

SL(6)357 – School Admissions Appeals Code

Background and Purpose

The School Admission Appeals Code, which was issued in 2013, has been revised to reflect the changes made by the Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2023 (“the 2023 Regulations”) that came into force on 3 May 2023.

The 2023 Regulations amended the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 (“the 2005 Regulations”) to include an option for admission appeals to be undertaken remotely, as well as in person, or a mixture of both. They codify certain temporary arrangements that were introduced in response to the coronavirus pandemic.

The 2023 Regulations apply to both types of admission appeal hearings dealt with under the 2005 Regulations; namely appeals against an admission authority’s refusal to admit a child and appeals by governing bodies against a local authority’s decision to admit a child who has been permanently excluded from two or more schools.

This Code also includes some technical amendments which reflect legislative changes since the previous code was issued in 2013.

Procedure

Draft Negative.

The Welsh Ministers have laid a draft of the Code before the Senedd. If, within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the draft being laid, the Senedd resolves not to approve the draft Code then the Welsh Ministers must not issue the Code.

If no such resolution is made, the Welsh Ministers must issue the Code (in the form of the draft).

Scrutiny under Standing Order 21.7

The following point is identified for reporting under Standing Order 21.7 in respect of this code:

1. The Committee has identified a substantial number of errors in the Code which are listed in the Annex to this report. In particular, there are several significant inconsistencies between the meaning of the English and Welsh texts which could lead to the code being interpreted incorrectly by the reader.



Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

17 May 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—
Welsh Parliament

Legislation, Justice and Constitution Committee

School Admissions Appeals Code

LJC Draft Report: Annex

Substantive errors

1. The Code contains references to “(date)” (at pages 1 and 2) and “[HTML]” (at pages 27, 37 and 49) where those placeholders have been left in and the relevant date/link has not been inserted.
2. In the Introduction, in paragraph 1.1, “LAs” is used from the beginning without having been first defined in the Code.
3. In paragraph 3.4, in the final bullet point, in the Welsh text, the words “in writing” have been translated as “drwy lythyr” which literally means “by letter”. The same thing occurs elsewhere in the translation of “in writing” in paragraphs 6.1, 7.2 and 7.11 of the Code. Later in Annex D, in paragraph D.3, there is also an instance where “in writing” has been translated as “ar bapur” which is an idiom that can mean “in writing” but literally means “on paper”. Elsewhere in the Code, the Welsh text has translated “in writing” more literally as “yn ysgrifenedig” in the majority of the paragraphs where the phrase is used. It is true that the Code does refer to decision letters as a means of notification, but it might not be appropriate to use phrases which mean “by letter” or “on paper” in the Welsh text as they could be viewed as appearing to limit the ways of notification or communication when that isn’t expressly stated in those paragraphs. It also means that there isn’t a way of distinguishing between “by letter” and “in writing” when it is expressly stated in the English text, if the same translation is used in the Welsh text for both those phrases.
4. In paragraph 4.13, in the Welsh text, in the penultimate sentence, the word that corresponds to “must” in the phrase “this **must** be explained to the appellant” isn’t shown in red font in the translation. This is significant as the red coloured font is used to show guidelines of the Code that must be followed as explained in paragraph 1.3.
5. In paragraph 5.12, in the Welsh text, in the first bullet point, the word “prejudice” has been translated as “niweidio”. But the word “prejudice” has been translated elsewhere throughout the Code using various forms of “anfantais” in the same context. It is therefore inconsistent with the rest of the Code and suggests to the reader of the Welsh text that “prejudice” has a different meaning in this paragraph.
6. In paragraph 6.14, in the second bullet point, the Welsh text has incorrectly translated “**un**reasonably” as meaning “**re**asonably”. Therefore, the English and Welsh text are directly contradictory.
7. In paragraph 7.2, the Welsh text doesn’t appear to convey the same meaning in relation to the time allowed for an appeal. The English text states that an appeal against a decision must be made “**not later than the fifteenth** school day after the day it is given notice”. It appears to include the fifteenth school day in the time allowed for making the appeal but the Welsh text states that it must be made **before the fifteenth** school day (“**cyn** y pymthegfed diwrnod ysgol”) which wouldn’t include that day in the time allowed. Furthermore, the English text is more precise in stating that the number of school days is calculated from “after **the day** it is given notice” whereas the Welsh text is more vague by stating that it begins after it is given notice (“**ar ôl** iddo gael rhybudd”). This could be interpreted as meaning that the number of days is calculated as beginning from the same day it is given notice or from the following day. It might also be worth reviewing the



translation of paragraph 7.3 to reflect any changes made to paragraph 7.2 in the light of these comments.

