

**2009 No. 823 (W. 73)**

**EDUCATION, WALES**

**The Education (Admission Appeals  
Arrangements) (Wales)  
(Amendment) Regulations 2009**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, and come into force on 22 April 2009.

The amendment in regulation 1 requires Appeal Panels hearing appeals which concern infant class size to consider whether the original decision was one which a reasonable admission authority would have made in the circumstances of the case.

Regulation 2 substitutes a new Schedule 2 in the 2005 Regulations. The new Schedule makes provision for appeals in cases where decisions are made about children entering the sixth form, or receiving education after they have ceased to be of compulsory school age. In cases where the child and any parent of the child make appeals in respect of the same school, the appeals must be heard together. The new Schedule removes references to the Council on Tribunals. The Administrative Justice and Tribunals Council, which has replaced the Council on Tribunals, has an automatic right to attend hearings over which it has jurisdiction, so the omitted provisions are no longer required. In addition, observers will be permitted to attend appeal panel hearings for the purposes of appraisal and training.

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**The Education (Admission Appeals  
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*Made* 31 March 2009

*Laid before the National Assembly  
for Wales* 1 April 2009

*Coming into force* 22 April 2009

The Welsh Ministers in exercise of the powers conferred on the Secretary of State by sections 94(5A), 95(3A) and 138(7) and (8) of the School Standards and Framework Act 1998<sup>(1)</sup> and now vested in them<sup>(2)</sup>, and after consultation with the Administrative Justice and Tribunals Council in accordance with Schedule 7 to the Tribunals, Courts and Enforcement Act 2007<sup>(3)</sup>, hereby make the following Regulations.

**Title, commencement and application**

1.—(1) The title of these Regulations is the Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2009, and they come into force on 22 April 2009.

(2) These Regulations apply in relation to Wales.

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- (1) 1998 c.31. Sub-section 94(5A) was inserted by section 50 and sub-section 95(3A) was inserted by section 51, Schedule 4, paragraph 9 of the Education Act 2002 (c.32).
- (2) The functions of the Secretary of State under these sections 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 paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).
- (3) 2007 c.15. Paragraph 24(1) of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 directs that the power of the Welsh Ministers to make, approve, confirm or concur in procedural rules for any listed tribunal is exercisable only after consultation with the Council.

## **Amendment of Regulations**

2.—(1) The Education (Admission Appeals Arrangements) (Wales) Regulations 2005<sup>(1)</sup> are amended as follows.

(2) In regulation 6(2)(a) for “would make” substitute “would have made”.

(3) For Schedule 2, substitute the following—

### **“SCHEDULE 2** Regulation 5

#### **Procedure on Appeal**

##### **Appeals made pursuant to section 94**

1.—(1) In this paragraph—

“appeal” means an appeal made under the arrangements specified in regulation 3(a) to (d); and

“a decision about sixth form education” means a decision—

- (a) made in relation to a preference expressed in accordance with arrangements made under section 86A(1) as to where education should be provided for a child; or
- (b) refusing permission for a child to enter the sixth form of the school to which the child has been admitted.

(2) Particulars of the arrangements for making an appeal, including information containing the contact details for whichever body or bodies are responsible for those arrangements, must be set out in any document containing a notification to parents of—

- (a) a decision referred to in section 94(1)(za), (b) and (2) refusing their child admission to a school for which the parents have expressed a preference in accordance with the arrangements made under section 86(1); or
- (b) a decision referred to in section 94(1)(a) as to the school at which education is to be provided for their child.

(3) In the case of a decision about sixth form education, notices must be sent to the child and the child’s parents containing the following—

- (a) notification of —

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(1) S.I. 2005/1398 (W.112).

- (i) a decision referred to in section 94(1)(za), (b) and (2) refusing the child admission to a school for which the child or any parent of the child has expressed a preference in accordance with the arrangements made under section 86A(1);
- (ii) a decision referred to in section 94(1)(a) as to the school at which education is to be provided for the child; or
- (iii) a decision referred to in section 94(1A) or (2A) refusing permission for a child who has already been admitted to a school to enter the school's sixth form;
- (b) particulars of the arrangements for making an appeal, including information containing the contact details for the appropriate authority; and
- (c) a statement explaining that where a child and any parent of the child make separate appeals in respect of the same school, the appeals must be heard together.

(4) Where a child and any parent of the child make separate appeals in respect of the same school, the appeals must be heard together.

(5) An appeal must be by notice in writing setting out the grounds on which it is made.

(6) An appeal must give the appellant an opportunity of appearing and making oral representations, and allow him or her to be accompanied by a friend or to be represented.

