

SCHOOLS (CONSULTATION) (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

General

Schedule 3 – Ancillary provision

Modification of enactments (paragraphs 1 and 2)

91. Paragraph 1(2) repeals sections 22A (Consultation on certain changes in educational matters) and 22B (Consent for certain changes in educational matters) of the 1980 Act. Section 22A contains the power to prescribe proposals in respect of which education authorities are required to consult and the manner of those consultations. Section 22B requires authorities to submit to the Scottish Ministers, for their consent, certain types of proposals concerning educational provision and such proposals cannot be implemented without the Scottish Ministers' consent. Section 22A and 22B provided the enabling powers to make the 1981 Regulations, which are revoked on the repeal of sections 22A and 22B. Paragraph 1(1) makes amendments to section 22 (discontinuance and moves of educational establishments) of the 1980 Act in consequence of the repeal of sections 22A and 22B and replaces references to those sections with references to the Act.
92. Paragraph 2 repeals section 143 of the Local Government etc. (Scotland) Act 1994 in consequence of the repeal of sections 22A and 22B of the 1980 Act.

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.

Transitional and transitory provision (for consultations which are completed prior to the date of commencement) (paragraph 4)

97. Paragraph 4 of schedule 3 addresses the situation where consultations have been conducted and completed, under the 1981 Regulations and section 22A of the 1980 Act, and the authority has taken the final decision to implement the proposal prior to the date of commencement of this Act. In these circumstances the authority may proceed or continue to proceed to implement their decision (as set out in sub-paragraph (2)) except in the circumstances set out in sub-paragraphs (3) and (4).
98. There are two such circumstances. Firstly where the authority modifies the proposal in a material way (sub-paragraph (3)). And secondly where (under section 22B of the Education (Scotland) Act 1980) the proposal requires the consent of the Scottish Ministers (being a closure proposal or a change of site or of catchment area which requires to be referred to the Scottish Ministers according to the distance or occupancy criteria set out in schedule 2 to the 1981 regulations), and that consent has not yet been given or has been refused (sub-paragraph (4)). If either of these two circumstances pertain, the authority may not proceed to implement their decision.

Saving provision (paragraphs 5 & 6)

99. Notwithstanding paragraph 1(2) (which repeals sections 22A and 22B of the 1980 Act), paragraph 5 of schedule 3 “saves” both these sections, and the 1981 Regulations, to the extent that they are required for the purposes of the transitional and transitory provisions in paragraphs 3 and 4 of schedule 3. Sections 22A and 22B and the 1981 Regulations continue to operate, to the extent required, as they did immediately before the commencement of the Act until all the transitional proposals and consultations have reached their conclusion. This conclusion is either authorities reaching their final decisions (for non-referable proposals under section 22A) or the Scottish Ministers having reached their decision on whether or not to grant consent in respect of any outstanding referrals (under section 22B and schedule 2 to the 1981 Regulations).
100. Paragraph 6 of schedule 3 defines “proceeding with the proposal” for the purposes of schedule 3 and makes full reference to the 1981 Regulations.