

Explanatory Memorandum to the Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2023

This Explanatory Memorandum has been prepared by the Education Directorate of the Welsh Government and is laid before the 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 Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language

28 April 2023

1. Description

1.1 The Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2023 (“the 2023 Regulations”) amend 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.

1.2 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.

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

2.1 None.

3. Legislative background

3.1 The 2023 Regulations are made under powers in sections 94(5) and (5A), 95(3) and (3A) and 138(7) of the School Standards and Framework Act 1998 (“the 1998 Act”) and make amendments to the 2005 Regulations (S.I. 2005/1398 (W. 112)).

3.2 The relevant functions of the Secretary of State in the School Standards and Framework Act 1998 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 2023 Regulations revoke the Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020 (“the 2020 Regulations”), 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”). They are made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 The purpose of the 2023 Regulations is 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 The admissions authority (the local authority or governing body depending on the type of school) will have 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 makes a number of amendments to the 2005 Regulations. Regulation 3(5)(a) of the 2023 Regulations inserts 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 limit 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 amends 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 intended effect of the 2023 Regulations 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 legislation applies to school admission appeals taking place in Wales only.

5 Consultation

5.1 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 draft School Admission Appeals Code (“draft 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. 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.

5.2 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.

5.3 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

5.4 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 Code as a result of the consultation.

5.5 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.

5.6 We are proceeding 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 Admissions Appeals Code will reflect this. Appeal hearings are not public meetings, and there is no need for them to take place in a public forum.

PART TWO - REGULATORY IMPACT ASSESSMENT

6. Regulatory Impact Assessment

6.1 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.

6.2 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.

6.3 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.

6.4 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.

6.5 The 2005 Regulations prescribe matters relating to appeals brought under sections 94 and 95 of the 1998 Act. The School Admission Appeals Code ("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.

6.6 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

6.7 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.

6.8 The Welsh Government therefore introduced 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 2020 Regulations and 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).

6.9 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.

6.10 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

6.11 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.

6.12 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. 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.

6.13 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.

6.14 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.

6.15 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.

6.16 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.

6.17 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.

7. Options

7.1 Two options were considered:

- *keep the status quo – retain the requirement for admission appeals to be undertaken in person only.*
- *make the legislation - Amend the 2005 Regulations and make the draft Appeals Code to include an option for appeals to take place remotely, as well as in person or a mixture of the two.*

Option 1 – Keep the status quo – Admission appeals to be undertaken in person only with no option to undertake appeals remotely

7.2 Maintaining the status quo would mean that all appeals would have to take place face to face. There would be no flexibility for admission authorities to respond to local or national issues, for example a future pandemic or seasonal health issues which might impact on the ability for appeals to be held in person.

7.3 Admission authorities would still be required to arrange and fund venues for all appeals, along with travel expenses of presenting officers and panel members and time off work for staff attending. Option 1 would not reflect feedback from stakeholders which set out the benefits for local authorities, schools, appeal panels and appellants of having the flexibility to undertake appeals remotely as well as in person or a mixture of both. Stakeholders pointed to savings in terms of cost and time for all those involved.

7.4 There would be no opportunity for appellants to have their appeals heard remotely. Feedback suggest that some families find remote appeals less intimidating. Consultation responses also pointed to savings in time and costs for families in having to arrange and fund childcare and a reduction in time taken off work to attend appeals.

7.5 Some local authorities may continue to struggle to get panel members, many of whom are older, to take part in face-to-face appeals due to their concerns about contracting covid.

Option 2 – Make the legislation to amend the 2005 Regulations and make the draft Appeals Code to include an option for appeals to take place remotely, as well as in person or a mixture of the two.

7.6 Making the legislation would mean there is an option for appeals to be undertaken remotely whilst maintaining equity and fairness that will ensure parties are able to present fully their case fully and have access to the necessary equipment. Admission authorities would be required to make all necessary arrangements for the appeal panel to have access to the necessary remote access equipment required. Relevant bodies including admission authorities and appeals

panels will still be required to comply with Equality legislation and the Public Sector Duty.

