

SCHOOLS (CONSULTATION) (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

General

Schedule 3 – Ancillary provision

Transitional and transitory provision (for consultations which “straddle” the date of commencement) (paragraph 3)

93. Paragraph 3 of schedule 3 provides for the transitional handling of consultations which are “ongoing” at the time of commencement of this Act – i.e. consultations upon which authorities have embarked (under the 1981 Regulations and section 22A of the 1980 Act), but in respect of which no final decision (on whether or not to implement the proposal consulted on) has been taken by the authority by the time of the commencement date of this Act.
94. Sub-paragraphs (2) and (3) specify that the authority may not proceed further with the proposal, upon commencement of this Act, unless the consultation which has been undertaken prior to, and straddling, the commencement date has consisted of or included the matters set out in sections 1 to 11 of the Act. Such a consultation can only proceed further, after the date of commencement of the Act, if the authority has in effect conducted the consultations in accordance with the provisions in sections 1 to 11 of the Act, as though they had been in force at the time. If those requirements have been met, the consultation may proceed; if not, the consultation process falls and the authority must recommence a new consultation in accordance with the procedures provided in this Act.
95. If the consultation is one that may proceed, and also relates to a closure proposal in respect of a rural school, sub-paragraph (4) additionally specifies that whatever consultation documents remain to be published after the commencement date of the Act – in some cases the proposal paper and the consultation report and in other cases, where the consultations have progressed further, only the consultation report – must contain an explanation of the extent to which the authority has, up to that stage, taken account of the three “rural factors” which are set out in section 12(2) to (5) of the Act. When the consultations are concluded and the authority comes to take a decision on whether to implement the closure proposal, as respect a rural school, (it being a proposal that may proceed under the terms set out in sub-paragraphs (2) and (3)), then, at the time of taking its decision, the authority must have special regard to the three “rural factors” set out in section 12(3) of the Act. This is provided for by sub-paragraph (4)(b).
96. Sub-paragraph (5) finally provides that all closure proposals, which proceed according to the terms of paragraph 3 of the schedule, will be subject to the new call-in procedures set out in sections 15 to 17 of the Act – rather than to the requirements in schedule 2 to the 1981 Regulations regarding referral to the Scottish Ministers for consent.