

Department for Education (DfE) guidance on educational provision during lockdown

The government decision on lockdown and the subsequent Department for Education (DfE) guidance vulnerable children and the children of critical workers and actions for schools to take during lockdown.

14 January 2021

Please note: the information contained in this legal update is correct as of the original date of publication.

The government decision on lockdown and the subsequent [Department for Education \(DfE\) guidance](#) on, firstly, vulnerable children and the children of critical workers and, secondly, actions for schools to take during lockdown, have resulted in a number of questions from schools on issues which fall outside the current guidance available.

One area of concern is around how the lockdown affects existing procedures within schools – admission decisions and appeals; exclusion decisions and reviews; and also complaints. Such matters are not covered by the existing guidance, but in our view the DfE guidance provides a clear basis for schools to continue to make decisions in these areas. The DfE guidance is written on the basis that schools will remain open, albeit only for a limited number of pupils who fit the vulnerable/critical worker categories. Schools have not been required to close and there has not been any direction issued by the DfE under the Coronavirus Act 2020 to require closure. As such, schools remain open, with attendance registers being taken for those in attendance physically, and the definition of ‘school day’ will apply.

This position has consequences for schools. Many of the statutory processes, such as those relating to admissions or exclusions and local policies/procedures (e.g. a formal complaint process), require actions to be taken, and rely on the definition of “school day” to provide a timescale for those actions. During the current lockdown, those timescales will continue to apply and action will be required across these areas, i.e. complaints will need to be investigated and responses provided in line with the relevant timescales, and exclusion reviews held either by governing boards or independent review panels within the timescales set out in the School Discipline Regulations 2012 and exclusions guidance (2017). Where a school needs to consider admission applications and its admission arrangements set out a timescale for this, it will be expected to make those decisions in line with its published arrangements.

It is worth noting that under the amendments brought in by the DfE in 2020 to the legal framework for admission appeals and exclusion reviews, there are already some variations to procedures which schools must consider. In relation to admission appeals, the amending regulations have removed reliance on “school days” within the School Admission Appeals Code 2012. However, those amending regulations are due to expire at the end of January 2021, although it is expected that further regulations on this issue will be forthcoming to ensure the possibility of remote admission appeals being utilised for the main appeals during the Summer Term until September 2021. In relation to exclusions, the amending regulations are in place until 24 March 2021. It would be expected that the regulations will be extended to allow remote hearings to continue in relation to exclusions and to continue the extension of timescales for parents to lodge a request for an independent review.

It will be important for schools to recognise this slight change in approach from the DfE in respect of schools being open and consider any current issues which may require action during the current lockdown.

If you need specific advice on the procedures to be adopted or in relation to any concerns raised with the school, please contact [Richard](#) or other members of the [education team](#).

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