



Llywodraeth Cymru
Welsh Government

OPEN CONSULTATION

Changes to school admission appeal arrangements

We want your views on proposals to make changes to School Admission Appeal arrangements to include an option for appeals to be held remotely as well as in person.

First published: 17 January 2023

Last updated: 17 January 2023

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Overview

This consultation seeks views on proposed amendments to the School Admission Appeals Code and the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 to add an option for appeals to be held remotely as well as in person (face to face), or a mixture of both.

The changes proposed would apply to both sorts of admission appeal hearings dealt with under the Appeals Code (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).

This consultation is for anyone with a role or interest in school admission appeals, including admission appeal panels, local authorities, schools, governing bodies, parents/carers and other interested parties. It is limited, seeking views on the above changes only.

What is this consultation about?

This consultation seeks views on the Welsh Government's proposal to revise the School Admission Appeals Code 2013 and the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 to allow appeals to be held remotely as well as in person (face to face) or a mixture of both (hybrid) with some participants attending in person and others remotely.

The changes will enable some of the flexibilities, permitted through temporary regulations introduced from May 2020, most recently - The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) (Amendment) Regulations 2021 which ended on 30 September 2022 to continue

(with appropriate modifications) once the revised Code and Regulations come into force.

These changes would apply to both sorts of admission appeal hearings dealt with under the Appeals Code (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).

This consultation is limited to these changes only. We are not seeking views at this stage on any wider issues in relation to school admission appeals.

A draft version of the revised Appeals Code, which includes the proposed changes described in this document, is available alongside this consultation. Changes will also be required to the Education (Admission Appeal Arrangements) (Wales) Regulations 2005.

What is the current position?

The rules on admission appeals are set out in the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 (the 2005 Regulations) and the statutory School Admission Appeals Code (the Appeals Code).

The Appeals Code imposes mandatory requirements on admission authorities to ensure the appeals process is fair and transparent. There are two separate categories of admission appeals dealt with under the 2005 Regulations and Appeals Code:

- Parents have the right to appeal to any maintained school which has refused their child a place. An appeal hearing provides parents with an opportunity to set out the reasons why their child should have a place at their chosen

school

- Appeals by the governing bodies of community or voluntary controlled schools against a decision by the local authority (their school's admission authority) to admit a child who has been permanently excluded from two or more schools.

The admission authority (the local authority or governing body, depending on the type of school) is responsible for establishing the appeal panel. The appeal panel is independent of the admission authority, and it should come to its own independent conclusion about whether the school should admit the child. The panel considers the case presented by both the admission authority and the parent and its decision is binding. The panel is supported by a fully trained clerk.

The 2005 Regulations and the Appeals Code currently require that appellants are given the opportunity to appear in person and make oral representations. The admission authority must also provide a presenting officer to present the decision not to admit the child and to answer detailed questions about the case being heard and about the school. This means that all appeal hearings must be held in person (face to face) or, in limited circumstances, decided on the basis of the written information submitted.

Due to the COVID-19 pandemic, it was not always possible to meet all of the statutory requirements of the 2005 Regulations and the Appeals Code for holding appeal hearings. For example, at some points COVID-19 restrictions made it impossible to hold hearings in person (face to face). We therefore introduced the Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020 (the 2020 Amendment Regulations) in May 2020. This provided admission authorities, local authorities, and admission appeal panels with the flexibility to enable appeal hearings to continue to be heard in a timely way.

These temporary arrangements disapplied the requirement in the Appeals Code and the 2005 Regulations that appeal hearings must be held in person where it

was not reasonably practicable to follow the normal appeals process due to the COVID-19 pandemic, and instead give flexibility for them to take place either in person or by telephone or video conference, or where none of those options were possible through a paper-based appeal where all parties can make representations in writing.

The 2020 Amendment Regulations were extended, most recently through the Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) (Amendment) Regulations 2021 which expired on 30 September 2022 (subject to certain in exceptions for ongoing appeals).

We propose to make changes to the 2005 Regulations and the Appeals Code to introduce a permanent change to also allow appeals to be conducted remotely, as well as in person or a mixture of both.

Why are we proposing change?

During the summer of 2022 Welsh Government undertook a review of the effectiveness of the temporary arrangements by way of a survey of the Association of Directors of Education Wales (ADEW) School Admissions Officer Group, which has representation from all 22 local authorities and diocesan authorities. 18 local authorities responded along with one diocesan authority which responded on behalf of schools for which the governing body is the admissions authority in one local authority area.

Analysis of responses received showed that since the temporary arrangements came into force, a total of 3,543 appeals were heard by respondents, 2,953 (83%) of which were held remotely. 943 appeals were successful. The flexibilities provided by the 2020 Amendment Regulations have been essential to enabling so many appeals to continue during the COVID-19 pandemic and these figures demonstrate how well local authorities and other admission authorities

have adapted to hearing appeals remotely.

The feedback from respondents to the review was positive, suggesting that the temporary arrangements worked well and provided benefits for local authorities, admission authorities, schools, appeal panels and appellants.

