

SCHOOLS (CONSULTATION) (SCOTLAND) ACT 2010

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Schools (Consultation) (Scotland) Act 2010 (asp 2) repeals section 22A of the Education (Scotland) Act 1980 (“the 1980 Act”) under which local authorities, who are responsible for school provision in their areas, were previously required to consult on a prescribed list of proposed changes to schools. The Education (Publication and Consultation Etc.) (Scotland) Regulations 1981 (S.I. No. 1558), as amended, (“the 1981 Regulations”), which are revoked as a result of the repeal of sections 22A and 22B of the 1980 Act, prescribed who should be consulted by local authorities, aspects of the consultation procedures, and how these were publicised and made available to consultees. They also prescribed certain categories of proposal that could not be implemented without the consent of the Scottish Ministers.
4. The Act’s provisions cover three main areas: the consultation procedures for school closures, and other proposals affecting schools, which local authorities must follow; a new local authority duty to take into account certain prescribed factors before deciding to consult on a proposal to close a rural school; and replacement of the system of referring certain local authority decisions to the Scottish Ministers for consent with a power to call in decisions, but only in decisions relating to closures.
5. The Act substantially implements the proposals set out in the Scottish Government’s consultation paper, *Safeguarding our rural schools and improving school consultation procedures – proposals for changes to legislation*,¹ which was published on 1 May 2008 and formed part of a wider and extensive consultation process.

¹ <http://www.scotland.gov.uk/Publications/2008/04/25131457/0>

OVERVIEW

6. The Act has three core themes and the sections are therefore grouped accordingly. Sections 1 to 11 relate to the process whereby local authorities consult on proposals for closures or other changes to schools that require consultation. Sections 12 to 14 make specific provision for closure proposals for rural schools. Sections 15 to 17 establish a system of Ministerial call-in, in relation to school closure decisions.

COMMENTARY ON SECTIONS

Process for all schools

Section 1 – Overview of key requirements

7. Section 1 provides an overview of the requirements that a local authority will have to comply with before proceeding with a proposed change to a school that requires consultation. The list of relevant proposals that require the consultation process to be undertaken are detailed in schedule 1. The procedural requirements are set out in detail in the subsequent sections.

8. For the purposes of a proposal described in paragraph 10 of schedule 1 to the Act (discontinuance of a further education centre), a further education centre that is managed by a local authority is also deemed to be a “school”. The consultation requirements that this Act places on a local authority will apply in circumstances where an authority is proposing to close such a centre.

Section 2 – Relevant proposals and consultees

9. This section defines the terms “relevant proposal” and “relevant consultee” and introduces schedules 1 and 2. A relevant proposal is defined by reference to the proposals listed in schedule 1 and a relevant consultee is a person or organisation to be consulted in relation to a given relevant proposal, as listed in schedule 2.

Section 3 – Educational benefits statement

10. Section 3 provides that when a local authority decides to consult on a relevant proposal they must prepare and publish, as part of their proposal paper, a statement to be known as an “educational benefits statement”. This duty may be read in the context of section 3(2) of the Standards in Scotland’s Schools etc. Act 2000 which sets out local authorities’ responsibilities to endeavour to secure improvement in the quality of education in their schools, and exercise their functions with a view to raising standards of education. In making a relevant proposal an authority would have to be certain that it is fulfilling its duties in relation to that Act.

11. The educational benefits statement must set out the authority’s assessment of the likely effects of the proposal, if it were implemented, on certain groups of people as specified in section 3(1)(a)(i) to (iv), namely the pupils and other users of the facilities at any affected school, children who would be likely to attend the school, and other pupils in the authority area. The authority must also explain the educational benefits that it believes will accrue

from the proposal and why, and any ways in which it would minimise or avoid any adverse consequences which it has identified.

12. Where a local authority decides to consult on more than one proposal at the same time they would be able to package them together into one proposal paper (section 4(3)). However they would have to produce a separate educational benefits statement for each proposal.