8. In paragraph A.25, there is a difference between the English and Welsh texts as the word “should” is missing from the opening words of the translation. In addition, in the English text, the word “should” appears in a different shade of blue in the opening words when compared with its appearance in later example of “should” in the second bullet point of the English text.

Further errors

9. On page 2, in the Welsh text, the term that corresponds to “Action Required” isn’t correctly aligned with the related text on the right-hand side. In addition, all of the terms listed on the left-hand side in the English text are spelt with capital first letters for each word other than “Additional copies”. In the Welsh text, only the first words of those terms are capitalised.
10. On page 3, in the Contents pages, under paragraph 4, and later in the actual heading above paragraph 4.13, in the English text, “Representation” is spelt with a capital first letter in the heading “Attendance and Representation”. But it is spelt with a lower case first letter in the main body of paragraphs 4.13 to 4.16 under the heading, and in the corresponding Welsh text. In the other headings only the first letters of the first words are spelt with a capital letter, so it is also inconsistent with the approach taken in the other headings.
11. On page 4, in the Contents pages, under Annex A, the entries for “Equality Act 2010” and “Human Rights Act 1998” and their respective page numbers are missing from the Welsh translation.
12. On page 4, in the Contents pages, in the Welsh text, a few of the entries in Annex A and Annex C aren’t correctly aligned in the list so they appear further left – e.g., the entries that correspond to “Education (Admission Appeals Arrangements) (Wales) Regulations 2005 (as amended)” and “Restrictions on the scope of admissions appeals as a result of statutory Infant class size limits”.
13. On page 6, in the Summary, the Education (Admission Appeal Arrangements) (Wales) (Amendment) Regulations 2023 are defined as “the 2023 Regulations”. However, the definition isn’t used in the Summary. Later in the Introduction on page 7, in paragraph 1.2, the title of that SI is repeated in full on the first occasion before the definition is used within that sentence. As a result, there doesn’t seem to be any purpose in defining the SI in the Summary and it would make more sense for the definition to appear in brackets after the first reference in paragraph 1.2, or simply to use the phrase “those Regulations” rather than “the 2023 Regulations” in paragraph 1.2.
14. In the Introduction, in paragraph 1.1, “the 1998 Act” appears in blue text with a hyperlink in the Welsh text unlike the English text. These differences occur regularly throughout the Code.
15. In the Introduction, in paragraph 1.1, there are spaces between the section, subsection, paragraph and sub-paragraph numbers in the reference, “section 88 (1) (a) (ii)” but it should be referenced as “section 88(1)(a)(ii)” without spacing.
16. In paragraph 1.4, the significance of the phrases “should” and “should not” are explained for the purposes of the guidelines. The terms are shown in a blue coloured font when they are used for this purpose in the English text. However, the Welsh text has used a different coloured blue font for the corresponding terms in the translation of this paragraph.



Furthermore, the translation then varies throughout the Code between the different coloured blue fonts when using the words that correspond to “should”/ “should not” – compare for example paragraphs 1.4 and 1.7. In addition, the blue coloured fonts are sometimes used for hyperlinked references to legislation which adds to the confusion as to the significance of the colour of the text in the translation. A few practical examples of the mixing of the blue fonts colours in the Welsh text include but aren’t limited to paragraphs 4.15 and 4.18, and footnotes 3 and 7. In places, the English text also uses different blue font colours for “should”/ “should not” and the hyperlinked references to legislation which further compounds the problem.

