WELSH STATUTORY INSTRUMENTS

2005 No. 1398 (W.112)

EDUCATION, WALES

The Education (Admission Appeals Arrangements) (Wales) Regulations 2005

Made - - - -	*24 May 2005*
Coming into force - -	*31 May 2005*

In exercise of the powers conferred on the Secretary of State by sections 94(5), (5A), (5C), 95(3), (3A), (3B) and 138(7) of the Schools Standards and Framework Act 1998 [F1], now vested in the National Assembly for Wales [F2] and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunal and Inquiries Act 1992 [F3] the National Assembly for Wales makes the following Regulations:

F1 1998 c. 31. Sub-sections (5), (5A), and (5C) of section 94 were substituted by section 50 of the Education Act 2002 c. 32. Sub-sections (3), (3A) and (3B) of section 95 were substituted by section 51 of, and paragraph 9 of Schedule 4 to, the Education Act 2002. For the definition of "prescribed" and "regulations"
see section 142(1) of the 1998 Act.

F2 *See* the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and section 211 of the Education Act 2002.

F3 1992 c. 53, amended by paragraph 22 of Schedule 21 to the Education Act 2002.

Title, commencement and application

1.—(1) The title of these Regulations is the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 and they come into force on 31 May 2005.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations —

[F4]...

"the 1998 Act" ("*Deddf 1998*") means the School Standards and Framework Act 1998.

[[F5]"the 2011 Measure" ("*Mesur 2011*") means the Local Government (Wales) Measure 2011;**]**

[F6"the admission authority" ("*yr awdurdod derbyn*") has the same meaning as in section 88(1)(a) and (b);**]**

[F6"admission decision" ("*penderfyniad derbyn*") means a decision referred to in section 94(1) to (2A) refusing a child admission to a school or entrance to a sixth form or as to the school at which education is to be provided for a child;**]**

"appropriate authority" ("*awdurdod priodol*") means the body or the bodies responsible for making the arrangements described in regulation 3;

[F6"coronavirus" ("*coronafeirws*") means severe acute respiratory syndrome coronavirus 2 (SARS-Cov-2);**]**

[F6"coronavirus exception" ("*eithriad y coronafeirws*") is a condition which applies where, for a reason related to the incidence or transmission of coronavirus—

(a) it is not reasonably practicable for a local authority or a governing body of a foundation or voluntary aided school to comply with the requirements of paragraph 1(1) and (2) or 2(1) and (2) of Schedule 1 (as the case may be), ("the constitution reason"), or

(b) it is not reasonably practicable for an appeal panel to comply with the requirement in paragraph 1(6) of Schedule 2, or paragraphs 4.13, 4.14 or 7.5 of the School Admissions Appeals Code for appellants or representatives of local authorities or governing bodies to be allowed to appear in person ("the appeal in person reason");**]**

"lay member"("*aelod lleyg*") has the meaning given to it by paragraphs 1(4) and 2(4) of Schedule 1;

[F6"remote access" ("*mynediad o bell*") means access to an appeal hearing to enable those who are not all present together at the same place to attend or participate simultaneously in the hearing by electronic means, including by live audio link and live video link;**]**

[F6"the School Admission Appeals Code" ("*y Cod Apelau Derbyn i Ysgolion*") means the School Admission Appeals Code which is the code issued under section 84 relating to admission appeals;**]**

[F5"School Admissions Code" ("*Cod Derbyniadau Ysgol*") means any code for school admissions issued under section 84;**]**

"school day" ("*diwrnod ysgol*") has the same meaning given to it by section 579(1) of the Education Act 1996. F7

(2) Any reference in these Regulations to—

(a) a numbered section is a reference to that section of the 1998 Act, unless stated otherwise;

(b) a teacher includes a headteacher.

F4 Words in reg. 2(1) revoked (1.1.2014) by The Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2013 (S.I. 2013/2535), regs. 1(1), **2(2)(a)**

F5 Words in reg. 2(1) inserted (1.1.2014) by The Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2013 (S.I. 2013/2535), regs. 1(1), **2(2)(b)**

F6 Words in reg. 2(1) inserted (temp.) (4.5.2020) by virtue of The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/479), regs. 1(1), **6** (with regs. 1(2), 2(2), 3, 4)

F7 1996 c. 56.

Constitution of appeal panels

3. Where arrangements or joint arrangements are made by —

(a) a local education authority under section 94(1) or (1A) [F8];

(b) the governing body of a foundation or voluntary aided school under section 94(2) or (2A) [F9];

(c) the governing bodies of two or more foundation or voluntary aided schools maintained by the same local education authority, in accordance with section 94(3) [F10];

(d) a local education authority and the governing body or bodies of one or more foundation or voluntary aided schools maintained by the authority, in accordance with section 94(4) [F11];

(e) a local education authority under section 95(2),

an appeal is to be made to an appeal panel constituted in accordance with the relevant paragraph of **[**[F12]Schedule 1 or, where the constitution reason of the coronavirus exception applies, the relevant paragraphs of Schedule 1, subject to paragraph 1 of Schedule 3**]**.

F8 Section 94(1A) was inserted by section 51 of, and paragraph 8(1) and (2) of Schedule 4 to, the Education Act 2002.

F9 Section 94(2A) was inserted by section 51 of, and paragraph 8(1) and (3) of Schedule 4 to, the Education Act 2002.

F10 Section 94(3) was amended by section 51 of, and paragraph 8(1) and (4) of Schedule 4 to, the Education Act 2002.

F11 Section 94(4) was amended by section 51 of, and paragraph 8(1) and (5) of Schedule 4 to, the Education Act 2002.