7.7 Option 2 provides flexibility to allow admission authorities to respond to local or national issues that might otherwise impact on the ability for appeals to be held in person.

7.8 Appeal hearings are not public meetings so there is an argument that there no need for them to take place in a public forum as a consequence. The option to undertake appeals remotely would result in cost savings for those involved and therefore provide better value for money. Taking this option forward would respond positively to the calls for remote appeals from admission authorities who had experience of undertaking appeals remotely as part of the temporary arrangements in place in response to the Covid-19 pandemic.

7.9 Some parents find undertaking appeals in their own home less intimidating and are more at ease with the process.

7.10 The vast majority of responses to the consultation (98%) agreed with the proposal to include an option for appeals to be heard remotely as well as in person,

8. Costs and benefits

Option 1 – Keep the status quo – Admission appeals to be undertaken in person only with no option to undertake appeals remotely.

8.1 Local authorities would continue to be responsible for arranging and paying for venues, along with travel costs for staff and panel members and other expenses. Working families would continue to have to take time off work and arrange childcare where necessary.

Option 2 – Make the legislation to amend the 2005 Regulations and make the draft Appeals Code to include an option for appeals to take place remotely, as well as in person or a mixture of the two.

8.2 We are giving admission authorities the flexibility to hold appeals remotely as well as face to face or a mixture of the two (hybrid) with some attendees taking part remotely and others face to face. We are not placing any additional requirements on admission authorities. The decision on whether to hold appeals remotely lies with the admission authority. There is no duty on admission authorities to hold appeals remotely. Admission authorities made use of remote appeals during the Covid-19 pandemic and many reported time and cost savings as a result.

8.3 As part of the consultation we asked whether the proposed changes would result in new costs or savings for local authorities. The majority of respondents (80%) agreed that there would be annual savings for local authorities. This included the time and cost of arranging and paying for venues, travel costs for local authority and appeal panel members along with other expenses and time taken off work by staff to attend appeals, including where several appeals are heard in one day. One local authority identified costs of monitors for appeal panel members but said that this was offset by the savings achieved.

8.4 Local authorities were asked to explain what estimation can be made of these additional savings. The evidence received from local authorities supports the expectation that these Regulations will generate cost-savings, however, we did not receive sufficient information to enable us to produce a robust estimate of aggregate annual savings. To give an indication of the potential savings one local authority said that prior to the pandemic they always had to pay independent providers for conference rooms in their facilities at a rate of on average £200 per day. There were additional costs on top of this including travel and subsistence of panel members. More recently, the same authority had to book a conference room at an independent venue for a two-day hearing which cost £800 in total.

8.5 One large local authority estimated savings of several thousand pounds a year, based largely on travel costs, not including savings of travel costs for appellants.

8.6 Another local authority said that travel and subsistence costs for panel members are dramatically reduced, which has offset the cost of monitors purchased for panel members to connect to their own PC/laptop. This has resulted in an average saving of 75% per year for the last 3 years (including 22/23 to date).

8.7 One other authority pointed out that officer time will be vastly reduced for each hearing. Officer efficiency will be increased as they will be able to work in between the hearings if there are several in a day.

8.8 The majority of respondents (46%) agreed that the changes will result in costs/savings for schools.

8.9 One diocesan authority pointed out that there would be annual savings for schools (*that are their own admission authorities*) including time and cost of arranging venues, travel costs for staff and presenting officer to attend, along with costs of additional cover for staff and travel time to attend appeal venues. Another respondent pointed out that local authorities have a duty to provide sufficient funds for schools to run appeals but that some schools may however see a cost saving, particularly where they have teaching headteachers, as online meetings will require those members of staff to spend less time away from school and less cover will therefore be required.

8.10 Sections 1 and 8 of the integrated impact assessment for this proposal for subordinate legislative change can be found here: [Changes to school admission appeal arrangements: impact assessment \[HTML\] | GOV.WALES](#)

9. Competition Assessment

9.1 The 2023 Regulations do not affect business, charities and/or the voluntary sector.

10. Post implementation review

10.1 The School Admissions Code and the Appeals Codes 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.

10.2 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.