



# Schools (Consultation) (Scotland) Act 2010

2010 asp 2

*Process for all schools*

## **1 Overview of key requirements**

- (1) Subsection (2) applies where, in relation to any school, an education authority has formulated a relevant proposal.
- (2) Before proceeding with the proposal, the education authority must comply with the initial and subsequent requirements set out in subsections (3) and (4).
- (3) The initial requirements are—
  - (a) to prepare an educational benefits statement in accordance with section 3,
  - (b) to prepare (and publish) a proposal paper in accordance with section 4,
  - (c) to give notice of the proposal to the relevant consultees (and invite representations) in accordance with section 6,
  - (d) to hold (and give notice of) a public meeting in accordance with section 7,
  - (e) to involve HMIE in accordance with section 8.
- (4) The subsequent requirements are—
  - (a) to review the proposal in accordance with section 9(1),
  - (b) to prepare (and publish) a consultation report in accordance with sections 9 and 10.
- (5) In subsection (2), the reference to proceeding with the proposal is to—
  - (a) deciding to implement it (wholly or partly), or
  - (b) implementing it (wholly or partly).

## **2 Relevant proposals and consultees**

- (1) In this Act—
  - (a) a “relevant proposal” is any proposal specified in paragraphs 1 to 10 of schedule 1,
  - (b) a “closure proposal” is a proposal specified in paragraph 1 of that schedule.

- (2) In this Act, the “relevant consultees”—
- (a) in relation to a particular relevant proposal, are the consultees specified in the corresponding paragraph of schedule 2,
  - (b) so far as required by paragraphs 11 and 12 of that schedule, include the consultees specified in those paragraphs.

### **3 Educational benefits statement**

- (1) The education authority must prepare an educational benefits statement which includes—
- (a) the authority’s assessment of the likely effects of a relevant proposal (if implemented) on—
    - (i) the pupils of any affected school,
    - (ii) any other users of the school’s facilities,
    - (iii) any children who would (in the future but for implementation) be likely to become pupils of the school,
    - (iv) the pupils of any other schools in the authority’s area,
  - (b) the authority’s assessment of any other likely effects of the proposal (if implemented),
  - (c) an explanation of how the authority intends to minimise or avoid any adverse effects that may arise from the proposal (if implemented),
  - (d) a description of the benefits which the authority believes will result from implementation of the proposal (with reference to the persons whom it believes will derive them).
- (2) The statement must also include the education authority’s reasons for coming to the beliefs expressed under subsection (1)(d).
- (3) In subsection (1), the references to effects and benefits are to educational effects and benefits.

### **4 Proposal paper**

- (1) The education authority must prepare a proposal paper which—
- (a) sets out the details of the relevant proposal,
  - (b) proposes a date for implementation of the proposal,
  - (c) contains the educational benefits statement in respect of the proposal,
  - (d) refers to such evidence or other information in support of (or otherwise relevant in relation to) the proposal as the education authority considers appropriate.
- (2) The proposal paper must also give a summary of the process provided for in sections 1 to 17 (so far as applicable in relation to the proposal).
- (3) A proposal paper may include more than one proposal.
- (4) The education authority must—
- (a) publish the proposal paper in both electronic and printed form,
  - (b) make the paper, and (so far as practicable) a copy of any separate documentation that it refers to under subsection (1)(d), available for inspection at all reasonable times and without charge—

- (i) at its head office and on its website,
    - (ii) at any affected school or at a public library or some other suitable place within the vicinity of the school,
  - (c) provide without charge the information contained in the proposal paper—
    - (i) to such persons as may reasonably require that information in another form, and
    - (ii) in such other form as may reasonably be requested by such persons.
- (5) The education authority must advertise the publication of the proposal paper by such means as it considers appropriate.

## **5 Correction of the paper**

- (1) This subsection applies where, during the consultation period, an education authority—
  - (a) has been notified of—
    - (i) an alleged omission of relevant information from a proposal paper,
    - (ii) an alleged inaccuracy in a proposal paper,
  - (b) discovers—
    - (i) that relevant information has been omitted from a proposal paper,
    - (ii) an inaccuracy in a proposal paper.
- (2) In a situation mentioned in subsection (1)(a), the education authority must—
  - (a) determine, as the case may be, if—
    - (i) relevant information has (in its opinion) been omitted,
    - (ii) there is (in fact) an inaccuracy, and
  - (b) inform the notifier as to the action (if any) it is taking under subsection (3).
- (3) In a situation mentioned in subsection (1)(a) or (b), the education authority may—
  - (a) take the following steps—
    - (i) publish a corrected proposal paper,
    - (ii) give revised notice in accordance with section 6, and
    - (iii) send a copy of the corrected paper to HMIE,
  - (b) issue a notice to the relevant consultees and HMIE—
    - (i) providing the omitted information or, as the case may be, correcting the inaccuracy, and
    - (ii) if the authority considers it appropriate, extending the consultation period by such period as is reasonable by reference to the significance of the information provided or, as the case may be, the nature of the correction, or
  - (c) take no further action (except by virtue of section 10(3)).

