

Changes to the Schools (Consultation) (Scotland) Act 2010

1.0 EXECUTIVE SUMMARY

Significant changes have been made to the Schools (Consultation) (Scotland) Act 2010 which take into account the recommendations in the Rural Schools Commission and the subsequent Parliamentary process. These have culminated in new statutory requirements for Education Authorities. These changes came into effect on 1 August 2014.

The provisions within the Schools (Consultation) (Scotland) Act 2010 and its amendments cover four main areas:

- I. the consultation procedures for school closures, and other proposals affecting schools, which councils must follow;
- II. the duties for councils to take into account when consulting on a proposal to close a rural school;
- III. a system of referring closure decisions to the Scottish Ministers for consent with a power to call in decisions, and
- IV. the introduction of a School Closure Review Panel for determining closure proposals when Scottish Ministers have called in a proposal.

The changes to the Act cover the following main areas:

- introducing a 5 year moratorium on consulting on a closure proposal after a decision is made not to implement a closure proposal;
- introducing a requirement to include standardised information about the financial implications where a proposal paper relates to a closure;
- clarifying the duties for a council where it is notified of alleged inaccuracies or omissions in the initial proposal paper;
- introducing a presumption against closure and clarifying the basis for determining a rural school closure;
- updating advice on the call-in process, including extending the role of Education Scotland to provide advice on the educational aspects of a proposal for Scottish Ministers when they consider whether to issue a call-in notice as well as to the Schools Closure Review Panel; and
- establishing a School Closure Review Panel for determining closure cases called in by Scottish Ministers.

Recommendations

- a. note the changes to the Schools (Consultation) (Scotland) Act 2010 which came into effect from 1 August 2014; and
- b. note that a presumption against closure of rural schools and the introduction of a 5 year moratorium will impact on any future review of the school estate.

Changes to the Schools (Consultation) (Scotland) Act 2010

2.0 INTRODUCTION

2.1 There are significant changes being made to the Schools (Consultation) (Scotland) Act 2010 which take into account the recommendations in the Rural Schools Commission and the subsequent Parliamentary process. These have culminated in new statutory requirements for Education Authorities taking effect on 1 August 2014.

2.2 The 2010 Act was amended in part 15 of the Children and Young People (Scotland) Act 2014. The changes to the Act cover the following main areas:

- introducing a 5 year moratorium on consulting on a closure proposal after a decision is made not to implement a closure proposal;
- introducing a requirement to include information about the financial implications of a proposal where a proposal paper relates to a closure proposal;
- clarifying the duties for a council where it is notified of alleged inaccuracies or omissions in the initial proposal paper;
- clarifying the basis for determining a rural school closure;
- updating advice on the call-in process, including extending the role of education Scotland to include providing advice on educational aspects of a proposal for Scottish Ministers when Ministers consider whether to issue a call-in notice and to the Schools Closure Review Panel; and
- establishing a School Closure Review Panel for determining closure cases called in by Scottish Ministers.

2.3 The Act defines ten types of proposal that trigger the consultation process. Proposals requiring consultation are those where a council proposes to:

1. discontinue permanently a school (this includes special schools and nursery schools) or a stage of education in a school (this includes years in a secondary school or a special class in a mainstream school or where the council proposes to discontinue Gaelic medium provision)
2. establish a new school or stage of education in a school
3. relocate a school or nursery class
4. vary the catchment area or modify the guidelines for placing requests for a school
5. vary the arrangements for the transfer of pupils from a primary school to a secondary school
6. change the school commencement date of a primary school

7. vary arrangements for the constitution of a special class in a school other than a special school
8. discontinue arrangements for the provision of transport by the council for pupils attending a denominational school
9. change a denominational school into a non-denominational school
10. discontinue a further education centre which is managed by the council.

3.0 RECOMMENDATIONS

3.1 It is recommended that the Community Services Committee:

- a. note the changes to the Schools (Consultation) (Scotland) Act 2010 which came into effect from 1 August 2014; and
- b. note that a presumption against closure of rural schools and the introduction of a 5 year moratorium will impact on any future review of the school estate.

4.0 DETAIL

4.1 The overview and guidance on the Schools (Consultation) (Scotland) Act 2010, as amended, prepared by Education Scotland is appended to this report for information. This guidance summarises the key points set out in the Act. The Act was amended in part 15 of the Children and Young People (Scotland) Act 2014. The Children and Young People (Scotland) Act 2014 received Royal Assent on March 27 2014 and the majority of part 15 came into effect on 1 August 2014.

4.2 The provisions within the Schools (Consultation) (Scotland) Act 2010 and its amendments cover four main areas:

- i. the consultation procedures for school closures, and other proposals affecting schools, which councils must follow;
- ii. the duties for councils to take into account when consulting on a proposal to close a rural school;
- iii. a system of referring closure decisions to the Scottish Ministers for consent with a power to call in decisions, and
- iv. the introduction of a School Closure Review Panel for determining closure proposals when Scottish Ministers have called in a proposal.

