

Explanatory Memorandum to the School Admission Appeals Code

This Explanatory Memorandum has been prepared by the Education Directorate of the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the School Admission Appeals Code 2023.

Jeremy Miles MS
MINISTER FOR EDUCATION

7 August 2023

1. Description

1.1 The School Admission Appeals Code which was issued in 2013 (“the 2013 Appeals Code”) has been revised to reflect the Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2023 (“the 2023 Regulations”) that came into force on 3 May 2023.

1.2 The 2023 Regulations amended the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 (“the 2005 Regulations”) to include an option for admission appeals to be undertaken remotely, as well as in person, or a mixture of both. They make permanent, with appropriate adaptations, some temporary arrangements introduced in response to the coronavirus (Covid 19) pandemic.

1.3 The 2023 Regulations apply to both types of admission appeal hearings dealt with under the 2005 Regulations, that is appeals against an admission authority’s refusal to admit a child and appeals by governing bodies against a local authority’s decision to admit to their school, a child who has been permanently excluded from two or more schools.

1.4 The revised School Admission Appeals Code (“the Appeals Code”) also includes some technical amendments which reflect legislative changes since the previous Appeals Code was issued in 2013.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 The School Admission Appeals Code has been amended to address errors identified in the Legislation, Justice and Constitution Committee’s report on the version withdrawn on 26 May 2023 (SL (6)357).

3. Legislative background

3.1 The Appeals Code is made under section 84 of the School Standards and Framework Act 1998 (“the 1998 Act”).

3.2 The relevant functions of the Secretary of State in the 1998 Act 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 virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

3.3 The Appeals Code supersedes the 2013 Appeals Code. The Appeals Code must be laid before the Senedd for 40 days. Provided the Senedd does not resolve not to approve the Appeals Code it will come into force in accordance with the School Admission Appeals Code (Appointed Day) (Wales) Order 2023. That Order is not subject to a Senedd scrutiny procedure and it is anticipated that it will be made

on 23 October 2023 and will provide for the Appeals Code to come into force on 1 November 2023.

4. Purpose and intended effect of the legislation

4.1 The Appeals Code reflects the 2023 Regulations which amended the 2005 Regulations to include an option for admission appeals to be undertaken remotely, as well as in person (face to face) or a mixture of both (hybrid).

4.2 Under the 2023 Regulations the admissions authority (the local authority or governing body depending on the type of school) has the flexibility to decide whether appeals are held in person, remotely or a mixture of the two with some participants attending in person and others remotely. Accordingly, regulation 3 of the 2023 Regulations made a number of amendments to the 2005 Regulations. Regulation 3(5)(a) of the 2023 Regulations inserted a new paragraph A1 into Schedule 2 to the 2005 Regulations. Paragraph A1 allows admission authorities to decide in certain circumstances whether an appeal hearing is to be held in person, by remote access (“a remote appeal”) or partly in person and partly by remote access (“a hybrid appeal”) (paragraph A1(1) of Schedule 2 to the 2005 Regulations as inserted by the 2023 Regulations).

4.3 Admission authorities may decide to hold appeals remotely if they are satisfied that the appeal can be heard fairly and transparently, that the appellants and presenting officer are able to present their case fully and that each participant has access to the electronic means to allow them to hear and be heard and where using a live video link to see and be seen.

4.4 If the admission authority decides to have a remote appeal or a hybrid appeal, it must make all necessary arrangements for the appeal panel to have access to the necessary remote access equipment (paragraph A1(3) of Schedule 2 to the 2005 Regulations as inserted by the 2023 Regulations).

4.5 Regulation 3 of the 2023 Regulations limits the circumstances where appeals can be held entirely by telephone conference (paragraph A1(2) of Schedule 2 to the 2005 Regulations as inserted by the 2023 Regulations).

4.6 Regulation 3 of the 2023 Regulations further amended the 2005 Regulations to allow the admission authority to decide that an appeal may be decided on the basis of written information only, in certain circumstances (paragraph A1(5) of Schedule 2 to the 2005 Regulations as inserted by the 2023 Regulations).

4.7 The Appeals Code reflects these changes. The overall intended effect of the 2023 Regulations and the Appeals Code is to provide flexibility to allow appeals to be held in the most effective way, whilst maintaining the core principles of fairness and equity in the appeals process.