Section 4 – Proposal paper

13. Section 4 provides that when an authority decides to consult on a relevant proposal, or proposals, and after they have prepared the associated educational benefits statement(s) (in accordance with section 3), they will be required to prepare and publish a proposal paper which will contain certain specified information. Under the 1981 Regulations an authority was not required to publish a consultation/proposal paper but simply to notify parents of a proposal and publish a statement outlining the proposal or the part that (in the authority's opinion) affected that parent.

14. The requirements set out in section 4(1)(a), (b) and (c), and (2) require that all proposal papers should contain the same core content – details of the relevant proposal, a proposed date for implementation of the proposal, the educational benefits statement and a summary of the consultation process to be undertaken. Subsection (1)(d) requires an authority to include in the paper such supporting evidence and information as is appropriate in connection with the views, conclusions, arguments and proposals set out in the paper.

15. Section 4(2) provides that the proposal paper must also include a summary of the processes set out in sections 1 to 17 of this Act – being the sequence of events, opportunities for participating in the consultation, and the role of the authority and potentially of the Scottish Ministers. Sections 12 to 14 set out the special provisions relating to proposals for the closure of a rural school (as defined in section 14). Only proposal papers relating to such closures will need to provide a summary of those sections. Likewise, the provisions in sections 15 to 17 (call-in by the Scottish Ministers) only apply to proposals for any school closure (whether or not rural). Only papers that propose a school closure will be required to include a summary of the process provided for in those sections.

16. Section 4(4)(b) and (c) requires the authority to make the proposal paper available for inspection (at all reasonable times and without charge) at its head office and on its website and at any affected school or at a nearby library or other suitable place near the school. The information contained in the proposal paper must also be made available, again without charge, to those who may reasonably require the information in another form – for instance in other languages or in a form appropriate to those with visual impairment etc.

Section 5 – Correction of the paper

17. Section 5 provides for inaccuracies and omissions of relevant information, and alleged inaccuracies and omissions of relevant information, in and from the proposal paper to be dealt with during the consultation period. It places a duty on an authority to look into any allegation of inaccuracy or omission of relevant information in or from a proposal paper.

18. Section 5(2)(a) obliges the authority to ascertain whether in fact the proposal paper does indeed contain an inaccuracy or omission of relevant information after which the authority must decide what action it will take in accordance with section 5(3). It may:

- (a) publish a corrected proposal paper (in accordance with section 6, which would require a new consultation period of at least 6 weeks to be set) and give notice of that fact to all the same relevant consultees who were notified of the publication of the original proposal paper;
- (b) issue a notice, again to all the relevant consultees, correcting the inaccuracy or omission of relevant information in the paper (for example, by way of a formal “erratum” or other explanation) and in addition may extend the original consultation period which had been set; or
- (c) take no further action.

19. Section 5(2)(b) also requires the authority to inform the person(s) who made the original allegation of inaccuracy or omission of relevant information as to exactly what action, if any, it is deciding to take in line with subsection (3).

20. In every case, if the procedures in section 5 have been triggered and gone through, the authority must set out details of the inaccuracy or omission in the consultation report. This is the case even where the authority takes no action in relation to the inaccuracy or omission or concludes that the allegation of inaccuracy or omission of relevant information is unfounded.

Section 6 – Notice and consultation period

21. Section 6 deals with the notice that the authority must give to the relevant consultees and the duration of the consultation period.

22. Section 6(1) requires the authority to give notice to the relevant consultees of the proposal that is being consulted on (or such part of the proposal as may affect a particular consultee).

23. Section 6(2) and (3) requires that the notice give a summary of the proposal, or the appropriate part of it, together with information as to where to obtain a copy of the proposal paper and how to make written representations, and to whom, about the proposal. The notice must also indicate the final day of the consultation period (the date by which representations must be received by the authority). In connection with the requirements set out in section 7, the notice should also give an indication – if it is known at the time – of the date, time and place of the public meeting that is to be held.

24. Section 6(4) specifies that the consultation period set by the authority shall last for at least six weeks, commencing on the day on which the authority gives notice of the proposal to the relevant consultees. The consultation period must include at least 30 “school days” (being a day on which the particular school is ordinarily open to pupils or, in the case of an FE centre, a day when the centre is ordinarily open to its students). The consultation period may fall within a single school term or straddle two terms. However, weekends, public holidays and other days on which the school is not open to pupils (including school holidays) will not count towards the 30 days minimum.

