inserted by regulation 12) applies instead to allow panels of two members to decide appeals (see regulation 7);
- (b) where it is not reasonably practicable for an admission appeal panel to comply with the procedural requirements in paragraph 1(6) of Schedule 2 or the requirements of the School Admission Appeals Code on appeals in person for a reason related to the incidence or transmission of coronavirus, paragraph 2 of new Schedule 3 applies to enable appeal panels to hold hearings by remote access or decide appeals on the basis of the written information provided (see regulation 8).

Paragraphs 3 to 5 of new Schedule 3 make provision for various timelines to apply in respect of appeals to ensure that the admission authorities and governing bodies can set reasonable timelines during the period of operation of these Regulations.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely costs and benefits of complying with these Regulations.