4.3 The Act, as amended, establishes a rigorous, open and transparent system for consulting on school closures and other changes to the school estate as proposed by councils. The Act requires councils to follow the same basic sequence, the key phases of which are:

- 1) the council makes the decision to consult on a proposal;
- 2) the council prepares a proposal paper, including an educational benefits statement and other required information;
- 3) the council publishes the proposal paper, advertises the fact and notifies Education Scotland and mandatory consultees;
- 4) the council meets certain consultation requirements, including holding a public meeting;

- 5) the consultation ends, after a minimum of six weeks, including at least 30 school days;
- 6) once the consultation period is complete and upon receipt of relevant papers from the council, Education Scotland have three weeks to prepare and finalise a report on the proposal and send it to the council;
- 7) upon receipt of the report from Education Scotland, the council reviews the proposal having regard to the report by Education Scotland and representations received during the consultation period and then prepares and publishes a consultation report; and
- 8) following publication of the consultation report, the council must allow three weeks to elapse before taking its final decision on the proposal.

4.4 The Act establishes a presumption that no rural school will be proposed for closure (nor even the consultation process commenced) unless and until a number of factors have been taken into account. However, it does not mean that no rural school should ever be closed and acknowledges that there will be circumstances in which that is the right or only course of action. Before proposing to close any rural school, the council must identify its reasons for formulating the proposal. It must also consider if there are any reasonable alternatives to closure of the school. Reasonable alternatives include steps that would result in the school or stage of education remaining open. In formulating a closure proposal on a rural school, the council must assess for the proposal and each of the alternatives to the proposal:

- the likely educational benefits of implementation of the proposal and the alternatives;
- the likely effect on the local community, and
- the likely effect of any different travelling arrangements that may be required by the closure.

The council may only publish a proposal paper to discontinue the school or stage of education if it considers that implementation of the proposal is the most appropriate course of action.

4.5 The Act also introduces a five year moratorium on consulting on a closure proposal after a decision is made not to implement a closure proposal. The Act defines a decision as a decision of the Council or the School Closure Review Panel, or, until the panels are established, a decision by Scottish Ministers.

4.6 The establishment of a new school or stage of education in a school has implications for the implementation of 600 hours of free pre-school education introduced within the Children and Young People (Scotland) Act 2014. The draft statutory guidance supporting the introduction of 600 hours notes the following with regard to Consultation under the Schools Consultation (Scotland) Act 2010:

- i. in order to expedite expansion and reconfiguration of early learning and childcare, the Children and Young People (Scotland) Act 2014 (Ancillary Provision) Order 2014 will suspend the requirements of the 2010 Act at 2(a) and (b), i.e. the duty to consult on opening or establishing a new school or stage of education in relation to early learning and childcare which the education authority is under a duty to deliver through section 47(1) of the Act;

- ii. this means that local authorities can adapt any school or local authority facility, or build a new facility, to expand and provide early learning and childcare without the need to consult. This suspension will be in place until March 2017; and
- iii. this suspension will not apply to education authority plans to relocate or close an early learning and childcare setting.

5.0 CONCLUSION

- 5.1 The changes to the Schools (Consultation) (Scotland) Act 2010 introduced through the Children and Young People (Scotland) Act 2014, clarifies the duties and responsibilities of the council when introducing a significant change to a school as defined in 2.3 above.
- 5.2 The introduction of a presumption against closure of rural schools and the introduction of a 5 year moratorium on consulting on a closure proposal after a decision is made not to implement a closure proposal will have consequences on how future reviews of the school estate are considered.
- 5.3 The statutory consultation process as detailed above provides a formal approach which will be resource intensive in relation to financial costs and staff time to administer whenever there is a requirement for the Council to consult on one of the ten types of defined proposal outlined in section 2.3.

6.0 IMPLICATIONS

- 6.1 Policy - none
- 6.2 Financial – The statutory consultation process as detailed above provides a formal approach which will be resource intensive in relation to financial costs and staff time to administer whenever there is a requirement for the Council to consult on one of the ten types of defined proposal outlined in section 2.3.
- 6.3 Legal – Implementation of the requirements of the Schools (Consultation) (Scotland) Act 2010 as amended in part 15 of the Children and Young People (Scotland) Act 2014.
- 6.4 HR - none
- 6.5 Equalities – An equality impact assessment will be carried out when considering any proposals as detailed in the Act.
- 6.6 Risk – Consideration must be given to the potential risk to the council's reputation when undertaking any future consultation.
- 6.7 Customer Service – Clarification of the consultation guidance will lead to a greater understanding of the process and should allow consideration to be given to the proposal put forward not the process.

7.0 APPENDICES

- 7.1 Education Scotland Schools Consultation Act as amended/ Education Scotland Overview and Guidance for EAs/July 2014

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