Section 7 – Public meeting

25. Section 7 requires the authority to hold (and be represented at) a public meeting about the relevant proposal during the consultation period and to give advance notice of its date, time and place to the relevant consultees (if that has not already been done by way of the notice of the proposal given or issued at the outset of the consultations, under section 6(3)(c)) and to HMIE.

26. Section 7(4) provides that a public meeting may focus on more than one proposal so long as all the proposals covered at the meeting have been included in the same proposal paper.

Section 8 – Involvement of HMIE

27. Section 8 spells out the involvement of HMIE – Her Majesty’s Inspectorate of Education – in the consultation processes.

28. Section 8(1) requires the authority to send to HMIE a copy of the proposal paper (as soon as it is published), a summary of the representations made at the public meeting required by section 7 (which will not be possible until such summary has been prepared, after the event), copies of relevant written representations received by the authority (either as and when they are received or en masse at the end of the consultation period), or, if HMIE agree, a summary of those representations, and a copy of any related documentation, so far as is practicable.

29. Section 8(2) and (4) requires HMIE to prepare a report on the educational aspects of the proposal, having particular regard to the educational benefits statement, the written representations (or a summary of them) and a summary of the oral representations forwarded by the authority, as well as to any relevant written representations on the proposal which are received directly by HMIE.

30. Section 8(5) obliges HMIE to submit their report to the authority within three weeks of their having been sent (by the authority) the copies, or a summary, of representations received during the consultation period. That three-week period cannot start until the consultation period has finished and may be extended by agreement with the authority.

31. In carrying out their duties under this section, section 8(3) provides HMIE with an appropriate power to enter schools and make such reasonable enquiries of any person as they consider appropriate.

Section 9 – Consultation report

32. Section 9 covers the stage of the consultation process around preparation and publication of the consultation report.

33. Section 9(1) requires the authority, on receipt of the report from HMIE, to review the proposal consulted on, having particular regard to the written and oral representations received and to HMIE's report.

34. Section 9(2) and (5) require the authority then to prepare a report on the consultation – the “consultation report” – and publish it in both electronic and printed form, and advertise its publication in an appropriate manner. It will be for the authority to determine what is appropriate in the circumstances.

35. Section 9(4) obliges the authority to inform those who made timeous written representations of the publication of the consultation report.

36. Section 9(3)(b) and (c) requires the authority to make the consultation report available for inspection (at all reasonable times and without charge) at its head office and on its website and at any affected school or at a nearby library or other suitable place near the school. The information contained in the report must also be made available, again without charge, to those who may reasonably require the information in another form – for instance in other languages or in a form appropriate to those with visual impairment etc.

Section 10 – Content of the report

37. Section 10 specifies what things in particular must be contained in the authority's consultation report. Subsections (2) and (3) prescribe the content for all consultation reports, whilst subsection (4) makes special provision for closure proposals.

38. The requirements specified in subsections (2) and (3) are: the number of, and a summary of the written representations received during the consultation period; a summary of the representations made during the course of the public meeting; a statement of the authority's response to those written and oral representations and to HMIE's report; a copy of HMIE's report; a statement setting out how the authority has reviewed the proposal (as required in terms of section 9 of the Act); and details of any inaccuracy or omission alleged or found within the proposal paper (under the provisions of section 5), together with a statement of what consequential action was taken and why.

39. Section 10(4) provides that in the case of a closure proposal (one falling within paragraph 1 of schedule 1) the consultation report must also set out the opportunities that there will be for the making of representations to the Scottish Ministers (in terms of section 15(4)) within three weeks of the authority taking its decision on whether or not to implement the proposal. Those opportunities will not arise if the authority takes a decision not to implement the proposal.

Section 11 – Time for further consideration

40. Section 11 specifies that the authority may not proceed, at this stage of the process, either to decide to implement the proposal or indeed to implement it, until a period of three weeks has elapsed since the day on which it published the consultation report.

