

Title of Document:	Response to consultation on the Education (Admission Appeals Arrangements)(Wales) Regulations 2005.
Audience:	Consultation respondents, including - Local Education Authorities; Governing Bodies of Foundation and Voluntary Aided Schools; Church Diocesan Authorities; 5% sample of community schools in Wales; Estyn; Council on Tribunals; Secretaries of Professional Organisations in Wales.
Overview:	This document outlines the response to a consultation on the Education (Admission Appeals Arrangements)(Wales) Regulations 2005.
Action required:	No further action required.
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Further copies may be obtained from:	This document is <u>only</u> available in electronic format.
Related documents:	Consultation on the Education (Admission Appeals Arrangements) (Wales) Regulations 2005. Welsh Assembly Government September 2004 ISBN 0 7504 3565 8 Copies of this document are available via the Welsh Assembly Government website at: www.learning.wales.gov.uk

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1. Background to the Consultation Exercise

The School Standards and Framework Act 1998 (the 1998 Act) introduced a new admissions framework designed to make admission arrangements and procedures clearer, fairer and more objective and to allow parental preferences to be met as far as possible. In Wales statutory Codes of Practice on School Admissions and School Admission Appeals were introduced in April 1999 and September 1999 respectively.

One feature of the framework is that parents have the right to appeal to an independent appeal panel if they are refused a place for their child at their preferred school. Under Section 94 of the 1998 Act, arrangements must be made by an admissions authority 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.

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

In general the admissions framework seems to be working well in Wales. The Education Act 2002 (the 2002 Act) amends the 1998 Act by introducing a number of measures to strengthen the existing framework. In respect of appeals , the Education Act 2002 allows provisions to be moved from primary legislation into Regulations to enable them to be more readily amended in the future.

Powers to make regulations to set out procedures for Admission Appeals are contained in Sections 94(5), (5A), (5C), 95(3), (3A), (3B) and 138(7) of the Schools Standards and Framework Act as amended by Sections 50 and 51 of the Education Act 2002.

2. Consultation Exercise – September 2004

On September 27, 2004, the Assembly Government's Schools Management Division published a bilingual consultation document which contained a draft of the ***Education (Admission Appeals Arrangements)(Wales) Regulations 2005***.

The document was distributed to representatives of the following organisations:-

- Governing Bodies of all Voluntary Aided and Foundation Schools in Wales.
- Directors of Education.
- A 5% sample of community schools

- Diocesan Organisations.
- Professional Associations
- Council on Tribunals.
- Governors Wales
- Welsh Local Government Association
- Welsh Language Board
- Estyn.
- Children's Commissioner.

An electronic version of the document and on-line response proforma were also made available via the Assembly's Learning Wales internet site www.Learning.Wales.gov.uk. The deadline for the submission of responses to the draft regulations was 23 December 2004.

3. Content of Consultation and Questions – September 2004

The draft regulations very closely mirror the current arrangements set out in Schedules 24 and 25 to the 1998 Act which apply to admission appeals in Wales. The Regulations incorporate minor changes compared with existing arrangements:

- A new duty to set out details of the arrangements for making an appeal, including the relevant contact details in the letters giving parents notification about admission decisions..
- Clarification that the right of appeal includes those against decisions refusing permission to any pupils to enter a school's sixth form.
- A 3 year cycle for advertising for lay members of appeals panels .
- An additional measure to ensure the neutrality of panel members

The consultation document asked for comments on the content of the draft regulations and on the draft regulatory appraisal, with the following consultation questions/issues:

- (i) Do you have any comment on the content of the regulations?
- (ii) Do you have any comments on the regulatory appraisal?
- (iii) Are there any other issues that you wish to raise in connection with the draft regulations?

4. Responses to the Consultation Document

A total of 16 replies were received in response to the consultation document. A detailed breakdown of respondents is provided below:

Category	Number of respondents
Head teacher	3
Diocesan Body	2
LEA	5
Professional Association	2
Other	4
TOTAL	16

5. Executive Summary

Overall, 9 (56%) of respondents expressed either a neutral position or mild support for the revised regulations.

Two responses pointed out the same minor error in the draft which was acknowledged and rectified. Two responses requested clarification on an interpretation of the regulations which was incorrect and those responding have been informed of the correct position.

One response wanted the regulations to be prescriptive as to timing, and a further response wanted the regulations to prescribe that panels must reflect the linguistic needs of people in the area in which they operate. The final response expressed the view that the right of appeal should be extended to pupils. Having taken into account the consultation responses and the practicability of some of the suggested changes it was confirmed that the Regulations are fit for purpose and should come into effect on 31 May 2005.

A detailed summary of responses to the consultation questions along with specific comments from individual respondees is provided at **Annex A**.

6. Future Developments

6.1 Implementation of the Regulations

In view of the overall positive response to the consultation exercise, the only proposed change to the draft regulations is to correct an error and to incorporate changes desirable for purposes of clarity and consistency. Subject to Assembly approval the intention is that the Regulations should come into force on May 31, 2005. All Admission Authorities will receive notification regarding implementation during the Summer Term.