4.8 The Appeals Code applies to school admission appeals taking place in Wales only.

5. Background

5.1 Parents have the right to express a preference for any school they would like their child to attend and where there are places admission authorities (*the local authority or governing body depending on the type of school*) must comply with that preference so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure. Parents have a right to appeal a decision by an admission authority to refuse their child a place at their preferred school.

5.2 The 1998 Act provides the legislative framework for school admission appeals. Section 94 of the 1998 Act provides that arrangements must be made by a local authority or in the case of a foundation or voluntary aided school, a governing body, enabling parents to appeal against school admission decisions, including decisions refusing permission to children already admitted to a school to enter the school's sixth form.

5.3 Section 95 of the 1998 Act provides that arrangements must be made by a local authority enabling a governing body of a community or voluntary controlled school to appeal against the authority's decision to admit a child who, at the time the decision was made, has been permanently excluded from two or more schools.

5.4 Admission appeals panels are independent of the admission authority. As part of its deliberation the panel should consider whether the admission authority has acted correctly in applying its admission arrangements when reaching its decision.

5.5 The 2005 Regulations prescribe matters relating to appeals brought under sections 94 and 95 of the 1998 Act. The Appeals Code, is made under section 84 of the 1998 Act. It imposes mandatory requirements on admission authorities to ensure the appeals process is fair and transparent.

5.6 Prior to these amendments the 2005 Regulations and the Appeals Code provided for appeals hearings to be held in person (face to face) only.

Temporary amendments to appeal arrangements in Wales

5.7 Due to restrictions imposed in response to the Covid-19 pandemic it was not always possible or appropriate to comply with the Appeals Code and the 2005 Regulations. For example, restrictions on social distancing made it impossible to hold hearings in person.

5.8 The Welsh Government therefore introduced the Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020 ("the 2020 Regulations"). The 2020 Regulations temporarily amended the 2005 Regulations to give admission authorities, local authorities and appeal panels some additional flexibility when dealing with appeals during the outbreak. The temporary changes were extended by the further the Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) (Amendment) Regulations 2020 ("the further 2020 Regulations") and the Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) (Amendment) Regulations 2021 ("the 2021 Regulations"). The extension provided by the 2021 Regulations ended on

30 September 2022 (subject to certain exceptions for appeals already in train on that date).

5.9 The temporary changes provided that where it was not reasonably practicable for an admission appeal panel to comply with the procedural requirements in the Appeals Code or Schedule 2 to the 2005 Regulations on appeals in person for a reason related to the incidence or transmission of coronavirus, they were able to hold hearings by remote access or decide appeals on the basis of the written information provided.

5.10 They also provided that where a panel member needed to withdraw part way through the appeals process, and it was not reasonably practicable for the panel to be reconstituted in the normal way for a reason related to the incidence or transmission of Coronavirus, a panel made up of at least two members may continue to consider and determine the appeal. Additionally, various timelines were to apply in respect of appeals to ensure that the admission authorities and governing bodies could set reasonable timelines during the period of operation of the 2020 Regulations, the further 2020 Regulations and the 2021 Regulations.

Review of the effectiveness of the temporary arrangements

5.11 A review of the effectiveness of the temporary arrangements was undertaken during 2022 by way of a survey of the Association Directors of Education Wales (ADEW) School Admissions Officer Group, which has representation from all 22 local authorities and diocesan authorities. Eighteen local authorities responded along with one diocesan authority on behalf of some Church schools in Cardiff.

5.12 The survey results showed that since the temporary arrangements came into force, a total of 3,543 appeals were heard by respondents, 2,937 (83%) of which were held remotely. Of those 943 appeals were successful. The feedback from respondents was positive, suggesting that the temporary arrangements worked well and provided benefits for local authorities, admission authorities, schools, appeal panels and appellants in both time and cost savings.

5.13 A number of respondents provided some feedback they had received from parents with some reporting parents being positive about the remote arrangements. This included not having to take time off work, arrange childcare or travel to venues to attend meetings, particularly in more rural areas. Local authorities also reported the perception that families appeared to be more comfortable undertaking appeals in their own surroundings.

