

Explanatory Memorandum to the Education (Admission Appeals Arrangements) (Amendment) (Wales) Regulations 2009

This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

Description

The Education (Admission Appeals Arrangements) (Wales) Regulations 2005 (the 2005 Regulations) prescribe matters relating to appeals brought against a decision to refuse a child admission to a school. Two amendments are being made. The first is a minor amendment which is intended to clarify the matters that should be taken into account by an appeal panel when considering appeals against decisions made on the basis of infant class size legislation. The second amendment 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 reference 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.

Matters of special interest to the Subordinate Legislation Committee

None.

Legislative Background

The powers enabling this instrument to be made are contained in Sections 94(5A), 95(3A), 138(7) and 138(8) of the School Standards and Framework Act 1998. These powers have been transferred to the Welsh Ministers. The legislation follows the negative resolution procedure.

Purpose and intended effect of the legislation

As currently drafted, Regulation 6(2)(a) of 2005 Regulations could be interpreted as suggesting that circumstances which did not apply at the time of the original admission decision (in the light of the circumstances at that time) may be taken into account by appeals panels when considering the “reasonableness” of an admission authority’s decision. However, the original policy intention was that such panels were to review the decision not consider new evidence.

This amendment is intended to clarify that the panel should only consider whether the original decision was one which no reasonable admission authority would have made in the circumstances at the time, by substituting the words ‘would have made’ for ‘would make’ in Regulation 6(2)(a).

Currently parents may express a preference for a particular school for their child (including the school the pupil already attends e.g. sixth form, and the admission authority must, as a

rule, comply with that preference unless the year group in question is full or the admission arrangements for the sixth form include a requirement to meet a specified academic standard (e.g. a certain number of GCSEs) which the pupil does not meet. This second amendment will allow the young person, as well as the parent, to have the right to express a preference and to have the consequent right of appeal if refused a sixth form place.

Implementation

It is intended that the Regulations will come into force on 22 April 2009.

Consultation

The amendment has been consulted on together with the Codes on School Admissions and School Admission Appeals, amendments to the Infant Class Size Regulations and a new set of Regulations relating to the Admission of Looked After Children. Further details are included in the Regulatory Impact Assessment below.

Regulatory Impact Assessment

Options

First amendment: Option 1 - Do Nothing

If a child has been refused admission to a school the child's parents may appeal against the decision that the admission authority has made. If Regulation 6(2)(a) is not amended there is a risk in the case of an infant class size prejudice case that an appeal panel could interpret the legislation to mean that it should consider new evidence when considering whether the admission authority's original decision was a reasonable one. This interpretation was not intended when the Regulations were originally framed.

First amendment: Option 2 - Do Minimum

The action proposed is the minimum required to rectify this situation.

Second amendment: Option 1 - Do Nothing

If the suggested amendment is not made, the Regulations will not be in keeping with the amendments included in the Education and Skills Act 2008, which gives young people in Wales the right to express a preference as to which school they would like to attend to receive their sixth form education.

Second amendment: Option 2 - Do Minimum

The action proposed will rectify this situation.

Benefits

The benefit of making these amendments is that the admission appeals process will work more consistently.

Costs

There are no additional financial implications for the Welsh Assembly Government arising from these amended Regulations. Local authorities and the governing bodies of foundation and voluntary aided maintained schools currently incur administrative costs in the establishment and operation of appeals panels. It is not anticipated that any additional costs will arise as a result of the implementation of these Regulations. The amended Regulations are not expected to lead to an increase in the number of appeals or extra expense in the administering of appeals.

Competition Assessment

The proposed legislation will not affect business, charities or the voluntary sector.

Consultation

Consultation on this set of Regulations was included in a consultation document "School admissions, school admission appeals and associated regulations" which was issued to: all admission authorities in Wales; Church Diocesan Authorities; a 10% sample of community schools in Wales; Estyn; Administrative Justice and Tribunals Council; and Secretaries of Professional Organisations in Wales, in electronic format in October 2008 for a period of 12 weeks.

The document can be viewed at:

<http://wales.gov.uk/consultations/closedconsultations/?lang=en>

Consultees were asked to respond to the consultation by providing comments on the draft Regulations. The majority of consultees had no comments to make on this set of Regulations. Two stated they were content with them. One consultee was concerned about the timescales involved for bringing in the proposed changes. These comments have been considered and changes made to address this issue.

Another consultee raised a query over the different roles of governing body observers at appeals held under section 94 and 95 of the School Standards and Framework Act 1998. As section 94 relates to general appeal arrangements, and section 95 relates to appeal arrangements where children have been twice excluded it is appropriate that there are different arrangements and no change is required to the Regulations as drafted.

Post implementation review

No review will be required but should a particular case arise it will be monitored to ensure that the appeal panel has complied with the new Regulations.

Summary

The first intended amendment is the only effective way of ensuring that the legislation is not misinterpreted. It will avoid confusion for admission appeals panels and ensure consistency for parents and children. There are no particular costs associated with the amendment.

The second amendment will provide the young person, with the right of appeal if they are refused admission to a school's sixth form, an opportunity which is currently not available to them.