POLICY NOTE

THE EDUCATION (APPEAL COMMITTEE PROCEDURES) (SCOTLAND) AMENDMENT REGULATIONS 2025

SSI No. 144

These amendments are made in exercise of the powers conferred by sections 28D(3) of the Education (Scotland) Act 1980, and section 22 and paragraph 6(6) of schedule 2 of the Education (Additional Support for Learning) (Scotland) Act 2004.

Purpose of the instrument: This instrument proposes amendments to the regulations governing school admission and exclusion appeal hearings in Scotland. Its purpose is to amend the current provisions which allow appeal committee hearings to be held remotely, providing continued flexibility and ensuring that appellants can attend hearings in person if they wish to do so.

Policy Objectives

The objectives of these amendments are:

- To introduce a new definition of "hearing", which allows for hearings to be held remotely or through the use of "remote facilities", which is also defined.
- To ensure that, where an appellant wishes to attend the hearing in person, the education authority must make arrangements for them to do so.
- To ensure that individuals who may be digitally excluded continue to have access to in-person hearings.
- To provide for appeal hearings to be held in person, wholly remotely, or partly remotely and partly in person (hybrid), ensuring greater choice and accessibility for appellants.

- To require that where an appeal involves a mix of in-person and remote participants (which will be particularly relevant to combined hearings with multiple appellants), an appellant who wishes to attend in person can do so and all appeal committee members must attend in person.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 ("the Act"), the Scottish Ministers certify that, in their view, the Education (Appeal Committee Procedures) (Scotland) Amendment Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The Scottish Government undertook a public consultation on the proposed regulations, which ran from 16 January to 12 March 2024. In addition, targeted engagement took place with education authorities, parent representative bodies, and equality and children's rights advocacy organisations to ensure those views were captured during the consultation.

The consultation responses indicated broad support for maintaining the option of remote hearings, provided that appropriate safeguards are in place to protect participation and access, particularly for digitally excluded groups. Many respondents emphasised the importance of ensuring that appellants are offered a choice of hearing format and that fully remote hearings should only proceed with the agreement of all parties involved. Concerns were raised about digital exclusion, differences in participation quality between remote and in-person hearings and fairness in combined hearings where appellants may express different preferences.

Reflecting on the views expressed during the consultation, the regulations will ensure that an appellant who wishes to attend a hearing in person can do so. The agreement of all parties is required before a hearing can proceed entirely remotely.

A full list of organisations consulted, and who agreed to the release of this information, is attached to the consultation report published on the Scottish Government website. It includes education authorities, Enquire, Society of Local Authority Lawyers and Administrators in Scotland and Convention of Scottish Local Authorities

Impact Assessments

An Equality Impact Assessment has been completed and found generally positive or neutral impacts. The assessment indicates that the proposals promote inclusivity and do not disadvantage individuals who are digitally excluded. A Children's Rights and Wellbeing Impact Assessment has also been carried out. This showed generally positive and neutral impacts, and while there is potential for certain negative impacts, these would not amount to an incompatibility with children's rights and can be mitigated by following the recommendations that will be set out in guidance. The guidance will highlight that appellants should be offered a choice of hearing format and will reiterate that education authorities must comply with their wider duties under equality and human rights legislation.

Financial Effects

The Cabinet Secretary for Education and Skills confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Learning Directorate
13 May 2025