A number of local authorities stressed the benefits these temporary arrangements have had in terms of time and cost savings as parents, presenting officers, panel members and clerks (particularly those in rural areas) did not have to travel to venues, but instead were able to participate from home or their place of work. Local authorities and schools have also made savings on the cost of hiring multiple venues for hearings.

Feedback from local authorities suggested that the temporary arrangements enabled parents to access the appeals system more easily, for example, without having to take significant time off work and/or incur any other additional costs, such as arranging additional childcare. In some cases, this was confirmed by parents through direct feedback to local authorities.

We hope to gather more evidence directly from parents on their views on these arrangements through this consultation.

All 22 local authorities have requested that the option of remote appeals is made permanent. As appeal hearings are not public meetings, there is no need for them to take place in a public forum.

What changes are we proposing?

We propose to amend the Appeals Code and the 2005 Regulations to add an option for holding appeal hearings remotely as well as in person (face to face). The amendments would:

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- introduce the ability for appeal hearings to be held remotely as well as in person or a mixture of both (hybrid) with some participants attending in person and others remotely
- give admission authorities flexibility to make the decision whether to offer appeal hearings in person or remotely or a mixture of both (hybrid)
- limit the circumstances where appeals may be held entirely by telephone to where video conferencing cannot be used for reasons relating to connectivity or accessibility and if the appellant and presenting officer both agree
- allow appeals to be determined on the written information submitted only where the presenting officer and/or appellant is unable to attend and not in other circumstances.

These changes will provide further flexibility around how appeal hearings are held.

Many admission authorities have already made use of the temporary arrangements and have put in place the necessary technology for remote appeals. We expect that the resulting benefits to appeal panels, schools and parents will continue to offset the costs of any necessary technology or time spent on providing any additional support. See paragraphs 3.9, 3.10, 4.5, 4.11, 4.13, 4.14, 4.16, 4.18, 4.20, 5.2, 5.3, 5.4, 5.5, 5.8, 5.25, 7.6 and 7.8, and glossary of the draft Appeals Code for changes to appeal hearings.

Consultation questions

Please use the consultation response form to respond to the following questions.

Question 1

Do you agree that the 2005 Regulations and the School Admission Appeals

Code should include an option for holding appeals remotely?

- Agree
- Disagree
- Neither agree nor disagree

Question 2

Do you agree the following formats allow for a fair and transparent appeal hearing?

- Face to face
 - Remote (telephone)
 - Remote (video conference)
 - Written submission
-
- Agree
 - Disagree
 - Neither agree nor disagree

Question 3i

Do you agree that admission authorities should make the decision on whether to offer appeal hearings in person, remotely or give a choice to attendees for either?

- Agree
- Disagree
- Neither agree nor disagree

Question 3ii

What factors should be taken into account in reaching this decision?

Question 4

Do you agree that appeals held entirely by telephone should be limited to where video conferencing cannot be used for reasons relating to connectivity or accessibility, and only if the appellant and presenting officer both agree

- Agree
- Disagree
- Neither agree nor disagree

Question 5

Do you agree that appeals should only be considered on the basis of the written evidence submitted where either:

- the presenting officer does not attend, and the appeal panel is satisfied that it can resolve the case by using evidence submitted by the admission authority if the appellant will not be disadvantaged in doing so?

or

- the appellant fails or is unable to attend and it is impractical to offer an alternative date?
- Agree
 - Disagree

- Neither agree nor disagree

Question 6

Do you agree that hybrid appeal hearings should be an option? (By 'hybrid' we mean where one or more participants join remotely, by video or telephone, and one or more attend in person.)

- Agree
- Disagree
- Neither agree nor disagree

Question 7

Do you agree that a hybrid appeal hearing can be conducted in a fair and transparent way which enables the appellant and presenting officer an opportunity to present their case?

- Agree
- Disagree
- Neither agree nor disagree

Question 8

(for local authorities) – Do you agree the proposed Appeals Code will result in new costs/savings for local authorities?

- Agree
- Disagree
- Neither agree nor disagree

Question 9

(for schools) – Do you agree the proposed Appeals Code will result in any costs/ savings for schools?

- Agree
- Disagree
- Neither agree nor disagree

Question 10

Minor technical drafting changes will also be made to ensure the Appeals Code is up to date - these include changes to legislation, other educational codes of practice and departmental names. Please provide any comments you have on the proposed changes.

Question 11

We would like to know your views on the effects that the proposal to allow appeal hearings to be held remotely or in person would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 12

Please also explain how you believe the proposed policy to allow appeal

hearings to be held remotely or in person could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

UK General Data Protection Regulation (UK GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

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You should also be aware of our responsibilities under Freedom of Information legislation.