## **6 Notice and consultation period**

- (1) The education authority must give the relevant consultees notice—
  - (a) of the relevant proposal, or
  - (b) where only part of the proposal affects a particular consultee (or category of consultee), of that part of the proposal.
- (2) The notice must—

- (a) give a summary of the proposal (or part),
  - (b) give information about—
    - (i) where a copy of the proposal paper may be obtained, and
    - (ii) how to make written representations on the proposal (including to whom such representations should be submitted).
- (3) The notice must also—
- (a) state the date of the last day of the consultation period for the proposal,
  - (b) advise that this is the period within which written representations must be received by the authority for them to be taken into account, and
  - (c) if known (at the time of giving the notice), state the date, time and place of the public meeting on the proposal.
- (4) In this Act, the “consultation period” is a period (fixed by the education authority) of at least 6 weeks that—
- (a) starts on the day (or last day) on which the notice required by subsection (1) is given,
  - (b) runs continuously, and
  - (c) includes at least 30 school days of any affected school.
- (5) In subsection (4), a “school day”—
- (a) in relation to a particular school is a day on which the school is ordinarily open to its pupils for the purpose of their school education, or
  - (b) in the case of a further education centre to which paragraph 10 of schedule 1 refers, is a day on which the centre is ordinarily open to its students for the purpose of their further education.

## **7 Public meeting**

- (1) During the consultation period, the education authority must hold (and be represented at) a public meeting on the relevant proposal.
- (2) Advance notice of the date, time and place of the public meeting must be given by the education authority to—
  - (a) the relevant consultees,
  - (b) HMIE.
- (3) Subsection (2)(a) does not require such notice to be given if it has already been given under section 6(3)(c).
- (4) More than one proposal may be the subject of the same public meeting if the proposals are included in the same proposal paper.

## **8 Involvement of HMIE**

- (1) The education authority must send to HMIE—
  - (a) when published, a copy of the proposal paper,
  - (b) as regards any relevant written representations received by the authority (from any person) during the consultation period—
    - (i) a copy of them, or
    - (ii) if HMIE agree, a summary of them,

- (c) a summary of any oral representations made to it (by any person) at the public meeting,
  - (d) as available (and so far as otherwise practicable), a copy of any other relevant documentation.
- (2) HMIE are to prepare a report on the educational aspects of the relevant proposal.
- (3) In preparing the report, HMIE may—
- (a) enter any affected school and make such reasonable enquiries of such persons there as HMIE consider appropriate, and
  - (b) make such reasonable enquiries of such other persons as HMIE consider appropriate.
- (4) In preparing the report, HMIE are to have regard (in particular) to—
- (a) the educational benefits statement,
  - (b) the things sent to them under subsection (1)(b) and (c),
  - (c) any written representations made (by any person) direct to HMIE on any educational aspect of the proposal so far as HMIE consider them to be relevant.
- (5) HMIE must submit the report to the education authority—
- (a) not later than 3 weeks after the authority has complied with subsection (1) (which 3 week period may not start during the consultation period), or
  - (b) within such longer period as is agreed between them.
- (6) In this Act, “HMIE’s report” is the report prepared under subsection (2).
- (7) In this Act, a reference to “HMIE” is a reference to Her Majesty’s Inspectors (including any of them).

## **9 Consultation report**

- (1) After the education authority has received HMIE’s report, the authority is to review the relevant proposal having regard (in particular) to—
- (a) any relevant—
    - (i) written representations received by the authority (from any person) during the consultation period,
    - (ii) oral representations made to it (by any person) at the public meeting,
  - (b) HMIE’s report.
- (2) The education authority must then prepare a consultation report.
- (3) The education authority must—
- (a) publish the consultation report in both electronic and printed form,
  - (b) make the report available for inspection at all reasonable times and without charge—
    - (i) at its head office and on its website,
    - (ii) at any affected school or at a public library or some other suitable place within the vicinity of the school,
  - (c) provide without charge the information contained in the consultation report—
    - (i) to such persons as may reasonably require that information in another form, and

- (ii) in such other form as may reasonably be requested by such persons.
- (4) The education authority must inform any person who during the consultation period made written representations on the relevant proposal of the publication of the consultation report.
- (5) The education authority must advertise the publication of the consultation report by such means as it considers appropriate.