5.14 Admission authorities also reported that many of their panel members are of an older age and are therefore more vulnerable to serious illness from Covid-19 and other seasonal illnesses. Some authorities explained that the pandemic has meant some panel members may refuse to attend hearings in person due to increased risk of transmission. Some admission authorities were concerned that they will not always be able to meet the existing requirements for admission appeals if they cannot pull panels together.

5.15 Some concern was raised regarding appeals determined on the basis of written submissions only. Looking ahead, they felt that face to face or remote

appeals should be retained as options and used whenever possible, with appeals determined based on written information only to be used where those methods are not possible.

5.16 There was little use of the flexibility which allowed two panel members to continue to determine an appeal where one member of the panel drops out due to Coronavirus.

5.17 All 22 local authorities requested that the flexibility provided by remote appeals are retained and made permanent. They pointed to the new way of working where remote working and remote meetings had become the default position. They also point to the current cost of living crisis being a real barrier for some families and panel members travelling to venues to attend hearings and to challenges for local authorities in the current financial climate.

6. Regulatory Impact Assessment (RIA)

6.1 As the Appeals Code makes factual amendments to update subordinate legislation and the amendments do not alter the policy (or its impact) in any significant way or how it is applied in a given situation, an RIA is not required. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.

7. Consultation

7.1 A consultation ran from 18 January 2023 to 22 March 2023 on the policy to allow appeals to take place remotely as well as in person, or a mixture of both and on the Appeals Code. The consultation was published on the Welsh Government Website and drawn to the attention of local authorities, admissions authorities, schools, and diocesan authorities. A total of 50 responses were received. The consultation documents and a summary of the responses are available at: [Changes to school admission appeal arrangements | GOV.WALES](#). The main points are included below.

7.2 There was almost unanimous support, with 98% of respondents agreeing with the proposal to include an option for appeals to be held remotely. The majority of respondents (96%) agreed that face to face appeals and appeals held by video conference allow for a fair and transparent hearing. There was more qualified support for appeals held by telephone conference with 37% of respondents agreeing that these allowed for a fair and transparent hearing, and the same percentage disagreeing. The main concern was around the inability for panels to see the expressions of those attending and to be able to pick up on their body language and visual clues to interpret the need for support. Whilst recognising the importance of being able to see and hear appellants, some respondents acknowledged that there may be rare exceptions where this is not possible, and that telephone and written submissions would be useful as an alternative option when face to face or video conference is not possible due to parents' circumstances.

7.3 We recognise some of the concerns raised in relation to appeals held by telephone, which is why we have limited the circumstances in which appeals can be held entirely by telephone to where video conference cannot be held due to connectivity or accessibility issues, and where the appellant and presenting officer agree. The majority of respondents (77%) agreed with our proposal to limit appeals held by telephone conference in this way.

7.4 The position regarding appeals determined based on written information provided only is set out in paragraph 4.13 of the 2013 Appeals Code. We are not making any changes to the limited circumstances in which appeals are determined based on written information only, contained in the 2013 Appeals Code as a result of the consultation.

7.5 The majority of respondents (63%) agreed that admission authorities should make the decision on whether to offer appeal hearings in person or remotely or a mixture of both.

7.6 In consideration of the consultation responses, we proceeded with changes to the 2005 Regulations to include an option for appeals to be held remotely, as well as face to face, or a mixture of the two (hybrid). The Appeals Code reflects this.

7.7 Although no policy changes have been made to the draft revised Appeals Code as a result of the consultation, some further technical changes have been made. These are set out in the [summary of consultation responses](#) that was published on 18 April 2023. The technical changes include bringing the Appeals Code up to date with the implementation of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 and referring to duties placed on local authorities with regard to the Welsh Language Standards. Further information has also been included on the Equality Act and the Wales specific duties. A number of other changes have been made to correct minor typographical/grammatical errors.

8. Competition Assessment

8.1 The revisions made to the Appeals Code does not affect business, charities and/or the voluntary sector.

9. Post implementation review

9.1 The School Admissions Code and the Appeals Code are subject to ongoing review whilst they remain in force. We will monitor implementation of the 2023 Regulations and the Appeals Code to ensure that it is having the intended effect of ensure that appeals are administered in the most operationally effective way, whilst maintaining equity and fairness.

9.2 As part of this we will continue to liaise with the ADEW School Admissions Officer Group which has representation from all local authorities and diocesan authorities. We will also have regard to any feedback received from appellants.