Special provision for rural schools

Section 12 – Factors for rural closure proposals

41. Sections 12 to 14 place an additional set of requirements on authorities when they are contemplating any closure proposal (specified in paragraph 1 of schedule 1) as respects a rural school. These are in addition to the requirements set out in the previous sections of the Act as to how consultations regarding relevant proposals for all schools are to be conducted.

42. Section 12(3) specifies three factors which an authority must “have special regard to” (under section 12(2)) when considering and proceeding with a closure proposal for a rural school.

43. The first factor is any viable alternative to the closure proposal. A decision to proceed to consult on a proposal to close a rural school should not be taken until any viable alternative to closure has been considered.

44. The second factor that an authority must consider is the likely effect on the local community if the closure proposal were to go ahead. Section 12(4)(a) specifies that that effect must be assessed by particular reference to the sustainability of the community. “Sustainability” is not defined in the Act and therefore bears its ordinary, dictionary meaning. Its usage here therefore means sustainability in the widest sense, both now and looking ahead. Section 12(4)(b) also requires particular consideration to be given to the implications for community access to or use of (or not as the case may be) of the school’s premises (which includes the grounds) and facilities after closure.

45. The third factor in section 12(3) is the likely changes to transport and travel arrangements if the closure proposal were to go ahead. This requires particular consideration of the effect on pupils, staff and other users of the school that would be occasioned by the school’s closure, and any consequential environmental impact. This could include consideration of journeys to and from the alternative school, use of vehicles (both school buses and parents’ cars), and curtailed possibilities for pupils walking and cycling to school (because of the greater distances involved) etc.

Section 13 – Explanation of approach

46. Section 13 provides that when conducting consultations in respect of a closure proposal for a rural school, the proposal paper which an authority publishes (in accordance with section 4) must additionally explain and set out how, in formulating the proposal, the authority had special regard to the three factors described in section 12.

47. After the consultation period has concluded, the authority must additionally include in the consultation report an explanation of how, in reviewing the proposal it applied the three factors described in section 12. The consultation report must also explain any change of attitude on the part of the authority regarding the application of the three factors in relation to the closure proposal.

Section 14 – Designation of rural schools

48. In the Consultation Paper on the Bill², the Scottish Ministers indicated their intention to define which schools are rural schools by reference to the 3 rural area categories contained (out of the 8 area categories) in the Scottish Government’s well-established “Urban/Rural Classification”; these are “Accessible Rural”, “Remote Rural;” and “Very Remote Rural”. This classification is regularly updated and used for a variety of purposes including analysis of data and particularly the presentation of statistics and other information. Section 14 includes provisions which enable the Scottish Ministers to proceed as they set out in the Consultation Paper (see paragraph 5).

49. Section 14(1) requires the Scottish Ministers to maintain a list of rural schools. That list must also be accompanied by an explanation of how it was devised (section 14(3)). Section 14(2) specifies that in considering the question of “rurality” and which schools are to be included in, or excluded from, the list, the Scottish Ministers must have particular regard to the population and geographical circumstances (remoteness etc.) of the community or settlement in which the school is located. These are essentially the factors which determine the categories of area within the existing “Urban/Rural Classification”.

50. Section 14(4) also requires the Scottish Ministers to monitor the list, updating it as they consider necessary, and to publish it.

51. Section 14(5) requires an authority to provide the Scottish Ministers with such information as they may reasonably require, in connection with maintaining the list. An example might be where there had been a significant increase or decrease in the population of the community in which a school is located – that being one of the determining factors set out in section 14(2) – such as might warrant a school being added to or removed from the list.

Call-in by the Scottish Ministers

Section 15 – Call-in of closure proposals

52. Section 15 provides for the possibility of the Scottish Ministers “calling in” a decision taken by an authority after the consultation procedures set out in sections 1 to 11 (or 1 to 14 in relation to rural closure proposals) of the Act have been completed. Sections 15 to 17 of the Act only apply if the decision taken by an authority is to proceed to implement a closure proposal. The possibility of Ministerial call-in of a decision to implement a closure proposal applies whether or not the closure proposal is for a rural school.

² <http://www.scotland.gov.uk/Publications/2008/04/25131457/0>

53. Section 15(2) provides that the authority must notify the Scottish Ministers of a closure decision within six working days (starting on and including the day on which the decision was made) and supply the Scottish Ministers with a copy of the proposal paper and of the consultation report.