## **10 Content of the report**

- (1) The consultation report must (in particular)—
  - (a) contain the information mentioned in subsection (2),
  - (b) if applicable, include the further information mentioned in subsection (3),
  - (c) in a relevant case, also provide the explanation mentioned in subsection (4).
- (2) The information is—
  - (a) a record of the total number of any written representations made to the education authority (by any person) on the proposal during the consultation period,
  - (b) a summary of—
    - (i) those written representations,
    - (ii) any oral representations made to it (by any person) at the public meeting,
  - (c) a statement of the authority's response to—
    - (i) those written and oral representations,
    - (ii) HMIE's report,
  - (d) a copy of that report,
  - (e) a statement explaining how the education authority complied with section 9(1).
- (3) In relation to any omission from, or inaccuracy in, the proposal paper to which section 5(1) applies, the further information is—
  - (a) details of the omission or inaccuracy (including a statement of the authority's opinion on it),
  - (b) a statement—
    - (i) of the action taken in respect of the omission or inaccuracy, or
    - (ii) if no action has been taken, of that fact (and why).
- (4) In the case of a closure proposal, the explanation is of the opportunity that may arise for making representations to the Scottish Ministers in connection with section 15(4).

## **11 Time for further consideration**

- (1) An education authority may proceed with a relevant proposal only after the expiry of 3 weeks starting with the day on which the authority complies with section 9(3)(a).
- (2) In subsection (1), the reference to proceeding with a proposal is to—
  - (a) deciding to implement it (wholly or partly), or
  - (b) implementing it (wholly or partly).

### *Special provision for rural schools*

## **12 Factors for rural closure proposals**

- (1) Subsection (2) applies in relation to any closure proposal as respects a rural school.
- (2) The education authority must have special regard to the factors mentioned in subsection (3).
- (3) The factors are—
  - (a) any viable alternative to the closure proposal,
  - (b) the likely effect on the local community in consequence of the proposal (if implemented),
  - (c) the likely effect caused by any different travelling arrangements that may be required in consequence of the proposal (if implemented).
- (4) For the purpose of subsection (3)(b), the effect on the community is to be assessed by reference (in particular) to—
  - (a) the sustainability of the community,
  - (b) the availability of the school's premises and its other facilities for use by the community.
- (5) For the purpose of subsection (3)(c)—
  - (a) the effect caused by such travelling arrangements includes (in particular)—
    - (i) that on the school's pupils and staff and any other users of the school's facilities,
    - (ii) any environmental impact,
  - (b) the travelling arrangements are those to and from the school of (and for) the school's pupils and staff and any other users of the school's facilities.

## **13 Explanation of approach**

- (1) Subsections (2) and (3) apply in relation to any closure proposal as respects a rural school.
- (2) The proposal paper must additionally explain how the education authority complied with section 12 when formulating the proposal.
- (3) The consultation report must additionally explain—
  - (a) how the education authority complied with section 12 when reviewing the proposal under section 9(1),
  - (b) any change of attitude that the education authority has had which is attributable to its compliance with section 12 when reviewing the proposal under section 9(1).

## **14 Designation of rural schools**

- (1) In this Act, a "rural school" is a school which is designated as such by its inclusion in the list of rural schools maintained by the Scottish Ministers for the purposes of this subsection.

- (2) In determining the question of rurality when considering whether a school falls to be included in or excluded from the list of rural schools, the Scottish Ministers are to have regard (in particular) to—
  - (a) the population of the community (or settlement) in which the school is located,
  - (b) the geographical circumstances of that community (or settlement) including its relative remoteness or inaccessibility.
- (3) The list of rural schools is to be accompanied by an explanation of how the Scottish Ministers devised the list—
  - (a) by reference to subsection (2), and
  - (b) if they consider it appropriate, by reference to any recognised criteria available from a reliable source.
- (4) The Scottish Ministers are to—
  - (a) monitor the list of rural schools (and update it as regularly as they consider necessary),
  - (b) publish it (including as updated) in such way as they consider appropriate.
- (5) An education authority must provide the Scottish Ministers with such information as they may reasonably require of it in connection with the list of rural schools.

*Call-in by the Scottish Ministers*

**15 Call-in of closure proposals**

- (1) Subsections (2) to (6) apply where, in relation to any school, an education authority has decided to implement a closure proposal.
- (2) The education authority must—
  - (a) notify the Scottish Ministers of that decision within the period of 6 working days starting with the day on which the decision is made,
  - (b) along with that notification, give them a copy of—
    - (i) the proposal paper,
    - (ii) the consultation report.
- (3) Before the expiry of 6 weeks starting with the day on which that decision is made, the Scottish Ministers may issue a call-in notice to the education authority.
- (4) In considering whether to issue a call-in notice, the Scottish Ministers are to take account of any relevant representations made to them (by any person) within the first 3 weeks of that 6 week period.
- (5) A call-in notice has the effect of remitting the closure proposal to the Scottish Ministers.
- (6) The education authority may not proceed further with the proposal before the expiry of the 6 week period within which a call-in notice may be issued as respects the proposal.
- (7) But the restriction in subsection (6) ceases to apply if (before the end of that period) the Scottish Ministers inform the education authority that they do not intend to issue a call-in notice as respects the proposal.