F12 Words in reg. 3 substituted (temp.) (4.5.2020) by virtue of The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/479), regs. 1(1), **7** (with regs. 1(2), 2(2), 3, 4)

Duty to advertise for lay members

4.—(1) The appropriate authority must during the period referred to in paragraph (2), secure the publication of an advertisement for lay members of appeal panels constituted in accordance with any of the paragraphs of Schedule 1.

(2) The advertisement referred to in paragraph (1) must be published before the end of the three year period starting when the last advertisement was published by that authority for lay members of an appeal panel constituted in accordance with Schedule 24 to the 1998 Act, and thereafter in every three year period following the date upon which an advertisement (or the final advertisement of a series of advertisements) was last published by that authority in accordance with this regulation.

(3) The advertisement referred to in paragraph (1) above must —

(a) identify by name, class, or general description, the schools served by the appeal panels to which the advertisement refers;

(b) be placed in at least one local newspaper circulating in the area in which the schools identified in the advertisement are situated;

(c) allow a period of at least 21 days from the date of publication of the advertisement for replies.

(4) Before appointing any lay member the appropriate authority must consider any eligible persons who have applied to the authority in response to the most recent advertisement or series of advertisements placed in pursuance of paragraph (1) indicating that they wish to be considered for such appointment.

Procedure for appeals

5. An appeal under arrangements specified in regulation 3 must be made in accordance with **[**[F13]Schedule 2 or, where the appeal in person reason of the coronavirus exception applies, the relevant paragraphs of Schedule 2, subject to paragraph 2 of Schedule 3**]**.

F13 Words in reg. 5 substituted (temp.) (4.5.2020) by virtue of The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/479), regs. 1(1), **8** (with regs. 1(2), 2(2), 3, 4)

Relevant considerations in appeals brought under sections 94 and 95 of the 1998 Act

[[F14]**6.**—(1) In relation to an appeal made under the arrangements referred to in regulation 3(a) to (d), the matters to be taken into account by an appeal panel, in considering an appeal, must include—

(a) any preference expressed by the appellant; and

(b) the arrangements for admission of pupils published by the local authority or the governing body in accordance with regulations made under section 92.

(2) The arrangements for admission referred to in paragraph (1)(b) are the arrangements published when any preference was expressed by the appellant.

(3) Consideration of the matter mentioned in paragraph (1)(b) may include consideration of whether those arrangements comply with any mandatory requirements of—

(i) a School Admissions Code, or

(ii) Part 3 of the 1998 Act.

(4) Where the decision was made on the ground that prejudice of the kind referred to in section 86(3)(a) would arise as mentioned in subsection (4) of that section, an appeal panel may determine that a place is to be offered to the child only if they are satisfied that one of the conditions mentioned in paragraph (5) applies.

(5) The conditions mentioned in this paragraph are—

(a) the child would have been offered a place if the schools admission arrangements had complied with the requirements of—

(i) a School Admissions Code, or

(ii) Part 3 of the 1998 Act;

(b) the child would have been offered a place if the school's admission arrangements had been properly implemented; or

(c) the decision was not one which a reasonable admission authority would have made in the circumstances of the case.

(6) In relation to an appeal made under arrangements referred to in regulation 3(e) an appeal panel in considering an appeal must have regard to—

(a) the reasons for the local authority's decision that the child in question should be admitted; and

(b) any reasons put forward by the governing body as to why the child's admission would be inappropriate.

(7) In this regulation, "preference" ("*hoff ddewis*") means a preference expressed in accordance with arrangements made under section 86(1) or section 86A(1), in relation to the school year 2013-2014, and subsequent schools years.**]**

F14 Reg. 6 substituted (1.1.2014) by The Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2013 (S.I. 2013/2535), regs. 1(1), **2(3)**

Payment of allowances

[F15 7.—(1) This regulation applies to any member of an appeal panel constituted in accordance with any of the paragraphs of Schedule 1.

(2) The relevant local authority may pay to a member referred to in paragraph (1) allowances for—

(a) financial loss;

(b) travel; and

(c) subsistence.

(3) The allowances referred to in paragraph (2) are to be at the most recent rates set out for payments to members of a community and town council in a report ("the report") by the Independent Remuneration Panel for Wales issued under Part 8 of the 2011 Measure (members: payments and pensions).

(4) Any reference in the report to an approved duty is to be read as including a reference to attendance at a meeting of an appeal panel.**]**

F15 Reg. 7 substituted (1.1.2014) by The Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2013 (S.I. 2013/2535), regs. 1(1), **2(4)**

Indemnity

8.—(1) The appropriate authority must indemnify the members of any appeal panel constituted for the purposes of the arrangements which it has made, as specified in regulation 3, against any reasonable legal costs and expenses reasonably incurred by those members in connection with any decision or action taken by them in good faith in pursuance of their functions as members of that panel.

(2) Where any such panel is constituted by —

(a) the governing bodies of two or more foundation or voluntary aided schools maintained by the same local education authority; or

(b) a local education authority and the governing body or bodies of one or more foundation or voluntary aided schools maintained by the authority,

any liability arising under paragraph (1) is to be a joint and several liability of the bodies by whom the joint arrangements are made unless otherwise previously agreed in writing between those bodies.

[F16 Time limits

9.—(1) Paragraphs 3 and 4 of Schedule 3 have effect for the purposes of determining the timetable in respect of an appeal pursuant to arrangements made by a local authority or governing body of a foundation or voluntary aided school under section 94.

(2) Paragraph 5 of Schedule 3 has effect for the purposes of determining the timetable in relation to an appeal pursuant to arrangements made by a local authority under section 95.**]**