54. Section 15(3) prescribes a period of 6 weeks from the date of the authority's decision, by the end of which the Scottish Ministers must decide whether to call-in the authority's decision. In considering whether to do so, section 15(4) requires the Scottish Ministers to take account of representations made to them within the first 3 weeks of that 6 week period. Therefore persons wishing to make representations to the Scottish Ministers that the decision should (or should not) be called in have 3 weeks from the date of the authority's decision to convey their representations to the Scottish Ministers. During the second half of the 6 week period the Scottish Ministers are to take account of any representations received – although their considerations are not restricted to the content of those representations – and decide whether or not to call the authority's decision in. In this connection section 17(3)(a) requires an authority to provide the Scottish Ministers with such information in connection with the proposal as they may reasonably require for the purposes of considering whether to issue a call-in notice.

55. Calling in an authority decision is effected by the Scottish Ministers issuing a call-in notice (under section 15(3)), which has the effect of remitting the closure proposal to the Scottish Ministers, as provided for in section 15(5). Section 15(6) and (7) provide that the education authority may not proceed further with implementation of the closure decision wholly or partly before the 6 week period has expired, unless the Scottish Ministers have given notice before the end of the period that they will not call the decision in.

Section 16 – Determination of case

56. Section 16(2) provides the Scottish Ministers with 3 options in relation to the proposal once they have called in the decision. After due consideration and investigation of the called-in closure proposal they may refuse to consent to the proposal, or give their consent, either subject to condition or unconditionally.

57. Section 16(3) prevents an authority from proceeding further with the proposal i.e. with the implementation of their decision until and unless the Scottish Ministers grant their consent. If conditions are attached, the authority may only proceed with implementation subject to the specified conditions (for example conditions might be imposed to ensure rectification of any failure discovered in the process).

58. When the Scottish Ministers have issued a call-in notice, section 17(3)(b) requires the authority again to provide such information as the Scottish Ministers may reasonably require for purposes of the Scottish Ministers deciding whether to consent to the proposal (i.e. to the authority's decision to implement the proposal).

Section 17 – Grounds for call-in etc.

59. Section 17(2) prescribes the grounds on which the Scottish Ministers may call-in an authority's decision to implement a closure proposal.

60. Section 17(2)(a) and (b) set out the grounds for Ministerial call-in. These are where it appears to the Scottish Ministers that the authority may have failed: in a significant regard to comply with the requirements set out in the Act insofar as they are relevant to the closure proposal; or to take proper account of a material consideration relevant to its decision to implement the proposal. The focus is on deficiencies, flaws or failures in the consultation and/or decision-making process and procedures.

General

Section 18 – Ancillary provision

61. This section introduces schedule 3 to the Act, which modifies and repeals legislation and makes transitional, transitory and saving provision.

Section 19 – Guidance

62. This section enables the Scottish Ministers to issue guidance, to which an education authority, in exercising its functions under the Act, must have regard.

Section 20 – Regulations

63. Section 20(1) enables the Scottish Ministers to make, by way of regulations, such supplemental, incidental, consequential, transitional, transitory or saving provision in connection with the Act, as they consider necessary or expedient. Such regulations may elaborate on any aspect of the process set out in sections 1 to 17 of the Act, and may also confer functions on authorities or the Scottish Ministers. If such provision involves textually amending an Act it will be subject to affirmative procedure in the Scottish Parliament, otherwise to negative procedure (as set out in section 20(6)(b) and (c)).

64. Under section 20(2) regulations may modify schedule 1 or 2 by adding or removing an entry, or altering the terms of any entry in those schedules. Any such modification of schedule 1 or 2 will be subject to affirmative procedure in the Scottish Parliament (as set out in section 20(6)(a)). The regulation powers in both section 20(1) and (2) include power to make different provision for different purposes.