(7) An appeal must be heard in private except where the body or bodies by whom the arrangements under section 94 are made direct otherwise; but—

- (a) if the panel so directs, one member of the local authority may attend, as an observer, any hearing of an appeal by an appeal panel constituted in accordance with paragraph 1 of Schedule 1;
- (b) if the panel so directs, one member of the governing body of the school in question may attend, as an observer, any hearing of an appeal by an appeal panel constituted in accordance with paragraph 1 or 2 of Schedule 1 (or in accordance with paragraph 2 as it

applies by virtue of paragraph 3 of that Schedule); and

(c) if the panel so directs, any person may attend a hearing of an appeal for the following purposes—

(i) training; or

(ii) appraisal of the performance of clerks or appeal panel members.

(8) For the purposes of sub-paragraph (7), an appeal to an appeal panel constituted in accordance with paragraph 1 of Schedule 1, as it applies by virtue of paragraph 4 of that Schedule, is to be treated—

(a) as an appeal to an appeal panel constituted in accordance with paragraph 1 of that Schedule if it relates to a community or voluntary controlled school; and

(b) as an appeal to an appeal panel constituted in accordance with paragraph 2 of that Schedule, if it relates to a foundation or voluntary aided school.

(9) In the event of a disagreement between the members of an appeal panel, the appeal under consideration is to be decided by a simple majority of the votes cast and, in the case of an equality of votes, the chair of the panel is to have a second or casting vote.

(10) The decision of an appeal panel and the grounds on which it is made must be communicated by the panel in writing to—

(a) the appellant and the local authority,

(b) in the case of an appeal heard jointly with another appeal in accordance with paragraph 1(4), to the appellant in the other appeal; and

(c) in the case of an appeal to an appeal panel constituted in accordance with paragraph 2 of Schedule 1, (or in accordance with that paragraph as it applies by virtue of paragraph 3 of that Schedule), to the governing body by whom or on whose behalf the decision appealed against was made.

(11) For the purposes of sub-paragraph (10), an appeal to an appeal panel constituted in accordance with paragraph 1 of Schedule 1, as it applies by virtue of paragraph 4 of that Schedule, is to be treated as an appeal to an appeal panel constituted in accordance with paragraph 2 of that Schedule, if it relates to a foundation or voluntary aided school.

(12) Subject to sub-paragraphs (2) to (11), all matters relating to the procedure on appeals, including the time within which they are to be brought, are to be determined by the appropriate authority.

### **Appeals made pursuant to section 95**

**2.**—(1) In this paragraph “appeal” means an appeal made under the arrangements specified in regulation 3(e).

(2) Where any such decision as is mentioned in section 95(2) is made by or on behalf of the local authority, the authority must give the governing body of the school notice in writing—

- (a) of that decision; and
- (b) of the governing body’s right to appeal against the decision in accordance with sub-paragraph (3).

(3) An appeal by the governing body against any such decision must be made not later than the fifteenth school day after the day on which they are given notice under sub-paragraph (2).

(4) An appeal must be by notice in writing setting out the grounds on which it is made.

(5) The appeal panel must meet to consider an appeal on such date as the local authority may determine but the date so determined must not be later than the fifteenth school day after the day on which the notice referred to in sub-paragraph (4) is received by that authority.

(6) On an appeal the panel must allow—

- (a) the local authority and the governing body to make written representations;
- (b) an officer of the authority nominated by the authority, and a governor nominated by the governing body, to appear and make oral representations; and
- (c) the governing body to be represented.

(7) Appeals must be heard in private except when the local authority direct otherwise; but—

- (a) if the panel so direct, one member of the local authority may attend, as an observer, any hearing of an appeal by an appeal panel;
- (b) if the panel so direct, any person may attend a hearing of an appeal for the following purposes—
  - (i) training; or

(ii) appraisal of the performance of clerks or appeal panel members.

(8) Two or more appeals may be combined and dealt with in the same proceedings if the appeal panel consider that it is expedient to do so because the issues raised by the appeals are the same or connected.

(9) In the event of a disagreement between the members of an appeal panel, the appeal under consideration is to be decided by a simple majority of the votes cast and, in the case of an equality of votes, the chair of the panel is to have a second or casting vote.

(10) The decision of an appeal panel and the grounds on which it is made must—

- (a) be communicated by the panel in writing to the local authority and the governing body; and
- (b) be so communicated by the end of the second day after the conclusion of the hearing of the appeal.

(11) Subject to sub-paragraphs (2) to (10), all matters relating to the procedure on appeals are to be determined by the local authority.”

*Jane Hutt*

Minister for Children, Education, Lifelong Learning  
and Skills, one of the Welsh Ministers

31 March 2009