17. In paragraph 2.1, and throughout the rest of the Code, the Welsh translation varies in whether “practice” (“arfer”) is to be treated as a masculine or feminine noun. As a result, the Welsh text varies in the translation of “good practice” between “arfer dda” and arfer da”. The translation should be consistent throughout the Code – see paragraphs 2.1 and 2.11 for “arfer da” and paragraphs 2.19, 4.6, and 4.11 for “arfer dda”. (It is also mutated as a feminine noun in paragraph 1.4 as “arfer wael” is the translation for “bad practice”).
18. On page 10, in footnote (3) for paragraph 2.1, in the English text, the first, second and third lines all incorrectly end with a full stop in the middle of the titles of the SIs. There is also an incorrect “and the” rather than “, the” in the third line, and in the fourth line of the English text there should be a space between “(Wales)” and “(Amendment)”.
19. In paragraph 2.3, in the first and second bullet points, the abbreviation “LA” is incorrectly abbreviated as “Al” rather than as “AL” in the corresponding Welsh text.
20. In paragraph 2.5, the reference should say “paragraphs 2.2 and 2.3” rather than “2.2 to 2.3” as they are consecutive paragraphs.
21. In paragraph 2.10, there is a slight difference between the English and Welsh texts where “relevant court rulings and guidance” has been paraphrased as meaning “relevant court rulings and latest guidance”.
22. In paragraph 2.13, a capital first letter has been used for “Regulations” but this is normally done in legislation when referring to a specific set of Regulations. Elsewhere in the Code, such as in paragraphs 3.2 and C.18, a lower case first letter has been used for the spelling of “regulations” when referring to sets of regulations in general rather than a specific set of Regulations.
23. From paragraph 4.9 onwards, in the Welsh text there is a slight difference in how the phrase “the timetabled admissions process” has been translated from a grammatical point of view. In paragraph 5.21 it has been translated as “y broses dderbyn a amserlennwyd” but in paragraphs 4.9, 4.10, 4.12 and 6.1 it has been translated as “y broses derbyn a amserlennwyd” without the soft mutation. There should be a consistent approach throughout the Code.
24. In paragraph 4.11, in the second sentence, there is a slight difference between the English and Welsh texts, as the word “appeal” in the phrase “appeal panel members” is missing from the Welsh translation.
25. In paragraph 4.16, the Welsh text has used a capital letter for “member” in the phrase that corresponds to “member of the Senedd” where the English text has a lower case first letter.
26. On page 20, in footnote (9) for paragraph 4.13. there is a reference to “paragraphs A15 to A23” but this appears to be incorrect and should state “paragraphs A15 to A22” ?



27. In paragraph 5.4, there is an incorrect reference to “paragraph 5.3 **and 5.4**”. This requires explanation as to the intended correct reference that should be found here. In addition, the reference should use a plural noun “paragraphs” if it refers to several paragraphs.
28. In paragraph 5.12, in the first bullet point, the reference “paragraphs 5.19 **to** 5.20” should use a conjunction “and” rather than “to” as they are consecutive paragraphs – “paragraphs 5.19 **and** 5.20”.
29. In paragraph 5.18, in the English text, in paragraph (a), the second paragraph appears aligned slightly further left than the later paragraphs within paragraphs (b) and (c). In the Welsh text all of the corresponding paragraphs in (a), (b) and (c) are aligned much further left in the text.
30. In paragraph 5.26, the reference “paragraphs 5.17 **to** 5.18” should use a conjunction “and” rather than “to” as they are consecutive paragraphs – “paragraphs 5.17 **and** 5.18”.
31. In paragraph 5.36, in the Welsh text, the word “Education” is missing from the translation of the title of the Act – “the **Education** Act 1996”. In addition, in the reference “paragraphs 3.51 **and** 3.52”, the translation has conveyed the meaning as “**to**” rather than “and”.
32. In paragraph 5.40, the abbreviation for individual development plan is included in brackets “IDU” after the term on the first occasion, but isn’t actually used in the Code. Presumably, this is to aid the reader rather than for the intention of using it as a definition in the Code.
33. In paragraph 5.42, in the English text, “Disability Discrimination” appears spelt with capital first letters and a single quotation mark at the beginning and double quotation marks at the end. In the Welsh text, the corresponding words aren’t capitalised and there aren’t any quotation marks around them. It doesn’t appear to be a publication but rather a section on the EHRC website, so it follows that the words should simply be incorporated into the sentence without capital letters and quotation marks in the English text as well.
34. In paragraph 6.1, the phrase “**five** working days” is used, where the number of days is expressed by the word “five”. Elsewhere in the Code, numerals rather than words are used in both languages for expressing the number of working days in a similar context (e.g., paragraphs 4.3, 4.4 and 4.23).
35. In paragraph 6.10, there is a slight difference between the Welsh and English texts where the word “panel” is missing from the translation of the phrase “different **panel** members”.
36. In paragraph 7.1, there is a reference to “the 1998 Act and paragraph 2(2) of Schedule 2 to the 2005 Regulations” at the end of the sentence which is all underlined and has a hyperlink. In the English text, the entire reference is shown in a blue font colour which is used for actions that should be taken. In the corresponding Welsh reference, only the words that correspond to “the 1998 Act” are underlined with a hyperlink, and they are shown in a different light blue font colour.
37. In paragraph 7.4, it refers to child looked after by “a Welsh LA”. It is only time that “Welsh LA” rather than “LA” is used in the Code.
38. In paragraph 7.5, in the English text, the first letter in the reference “**s**ection 95(2)” isn’t coloured blue and underlined, and the corresponding Welsh text is coloured a different shade of blue. In addition, in the Welsh text, “the 1998 Act” has also been coloured blue and underlined even though this doesn’t occur in the English text. These problems occur throughout the Code in various places in relation to the formatting differences between the language texts.



