Use of remote technology in school admission and exclusion appeal hearings: Consultation

Responding to this Consultation

We are inviting responses to this consultation by 12 March 2024.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (Scottish Government consultations - Citizen Space). Access and respond to this consultation online at: Scottish Government Consultations - Remote Means School Admissions and Exclusion Appeal Hearings. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 12 March 2024.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

School Organisation Team Scottish Government Area 2B North Victoria Quay Edinburgh, EH6 6QQ

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: Privacy - gov.scot (www.gov.scot)

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at Scottish Government consultations - Citizen
Space. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at emma.davidson@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <u>Scottish Government consultations - Citizen Space</u>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Background

Due to the COVID-19 pandemic, education authorities and education appeal committees (hereafter "appeal committees") faced significant challenges in meeting the statutory requirements of the legislation that apply to school admission and exclusion appeal hearings. In response to their concerns that the school admission placing request and appeals process may face significant disruption we introduced The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020¹, in April 2020. The regulations provided education authorities and appeal committees with greater flexibility, to enable appeal hearings to continue to be heard in a timely way.

These arrangements were:

- giving flexibility for appeal hearings to take place either in person or by telephone or video conference, or where all parties agree wholly in writing; and
- amending the timescales and deadlines relating to appeals

The regulations were amended further in February 2021 and in December 2021 through The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2021² and The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) (No. 2) Regulations 2021³ respectively. Subsequently, as the pandemic eased, the regulations were amended to remove the extensions to the deadlines and timescales returning them to as they were prior to the pandemic. The ability to conduct appeal hearings remotely however has remained in place throughout this period. The current regulations will remain in place until such time changes are made following the outcome of this consultation process.

Benefits of the use of remote means for appeal hearings

We have regularly reviewed the operation of the regulations with education authorities and parent representative bodies. The feedback from stakeholders was positive about the flexibilities provided through the above regulations. They reported that parents had been positive about the remote arrangements which were enabling parents to more easily access the appeals system without, for example, having to take significant time off work and/or incur additional costs, such as arranging additional childcare.

Education authority stakeholders noted the greater flexibility for appeal committees and parents alike as hearings can often run over. They also noted that use of remote means has become a normal feature of everyday life and to remove that option would be out of step with wider practice across society.

¹ <u>The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020 (legislation.gov.uk)</u>

² The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2021 (legislation.gov.uk)

The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) (No. 2) Regulations 2021 (legislation.gov.uk)

Stakeholders have noted the greater convenience and better access to justice this approach offers to parents, by allowing them to attend hearings easily and without the need to travel to council offices. Attending in-person appeal hearings can be intimidating to some parents and remote hearings allow parents to participate in their own home where they can be more comfortable and relaxed.

Potential barriers arising from use of remote means in appeal hearings

Stakeholders acknowledged the risk of digital exclusion for those without access to suitable IT/broadband connection and suggested that use of remote means remain optional. Scottish Government guidance for Education Authorities on how they conduct remote appeal hearings has also emphasised the importance of appeal committees' responsibilities under the Equality Act 2010 to ensure that the needs of participants are taken into account when conducting appeal via remote means. You can find this guidance here: <a href="Appeal hearings procedures - Coronavirus (COVID-19): school placing requests and appeal hearings - guidance for local authorities - gov.scot (www.gov.scot)

Consent to use of remote means in appeal hearings

The current regulations only require the consent of all parties in relation to wholly written appeals. If the ability to use remote means is retained permanently, we believe it is important that parents who wish to present their case in-person can continue to do so. Therefore, we are of the view that the use of remote means should be used where all parties agree. We remain committed to in-person appeal hearings and parents should retain the right to an in-person hearing if they wish. The purpose of the proposed changes is to give all parties greater flexibility in how appeal hearings are conducted.

Purpose of the consultation

Through this consultation, we hope to gather more evidence on the direct views of parents and children and young people about these arrangements as well as other interested stakeholders. A number of stakeholders have requested that the flexibility to use remote means for appeal hearings is retained and made permanent. We are therefore consulting on whether to retain the option of holding appeal hearings remotely, and if so, any other amendments that need to be made to how this would work in practice. We are seeking views on making in-person appeal hearings the default with remote hearings an option if all parties agree. It would be our intention to bring these changes into force in time for the spring 2025 school admissions round.

This consultation is limited, and we are only seeking views on these proposed changes to remote access to appeal hearings and not on any wider issues in relation to school admission appeals.

Proposal

The Scottish Government proposes that the ability to hold school admission and exclusion appeals using remote means is maintained on a permanent basis. In-person appeal hearings will be the default means by which appeal hearings are conducted.

Where all parties agree to use remote means we propose video conferencing is the default remote means, and that telephone conferencing and wholly written appeals are only used where it is not possible to use video conferencing.

Questions

- 1. Do you agree with the proposal that the use of remote means for appeal hearings should remain?
- 2. Do you agree that video conferencing should be the default option and telephone conferencing, or wholly written means be used only where it is not possible to use video-conferencing?
- 3. Do you agree that remote means should only be used where all parties agree?
- 4. Are there any other improvements that should be made to how remote means is used in appeal hearings, for example, to mitigate the risk of digital exclusion?

Making Use of Remote Means to Conduct Appeal Hearings



Respondent Information Form

Please Note this form must be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy: Privacy-gov.scot (www.gov.scot)

Are you responding as an individual or a	n organisation?
☐ Individual	
☐ Organisation	
Full name or organisation's name	
Phone number	
Address	
Postcode	
E and A I I are	
Email Address	
The Scottish Government would like response. Please indicate your published	your permission to publish your consultation shing preference.
Information for organisations:	
The option 'Publish response only (without this option is selected, the organisation r	out name)' is available for individual respondents only. If name will still be published.
If you choose the option 'Do not publish having responded to the consultation in,	response', your organisation name may still be listed as for example, the analysis report.
☐ Publish response with name	
☐ Publish response only (withou	t name)
☐ Do not publish response	

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in

ture, but we require your permission to do so. Are you content for Scottish nment to contact you again in relation to this consultation exercise?
Yes
No

Questionnaire

Question 1 Do you agree with the proposal that the use of remote means for appeal hearings should remain?
☐ Strongly agree
☐ Mostly agree
☐ Mostly disagree
☐ Strongly disagree
Please give reasons for your answer.
Question 2 Do you agree that video conferencing should be the default option and telephone conferencing, or wholly written means be used only where it is not possible to use video-conferencing?
☐ Strongly agree
☐ Mostly agree
☐ Mostly disagree
☐ Strongly disagree
Please give reasons for your answer.
Question 3 Do you agree that remote means should only be used where all parties agree?
☐ Strongly agree
☐ Mostly agree
☐ Mostly disagree

☐ Strongly disagree
Please give reasons for your answer.
Question 4 Are there any other improvements that should be made to how remote means is used in appeal hearings, for example, to mitigate the risk of digital exclusion?
☐ Yes
□ No
Please give reasons for your answer.



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