

SL(5)544 – The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020

Background and Purpose

The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020 (“the 2020 Regulations”) are made under powers in sections 94(5), (5A), 95(3), (3A) and 138(7) of the School Standards and Framework Act 1998 (“the 1998 Act”) and make amendments to The Education (Admission Appeals Arrangements) (Wales) Regulations 2005 (“the 2005 Regulations”).

The 2020 Regulations amend the 2005 Regulations to change procedural and constitutional requirements in relation to school admission appeals in response to the impact of coronavirus (COVID-19) on school admissions appeal arrangements.

In specified circumstances appeal panels may consider appeals as a panel of two (rather than three), hearings can be held remotely on the basis of written submissions (rather than in person), and greater flexibility is provided in relation to the deadline for the determination of appeals. The panel is required to be supported by a trained clerk. In addition, the 2020 Regulations revise the deadlines relevant to the appeal process so that they refer to calendar days or a fixed date rather than “school days”, which is the term used in the School Admissions Appeals Code (“the Code”) - the Code is made under section 84 of the 1998 Act.

Requirements relating to school admission appeals have been and will continue to be set out in both the 2005 Regulations (as amended by the 2020 Regulations) and the Code.

The amendments have been implemented in this way in preference to any amendment to the Code. This is because the procedure for amending the Code set out in section 85 of the 1998 Act would necessitate a longer delay to the new rules coming into force, which is undesirable due to their urgency. The Code and the 2005 Regulations will continue to be read alongside each other. Where the 2020 Regulations amend procedure that is set out in the Code, the 2020 Regulations will take precedence.

Guidance will be published alongside the 2020 Regulations to clarify which rules apply in the relevant circumstances. The Code will remain intact and un-amended enabling those involved in school admission appeals to easily revert to a clear and known set of rules once the coronavirus (COVID-19) outbreak has passed.

The 2020 Regulations come in to force on 4 May 2020. They will apply to the procedure for appeals lodged between this date, but before 31 January 2021, as well as appeals that are already underway but which have not yet concluded at the time the 2020 Regulations come into force. Save for those specified provisions that will continue to have effect in limited circumstances (see reg. 3(1)), the 2020 Regulations will expire on 31 January 2021. 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.



Procedure

Negative.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

Standing Order 21.2(iv) - that it appears to have retrospective effect where the authorising enactment does not give express authority for this

Regulation 1(2)(b) has retrospective effect in that it captures appeals commenced before the 2020 Regulations came into force. The Committee notes that this provision was necessary to enable the 2020 Regulations to come into force immediately on the 4 May 2020 whilst still capturing existing appeals (see further Merits point 1. below).

Merits Scrutiny

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The Committee notes the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date subordinate legislation is laid before the Senedd and the date the subordinate legislation comes into force), and the explanation for the breach provided by Rebecca Evans AM, Minister for Finance and Trefnydd, in a [letter](#) to the Llywydd dated 1 May 2020.

The letter notes that the 2020 Regulations temporarily amend certain procedural and constitutional requirements that are set out in the 2005 Regulations relating to school admission appeals panels until 31 January 2021. It goes on to say:

“This change is being made to allow these appeals to continue to be conducted despite significant practical difficulties caused by measures needed to limit the spread of coronavirus (COVID-19). Those measures include the social distancing guidance introduced by the Welsh Government and Public Health Wales, which restricts the ability for parties to meet in person, and the guidance on self-isolation, which causes difficulties in securing sufficient panel members for appeal hearings.”

It states the 2020 Regulations made a “one-off amendment to the 2005 Regulations” with a view to providing the maximum flexibility for the appeals process to continue, thus addressing the concerns of parents about where their children should attend school, whilst limiting the risk of appeals panels contracting or spreading the virus.

The letter notes also, “Further, as the majority of school admission appeals take place in April-July, compliance with the 21 day convention would make it impossible for these flexibilities to be introduced in time for admission authorities to undertake the bulk of their appeals work.”

The Committee notes the [Explanatory Memorandum](#) (“EM”) sets out additional information to support the breach of the 21-day rule and, in particular, highlights there is already a backlog of secondary appeals and that compliance with the rule in this case would potentially paralyse the appeal system for that that period. We further note the EM references positive stakeholder feedback for the proposals (see



para. 5.1); highlights the extensive safeguards that have been built into the 2020 Regulations to ensure appellants still have adequate time to pursue appeals, and that notice of the changes was provided to the sector and parents via guidance published on 16 April 2020 (including a frequently asked questions section), which was Primary Offer Day.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The Committee notes that the EM states, "...it has not been possible to prepare a Business and Regulatory Impact Assessment." Section 76(2)(a) of the Government of Wales Act 2006 defines a regulatory impact assessment as "an assessment as to the likely costs and benefits of complying with relevant Welsh subordinate legislation". Section 76(1) of the Government of Wales Act 2006 requires the Welsh Ministers to make a code of practice setting out their policy on the carry out of regulatory impact assessments in connection with relevant Welsh subordinate legislation. Paragraph 4.2 of the code states that "Welsh Ministers' policy will be to carry out an RIA ... subject to the following exceptions". The Committee notes the sixth bullet of para. 4.2, which appears to apply in the present circumstances and provides that such an assessment is not required, "Where the relevant Welsh subordinate legislation needs to be put in place quickly to deal with an emergency (e.g. foot-and-mouth or avian flu)".

We note however, para. 6.1 of the EM states, "No significant impact on business, charities or voluntary bodies is foreseen and the Appeal Amendment Regulations 2020 have effect for a temporary period up to 31 January 2021." Further, the EM states that engagement has occurred with stakeholders, for example, "The feedback has been positive and the proposed flexibilities around how an appeal is administered, have been welcomed" (para. 5.1).

We note also that both a Children's Rights Impact Assessment (see para. 6.4), and Equality and Human Rights Assessment (see paras. 6.5 and 6), have been carried out noting no adverse effect.

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Regulation 2(2) provides the 2020 Regulations will cease to have effect on 31 January 2021 subject to certain saving provision (set out in reg. 3). The Committee notes the justification in the EM, particularly at para. 4.6, for the duration of the 2020 Regulations, "This is considered a suitable expiry date because it should allow sufficient time to deal with the annual peak in appeals relevant to children starting new schools at the beginning of the academic year 2020/21. It will also support handling of appeals that are delayed into the autumn, which is also a busy period for appeals from in-year applications, often for year groups other than reception or year 7. The Appeal Amendment Regulations 2020 are subject to review for the time that they are in force."

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A Welsh Government response is not required.

Legal Advisers



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