39. On page 36, in footnote 26 for paragraph 7.4, “Regulation” should be spelt with a lower case first letter as it is referring to a specific individual regulation rather an entire set of Regulations.
40. In the heading of Annex A, in the English text, there is a colon after “Admission appeals” but there is a hyphen in the corresponding Welsh text.
41. In Annex A, in paragraph A.5, there is a reference to “section 94” but it doesn’t add “of the 1998 Act” unlike all the other references in paragraphs A.3 to A.13.
42. In Annex A, in paragraph A.7, in the second bullet point, there is an error in the English text which states “made on or behalf of” when the intention appears to be to state “made by or on behalf of”. The Welsh translation has assumed that it should say “made by or on behalf of” and has translated it as having that meaning.
43. In Annex A, in several places, the references to “the 1998 Act” have been shown in blue font and underlined in the Welsh text although that hasn’t been done in the English text. For examples, see paragraphs A.6, A.8, A.9 and A.13.
In addition, in the English text, the reference to “the 1998 Act” has been shown in blue font, underlined and with a hyperlink in paragraph A.12 although this hasn’t been done for all of the earlier references to that Act.
44. In Annex A, in paragraph A.13, in the Welsh text, the word that corresponds to “year” in “year group” has been shown in a light blue colour, underlined, and with a hyperlink although it doesn’t occur in the English text. This is addition to the other formatting differences that have already been mentioned in relation to this paragraph.
45. In paragraph A.15, there is a significant difference between the English and Welsh texts as the words “and victimisation” are missing from the translation.
46. In paragraphs A.18 and A.20, the words “victimise” and “victimisation” occur in the English text, and they have been included in the Welsh text. However, they have been translated differently as “trin [person] yn annheg” and “erledigaeth” in those paragraphs. They do appear to refer to the same concept in law and therefore they should be consistent regarding their terminology. The Welsh Government’s terminology website does suggest “erledigaeth” as the preferred term with a status B for “victimisation”.
47. In paragraph A.19, in the Welsh text, there appears to be a minor grammatical error where “having a religious character” has been translated as “rhai â chanddynt gymeriad crefyddol”. However, there shouldn’t be a circumflex above the “a” in the words “rhai â chanddynt”.
48. In paragraph A.21, in the English text, the sentence doesn’t make sense as it states “is available the from the”. The corresponding Welsh text does make sense and has translated the meaning as “available from the”.
49. In Annex B, in paragraph B.5, in the first bullet point of the final words, the English text states “have understood the reasons for the decision, **which must** be expressed clearly and concisely (in writing)”. The Welsh text interprets “which must” as referring to “the decision”, and if that is the intention of the English text, the translation is correct. But, if the English text is referring to “the reasons” then the translation has misinterpreted the English text and is incorrect.
50. In Annex C, in paragraphs C.9 and C.15, there are references to “paragraphs 5.17 to 5.18”. But they should use the conjunction “and” rather than “to” as they are consecutive paragraphs.
51. In Annex C, in paragraphs C.9 and C.16(a), in the English text, there is a slight inconsistency where the word “met” is used in relation to the conditions referred to in paragraphs C.6 and