Section 21 – Definitions

65. This section provides definitions of terms used in the Act (or, in some cases, where terms are defined). The term "education authority" has the same meaning as in section 135(1) of the 1980 Act and therefore means the 32 councils in Scotland. "School" means any school managed by an education authority (i.e. what is often called a local authority school) and also, in relation to a proposal of the type mentioned paragraph 10 of schedule 1, includes a local authority managed further education centre. The terms "educational benefits statement", "proposal paper", "public meeting" and "consultation report" are to be

construed by reference to section 1(3) and (4) of the Act. Section 21(3) provides that expressions undefined in the Act are construed by reference to section 135(1) of the 1980 Act (but only if they are defined in that section and unless the context of this Act requires otherwise).

Section 22 – Commencement and short title

66. Section 22(1) provides that sections 19 to 21 (Guidance, Regulations and Definitions) and section 22 itself (Commencement and short title) come into force on the day after Royal Assent.

67. Section 22(2), (3) and (4) provide for the rest of the Act to be commenced by order (made by statutory instrument) on such day or days that the Scottish Ministers appoint. Such commencement orders may appoint different days for different provisions and may include such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient in connection with commencement.

Schedule 1 – Relevant proposals

68. This schedule is introduced by section 2. It sets out the categories of proposal in respect of which authorities must conduct consultations according to the Act's provisions.

69. In the 1981 Regulations, (which will be revoked as a result of the repeal of sections 22A and 22B of the 1980 Act), there are 23 “kinds of proposal” in respect of which authorities must conduct consultations in the manner set out in those Regulations. In schedule 1 those 23 categories have been consolidated and grouped into 10 broad categories, but without loss of any of the 23 current categories.

70. Paragraphs 1 to 10 of the schedule set out the “grouped” categories of relevant proposals.

Closure (paragraph 1)

71. These are proposals for the permanent discontinuation of: a school; all the nursery classes in a school; a stage of education in a school; or the provision of either Gaelic or English medium education in all of the nursery classes in a school or in a stage of education, whether or not it is to be continued in the other medium. Section 21(1)(a) of the Act defines school as meaning any school under the management of an education authority, which means a public school as defined in section 135(1) of the 1980 Act. Under section 135(1) this therefore means that, in addition to primary and secondary schools, the following are also included within the meaning of “school”: a stand-alone special school; a special class within a mainstream school³; and a nursery school. Nursery classes in a school and stage of education in a school are as defined in paragraph 12 of schedule 1 to the Act. Also caught within paragraph 1(4) and (5) are proposals to make arrangements, howsoever described, which would result or be likely to result in the permanent discontinuation of a school, stage of education or the provision of Gaelic or

³ A special class is a class for pupils with additional support needs within a mainstream school. Paragraph 12 of the schedule defines “special school” and “special class”.

English medium education in all the nursery classes or a stage of education (apart from a nursery class) in a school. Permanent discontinuation excludes temporary discontinuance, for instance, in an emergency, by way of planned decant for a period, or because the school roll has meantime fallen to zero.

72. If a relevant proposal falls within more than one of the categories set out in paragraphs 1 to 9 (ie proposals affecting schools not FE centres) of this schedule, it is to be regarded as falling solely within paragraph 1. In other words it is to be treated as a closure proposal.

Establishment (paragraph 2)

73. These are proposals to establish a new school or a new stage of education in a school. Given the meaning of “school” (as in paragraph 72 above) paragraph 2 of schedule 1 therefore also covers a proposal to establish a special class within a mainstream school.

Relocation (paragraph 3)

74. These are proposals to relocate a school or a nursery class in whole or in part. In the 1981 Regulations such proposals were described as “change of site”.

Admission arrangements (paragraph 4)

75. These are proposals to vary any of the admission arrangements for a school, including its catchment area (replacing the term “delineated area” used in the 1981 Regulations) or placing request guidelines formulated under section 28B(1)(c) of the 1980 Act. Other types of proposal included here would be a change in selection procedures for schools or converting a school which is a single sex school to a “mixed” school or *vice versa*.

Transfer from primary to secondary school (paragraph 5)

76. Included here are proposals to vary, for instance, the relationship between a secondary school and its “feeder” primary schools, or to change the age and time at which primary pupils transfer to secondary school.

Primary school commencement date (paragraph 6)

77. These are proposals to vary the number or other details of commencement dates (for starting primary school) fixed under section 32 of the 1980 Act.