- (8) In subsection (6), the reference to proceeding further with the proposal is to implementing it (wholly or partly).

## **16 Determination of case**

- (1) Subsections (2) and (3) apply where a call-in notice is issued as respects a closure proposal.
- (2) The Scottish Ministers may—
- (a) refuse to consent to the proposal, or
  - (b) grant their consent to the proposal—
    - (i) subject to conditions, or
    - (ii) unconditionally.
- (3) The education authority may not proceed further with the proposal—
- (a) unless the Scottish Ministers grant their consent to it under subsection (2)(b), and
  - (b) until the Scottish Ministers duly inform the authority of that consent (and any conditions to which it is subject).
- (4) In subsection (3), the reference to proceeding further with the proposal is to implementing it (wholly or partly).

## **17 Grounds for call-in etc.**

- (1) The Scottish Ministers may issue a call-in notice only if subsection (2) applies.
- (2) This subsection applies where it appears to the Scottish Ministers that the education authority may have failed—
- (a) in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the closure proposal, or
  - (b) to take proper account of a material consideration relevant to its decision to implement the proposal.
- (3) The education authority must provide the Scottish Ministers with such information in connection with a closure proposal as they may reasonably require of it for the purposes of their consideration of—
- (a) whether to issue a call-in notice, or
  - (b) the matter of consent (including conditions) under section 16(2).
- (4) In this Act, a “call-in notice” is one issuable by the Scottish Ministers under section 15(3).

### *General*

## **18 Ancillary provision**

Schedule 3—

- (a) modifies enactments,
- (b) makes transitional, transitory and saving provision.

## 19 Guidance

In exercising its functions under this Act, an education authority must have regard to any guidance issued by the Scottish Ministers for the purposes of or in connection with this Act.

## 20 Regulations

- (1) The Scottish Ministers may by regulations make such—
  - (a) supplemental provision, or
  - (b) incidental, consequential, transitional, transitory or saving provision,as they consider necessary or expedient for the purposes of or in connection with this Act.
- (2) The Scottish Ministers may by regulations modify schedule 1 or 2 by—
  - (a) adding an entry to, or removing an entry from, it, or
  - (b) altering the terms of any entry in it.
- (3) Regulations under subsection (1)(a) may (in particular) elaborate on any aspect of the process provided for in sections 1 to 17.
- (4) Regulations under subsection (1) may (in particular) include provision as to the functions of education authorities or the Scottish Ministers.
- (5) The power to make regulations under subsection (1) or (2) includes power to make different provision for different purposes.
- (6) The power to make regulations under subsection (1) or (2) is exercisable by statutory instrument, but—
  - (a) a statutory instrument containing regulations under subsection (2) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament,
  - (b) a statutory instrument containing regulations under subsection (1) which adds to, replaces or omits the text of an Act (including this Act) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament,
  - (c) a statutory instrument containing any other regulations under subsection (1) is subject to annulment in pursuance of a resolution of the Parliament.

## 21 Definitions

- (1) In this Act—

“education authority” has the meaning given in section 135(1) of the 1980 Act,  
“school”—

  - (a) means any school under the management of an education authority (that is, a public school as defined in section 135(1) of the 1980 Act),
  - (b) in relation to a proposal specified in paragraph 10 of schedule 1, includes the (authority-managed) further education centre concerned,

“the 1980 Act” means the Education (Scotland) Act 1980 (c. 44).
- (2) In this Act—

“affected school” is to be construed in accordance with paragraph 11 of schedule 1,

“call-in notice” (as respects a closure proposal) is defined in section 17(4),

“consultation period” is defined in section 6(4) and “consultation report” is to be construed by reference to section 1(4),

“educational benefits statement”, “proposal paper” and “public meeting” are to be construed by reference to section 1(3),

“HMIE’s report” and “HMIE” are defined in section 8(6) and (7),

“relevant proposal”, “closure proposal” and “relevant consultees” are defined in section 2,

“rural school” is defined in section 14(1).

- (3) Unless the context otherwise requires, any undefined expression used in this Act (but defined in section 135(1) of the 1980 Act) is to be construed in accordance with section 135(1) of the 1980 Act.

## **22 Commencement and short title**

- (1) This section and sections 19 to 21 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on the day that the Scottish Ministers by order made by statutory instrument appoint.
- (3) An order under subsection (2) may appoint different days for different provisions.
- (4) An order under subsection (2) may—
- (a) include such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient in connection with the commencement of this Act,
  - (b) make different provision for different purposes.
- (5) The short title of this Act is the Schools (Consultation) (Scotland) Act 2010.