- C.7. But, in paragraphs C.6 and C.7, the panel must be satisfied that the conditions “apply” rather than are “met”. The Welsh translation of those paragraphs is consistent and uses the word “apply” in all of those paragraphs.
52. In Annex C, in paragraph C.17, in the final sentence of the Welsh text, the words “bydd eu” have become merged as “byddeu” which doesn’t make sense.
 53. On page 49, in footnote (33) for paragraph C.18, there are opening brackets before the words “within the meaning of” but there aren’t any closing brackets in the footnote.
 54. On page 49, in footnote (34) for paragraph C.18, there are square brackets around the words “child arrangements” in the phrase “a [child arrangements] order”.
 55. In Annex D, in paragraph D.3, in the Welsh text, the translation of the publication “The Equal Treatment Bench Book” is in the blue font colour used for things that “should” be done, underlined and hyperlinked unlike in the English text.
 56. In Annex E, it states that “Guidance is available on the EHRC’s website” but the link is to the EASS website. I understand that the EASS is an independent advice service and that it isn’t operated by the EHRC. Therefore, this would appear to be incorrect, and should say “the EASS website. In addition, it appears as though a bullet point could be missing before the information about the EASS.
In the Welsh text, there is also a typographical error in the translation of the name of the Equality Advisory and Support Service in the website link where the letter ‘h’ is missing in “Cyngori” which should be spelt “Cyng~~h~~ori”. Furthermore, the text of the name of that Service appears in different font colours in the Welsh text and the English texts. There are also different words in brackets after the name of the Service in the link in the Welsh and English texts. The Welsh text has “(custhelp.com)” but the English text has “(equalityadvisoryservice.com)”.
 57. In Annex F, the “Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 (“the 2011 Regulations”)” and “Guidance: The Equality Act 2010 (Disabled School Pupils) (Wales) Regulations 2021 [HTML] | GOV.WALES” appear in blue coloured text, underlined and with a hyperlink unlike the other related documents listed in the Annex.
 58. In Annex F, in the English text, the case “R (ota I) v The Independent Appeal Panel of St Edward’s College [2001] ELR 542” doesn’t appear to be in the correct place as it should appear before the case beginning “R (ota K and S)” to be in the correct order.
 59. In the Glossary, in the English text, in the entry for “Admission Authority”, the second sentence appears in a different font size to the rest of the entries – size 11 rather than 12.
 60. In the Glossary, in the entry for “Admission round (normal)”, in the English text, “Foundation” has been spelt with a capital first letter in the words “Foundation school” but is spelt with a lower case first letter in the Welsh text. The Welsh text appears to be correct in this instance.
 61. In the Glossary, in the Welsh text, in the entry that corresponds to “Infant class size limit”, a word is missing after “of the 1998 Act” with the result that the translation doesn’t make sense. The Welsh word “yn” should appear after “o Ddeddf 1998” to complete the meaning of the sentence.
In addition, in the English text of that entry a longer part of the sentence appears in blue, underlined and with a hyperlink compared with the Welsh text.
 62. In the Glossary, in the entry for “Looked after children”, in the English text, the words in the term “Previously Looked after Children” are all spelt with capital first letters. But only the first word of the term is spelt with a capital letter in the later entry for that term in the



Glossary. In the Welsh text it is spelt consistently with only the first letter capitalised in both places.

63. In the Glossary, in the entry for “Oversubscription” there is a slight difference between the Welsh and English text. In the English text, it refers to “the school’s published admission number”, but the Welsh text has the meaning “the admission number published on the school’s website”. In addition, in the Welsh text, it could be argued that it would have been sufficient to put “Goralw” in the heading without the additional explanation, as the entry itself provide an explanation of the meaning of “Goralw” (“Oversubscription”). It also means that if anyone searches for the term “goralw” in the Glossary it will not be found under the letter “g” because the heading begins with the first letter of the explanation “Mwy o...” which doesn’t seem helpful to the reader.