6.2 Response to key issues raised within the consultation

(i) Timing of the appeals process

Whilst it is not considered that the regulations should be prescriptive as to the timing of appeals, it is desirable that parents appealing against an Admission Authority's decision should have a prompt resolution of matters and a clear idea of the timescale involved in the process. A number of LEAs set out their own timetables in admission booklets and this is a practice we encourage. The Code of Practice on Admissions Appeals is to be revised shortly and it is intended to strengthen the Code so as to require timetables to be set out and to be met as far as possible. There are a number of other issues that will be incorporated into the revised Code, such as the training of panel members, and the promotion of joint working arrangements between admission authorities so as to reduce burdens on smaller admission authorities such as the governing bodies of voluntary aided and foundation schools. Because of falling rolls in Wales, excess applications to individual schools tend to be confined to a few areas, generally where there is a higher density of population. A few authorities have not held appeals for a number of years.

(ii) Linguistic composition of panels

The great majority of school admissions appeals are dealt with by LEAs which, as public bodies, are already regulated by their own Welsh Language schemes for the purposes of the Welsh Language Act. There is no need therefore to incorporate additional requirements in these regulations. Linguistic issues will however be dealt with in the revised Admission Appeals Code of Practice.

6.3 Revised Code of Practice

A revised Code of Practice on Admission Appeals is due to be issued for consultation later this year. The revised Code of Practice will be subject to Assembly approval

ANNEX A: SUMMARY RESPONSE TO THE CONSULTATION QUESTIONS

QUESTION 1: Do you have any comment on the content of the Regulations?

Category of respondent	Number of respondents
Headteacher	3
Diocesan Body	2
LEA	5
Professional Association	2
Other	3
TOTAL	15

SUMMARY RESPONSE

9 respondents were neutral or expressed support for the draft regulations. **2 respondents** wanted the regulations to incorporate additional requirements. **2 respondents** pointed out minor errors. **2 respondents** sought clarification over specific provisions.

INDIVIDUAL COMMENTS

" They are minor changes to a system that seems to be working well" [Headteacher]

"The Regulations will bring the Admission Appeals Panel in line with the Exclusions Appeal panel" [LEA]

" The Council welcomed the more specific provision in Regulation 4 concerning the duty to advertise for lay members on a three-year cycle" [Other]

"the Council was disappointed that the opportunity was missed to produce a more comprehensive set of procedural rules for the panels, for example, to prescribe certain matters such as time limits for appeals" [Other]

Welsh Assembly Government Response:

Consideration has been given to prescribing time limits for appeals, but there are significant practical implications. Admission Authorities could find themselves in breach of regulations if a panel had to be postponed because of an unavoidable occurrence such as illness. Governing Bodies of Voluntary and Foundation schools would be particularly vulnerable because unlike LEAs they do not generally have a large pool of potential members on whom they can call. It was concluded therefore that it would be preferable to include time scales in the revised code of practice, which is due to be prepared this year. The current Code of Practice does not set these matters out in detail. The wording of Section 84 (3) of the School Standards and Framework Act under which the Appeals Code would be issued carries significant weight as it imposes on Admission Authorities and others "a duty to have regard to" the Code. There is scope for strengthening the Code of Practice considerably taking into account the nature of Admission Authorities in Wales.

"It is essential that the membership of the panel reflects the linguistic nature of the school and of the wider community which it serves. If the panel serves a Welsh medium or bilingual school, this should be reflected in the constitution of the panel, and should be reflected in the advertisements for lay members if necessary. This should be stated explicitly in the Regulations"

Welsh Assembly Government Response:

It should not be necessary to include express provision for choice of language in these regulations. LEAs are already regulated in this respect as a result of their own Welsh Language Schemes agreed under the Welsh Language Act and the Governing Bodies of schools are also public bodies for the purposes of the Act and are therefore obliged to treat Welsh and English on the basis of equality as far as is reasonably practicable in the circumstances. The Code of Practice can make it clear that admission authorities must make arrangements in response to the language preference of individuals in the context of compliance with the Welsh Language Act.

The minor error pointed out in consultation has been rectified and the two respondents who requested clarification have received explanations which have satisfied their concerns.

QUESTION 2: Do you have any comments on the Regulatory Appraisal?

SUMMARY RESPONSE

No responses were received to this question

QUESTION 3: Are there any other issues that you wish to raise in connection with the draft Regulations?

SUMMARY RESPONSE

Only 2 respondents submitted comments, one of which expressed general welcome for the regulations. The remaining response suggested that current legislative provision for pupils to express a view is insufficient, and that Governors' ability to appeal against an LEA direction is undesirable.

INDIVIDUAL COMMENTS

" We suggest that regulation 6 should be amended to the effect that matters to be taken into account by an appeals panel include the ascertainable wishes of the child - even where the parents are the appellants"[Other]

"a similar right of appeal about secondary school admissions should therefore be extended to children and young people - and most certainly about decisions refusing permission to young people already admitted to a school to enter the school's sixth form"[Other]

Welsh Assembly Government Response:

The right to state a preference for a school and therefore the right to appeal, as set out in Section 86 of the School Standards and Framework Act 1998 is given to a parent. Regulations under the 2002 Act could not therefore give a pupil the right of appeal or prescribe that the child's views be heard or taken into account even in the case of a 6th form admission. The current Code of Practice states " The Act does not envisage children attending the appeal hearing but they may do so at the discretion of the Appeal panel" . We will look to strengthen this and to deal with issues of ascertaining the wishes of pupils in revising the Code of Practice.

The right of Governors to appeal against a direction is enshrined in Section 95 of the SFFA 1998. These regulations could not alter the position. Any change in the primary legislation would need to be subject to consultation. Currently we consider the right of the LEA to direct and the governing body to appeal to an independent appeals panel provides the right balance.

As regards 6th form entry these regulations will improve the present position in that they make specific reference to parents' right of appeal where a pupil is being refused admission to a 6th form.