Special class outwith a special school (paragraph 7)

78. These are proposals for varying the arrangements for special classes in a mainstream school.

Transport to a denominational school (paragraph 8)

79. These are proposals specifically to discontinue arrangements for the provision of school transport (provided under section 51 of the 1980 Act) to and from a denominational school.

Changing from denominational to non-denominational school (paragraph 9)

80. These are proposals for a denominational school to become a non-denominational school in terms of section 22(4) of the 1980 Act.

Discontinuance of a further education centre (paragraph 10)

81. These are proposals to discontinue a local authority managed further education centre. Such centres now exist only in Orkney and Shetland. Further education colleges and centres elsewhere in Scotland are no longer run by local authorities. Paragraph 10 sets out what sort of a facility is included within the term “further education centre” and what is not.

Meaning of expressions used in this schedule (paragraphs 11 & 12)

82. Paragraph 11(1) defines what is meant by a school “affected” by a proposal and sub-paragraph (2) offers examples such as the school proposed for closure and the schools to which its pupils would transfer; or the schools whose pupils would transfer to a newly established school. Sub-paragraph (3) excludes from the definition of an “affected” school one where the only impact would be the likelihood of its being subject to placing requests as a result of the implementation of the proposal.

83. Paragraph 12 defines the terms “catchment area”, “nursery class”, “primary school”, “primary education”, “secondary school”, “secondary education”, “further education” and “school commencement date” by reference to section 135(1) and (2) of the 1980 Act. “Denominational school” is defined by reference to section 21 of the 1980 Act, which in turn makes reference to sections 16(1) and 17(2) of the 1980 Act.⁴ “Special school” and “special class” are defined by reference to the Education (Additional Support for Learning) (Scotland) Act 2004. “English medium education”, “Gaelic medium education” and “stage of education” are defined within paragraph 12 itself.

Schedule 2 – Relevant consultees

84. This schedule is also introduced by section 2. Paragraphs 1 to 10 list the relevant consultees – the people and bodies whom the authority must consult – for each of the categories of proposal set out in paragraphs 1 to 10 of schedule 1. The list of relevant consultees are set out in this schedule in parallel to the schedule 1 list of proposals (adopting the same numbering) and each paragraph therein reads across to the corresponding paragraph in schedule 1 – for example, a local authority must consider those listed in paragraph 1 of schedule 2 as relevant consultees when they are consulting on a proposal set out in paragraph 1 of schedule 1.

85. The lists of consultees set out in respect of the 23 categories of proposal in the 1981 Regulations have been extended in this Act. The Scottish Schools (Parental Involvement) Act 2006 amended the 1981 Regulations by adding the requirement to consult Parent Councils (or Combined Parent Council) in appropriate places. Several entirely new categories of consultee are included in this schedule – namely the staff and pupils at

⁴ Denominational schools are either as: transferred to education authorities under section 16(1); or provided by education authorities under section 17(2).

affected schools, community bodies (the community council and community planning partnership), trade unions representative of staff at any affected schools, Bòrd na Gàidhlig, other users of any affected schools, and other education authorities, as the authority considers appropriate.

Those to be consulted on proposals relating to schools (paragraphs 1 to 9)

86. For the first 9 out of the 10 proposals (which cover all the proposals relating to schools) the first six categories of consultee are identical in every case. The authority must consult – in respect of affected schools – the Parent Council (or Combined Parent Council), the parents of pupils, the pupils (who are mature enough to be consulted), the staff and the trade unions that represent those staff. In addition the parents of children (the term “children” is used here instead of pupils because some may be of pre-school age) expected to be in attendance at any affected school within two years of the date of publication of the proposal paper are to be consulted. In addition, the lists specify that the authority must consult any community council, or community planning partnership (established under the Local Government in Scotland Act 2003) in respect of those proposals listed in paragraphs 1 to 5 of schedule 1, which are those proposals where there may be a “community interest”. The authority must also consult such other users of any affected school as the authority considers relevant, but only in cases of closure, establishment and relocation proposals (paragraphs 1, 2 and 3 of schedule 1). Such persons may be adult users of the school’s educational facilities, community users of the buildings or users of the sports facilities both indoor and outdoor. Finally, the authority must also consult such other education authorities as it considers relevant.