If your details are published as part of the consultation response, then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the UK GDPR, please see contact details below:

Data Protection Officer:

Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail: dataprotectionofficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
K9 5AF

Tel: 01625 545 745 or 0303 123 1113

Website: [Information Commissioner's Office](#)

Annex: Minor technical drafting changes

We propose making additional technical drafting changes to the School Admission Appeals Code. The majority of changes update references to Codes, regulations and departmental names. We propose making amendments to:

Minor technical drafting changes

Location	Minor Change	Reason for change
	Removal of Ministerial foreword.	Change of Minister and Government.
Page 1	Amendments to Summary.	To reflect the changes proposed by this consultation.
Page 2	Amendments to	Clarify the dates which the revised Appeals Code will apply.

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Location	Minor Change	Reason for change
	Introduction.	
Page 3 – para 1.9	Reference to paragraphs.	To accurately reference to the correct paragraph within the Appeals Code.
Page 4	Inclusion of addition text to bullet point 4.	Inclusion of new related document – Additional Learning Needs (ALN) Code.
Page 4	Removal of reference to Administrative Justice and Tribunals Council (AJTC).	The AJTC no longer exists.
Page 6 – Para 2.6	Reference to paragraphs.	To accurately reference to the correct paragraph within the Appeals Code.
Page 7 – Para 2.14	Amendment to footnote 5.	To accurately refer to Regulation 7 of the 2005 Regulations.
Page 14 - Para 4.8 (second bullet point)	Reference to paragraphs.	To accurately reference to the correct paragraph within the Appeals Code.
Page 15 – Para 4.15	Amendment to footnote.	To accurately refer to Paragraph 1(6) of Schedule 2 to the 2005 Regulations.

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Location	Minor Change	Reason for change
Page 17 – Para 4.26 and 4.27	Reference to paragraphs.	To accurately reference to the correct paragraph within the Appeals Code.
Page 18 – Para 5.2	Inclusion of new footnote (footnote 9) and removal of a previous footnote (previously footnote 10).	To provide further explanation of appeals held in private.
Page 19 – Para 5.11	Reference to paragraphs.	To accurately reference to the correct paragraph within the Appeals Code.
Page 19 – Para 5.13 at first bullet point and para 5.15.	Reference to paragraphs.	To accurately reference to the correct paragraph within the Appeals Code.
Page 21 – Para 5.19 (1)(C).	Reference to paragraphs.	To accurately reference to the correct paragraph within the Appeals Code.
Page 22 – Para 5.20	Amendment to weblink.	To include current weblink.
Page 24 –	Reference to paragraphs.	To accurately reference to the correct paragraph within the Appeals Code.

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Location	Minor Change	Reason for change
Para 5.26		
Page 25 – para 5.27	Reference to paragraphs.	To accurately reference to the correct paragraph within the Appeals Code.
Page 27 – Para 5.41	Amendment to Tribunal name.	To accurately reference to the Education Tribunal for Wales which replaces the Special Educational Needs Tribunal for Wales.
Page 27 – Para 5.43	Amendment to footnote 14.	To accurately refer to Paragraph 1(9) of Schedule 2 to the 2005 Regulations.
Page 31 – Para 7.1	Removal of previous footnote and reference to legislation.	To include reference to Section 95(2) of the School Standards and Framework Act 1998 Act and paragraph 2(2) of Schedule 2 to the 2005 Regulations.
Page 32 – Para 7.12	Inclusion of new paragraph 7.12.	To provide clarity in relation to section 95 of the School Standards and Framework Act 1998.
Page 34 – Annex A at A3, A4, A5 and A7.	Inclusion of additional explanatory text or in the case of A7, amended text.	To provide clarity on relevant sections of the School Standards and Framework Act 1998.

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Location	Minor Change	Reason for change
Page 36 and 37 – Annex A at A15 to A24.	Inclusion of amended text.	To provide further explanatory text in relation to the Equality Act 2010 and the Human Rights Act 1998.
Page 41 – Annex C at C4.	Amendment to footnote 25.	To accurately refer to Regulation 6 (5) of the 2005 Regulations.
Page 42 – Annex C at C9	Reference to paragraphs.	To accurately reference to the correct paragraph within the Appeals Code.
Page 43 – Annex C at C15	Reference to paragraphs.	To accurately reference to the correct paragraph within the Appeals Code.
Page 44 – Annex C at C18(1).	Amendment to text.	To reflect changes introduced by the Additional Learning Needs and Education Tribunal Wales Act 2018.
Page 44 – Annex C at C18(2).	Inclusion of new footnote 28 and 29 and amendment to text.	To provide clarity on reference to looked after children.
Page 45 – Annex C	Removal of what was C20.	Reference to dates no longer relevant.

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Location	Minor Change	Reason for change
Page 48 – Annex E	Amendments to text.	Updates made to addresses.
Page 49 – Annex F	Amendments to text.	Updated references to related documents and inclusion of new related documents.
Page 50, 51 and 52 – Glossary	Amendments to text.	Updated information in relation to ‘complaints’, ‘infant class size limit’, and additional information in relation to ‘previously looked after children’ and ‘oversubscription’.

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