Those to be consulted on a proposal to discontinue a further education centre (paragraph 10)

87. Paragraph 10 of the schedule sets out a list of those who must be consulted on a proposal to discontinue a further education centre. As well as many of the categories already mentioned above – the pupils, parents, Parent Council, staff of any school whose pupils attend the centre, trade unions that represent those staff, the community council and community planning partnership – the authority in this case must also consult the centre’s staff and students, any employers of the students and finally also any other users of the centre which the authority considers relevant.

Gaelic and denominational consultees (paragraphs 11 & 12)

88. Where a proposal affects the provision of Gaelic medium education, Bòrd na Gàidhlig must be consulted.

89. Where a proposal affects a denominational school, the person duly authorised for the purpose by the relevant church or denominational body must be consulted.

Meaning of expressions used in this schedule (paragraph 13)

90. The term “community council” is defined by reference to the Local Government (Scotland) Act 1973 whilst “Parent Council” and “Combined Parent Council” are defined by reference to the Scottish Schools (Parental Involvement) Act 2006.

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.

PARLIAMENTARY HISTORY

101. The following table sets out, for each stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which proceedings at that stage took place and the references to the Official Report of those proceedings.

Proceedings and Reports	Reference
Introduction	
Bill as introduced, 2 March 2009	http://www.scottish.parliament.uk/s3/bills/23-Schools/b23s3-introd.pdf - SP Bill 23 – Session 3 (2009)
SPICe briefing (SB 09-29) on the Bill as introduced, 30 April 2009	http://www.scottish.parliament.uk/business/research/briefings-09/SB09-29.pdf
Stage 1	
<i>(a) Education, Lifelong Learning and Culture Committee</i>	
13 th Meeting, 6 May 2009	http://www.scottish.parliament.uk/s3/committees/ellc/or-09/ed09-1302.htm#Col2285 – Official Report, 06 May 2009, Columns 2285 - 2328
14 th Meeting, 13 May 2009	http://www.scottish.parliament.uk/s3/committees/ellc/or-09/ed09-1402.htm#Col2329 – Official Report, 13 May 2009, Columns 2329 - 2372
15 th Meeting, 20 May 2009	http://www.scottish.parliament.uk/s3/committees/ellc/or-09/ed09-1502.htm#Col2373 – Official Report, 20 May 2009, Columns 2373 - 2413
16 th Meeting, 27 May 2009	http://www.scottish.parliament.uk/s3/committees/ellc/or-09/ed09-1602.htm#Col2417 – Official Report, 27 May 2009, Columns 2417 - 2446
17 th Meeting, 3 June 2009	http://www.scottish.parliament.uk/s3/committees/ellc/or-09/ed09-1702.htm#Col2450 – Official Report, 03 June 2009, Columns 2450 - 2484

*These notes relate to the Schools (Consultation) (Scotland) Act 2010 (asp 2)
which received Royal Assent on 5 January 2010*

Proceedings and Reports	Reference
<i>(b) Subordinate Legislation Committee</i>	
12 th Meeting, 31 March 2009	http://www.scottish.parliament.uk/s3/committees/subleg/or-09/su09-1202.htm#Col532 – Official Report, 31 March 2009, Columns 532 - 533
15 th Meeting, 5 May 2009	http://www.scottish.parliament.uk/s3/committees/subleg/or-09/su09-1502.htm#Col564 – Official Report, 05 May 2009, Columns 564 - 565
16 th Meeting, 12 May 2009	http://www.scottish.parliament.uk/s3/committees/subleg/or-09/su09-1602.htm#Col575 – Official Report, 12 May 2009, Columns 575 - 579
17 th Meeting, 19 May 2009	http://www.scottish.parliament.uk/s3/committees/subleg/or-09/su09-1702.htm#Col593 – Official Report, 19 May 2009, Columns 593 - 594
<i>(c) Finance Committee</i>	
8 th Meeting, 24 March 2009	http://www.scottish.parliament.uk/s3/committees/finance/or-09/fi09-0802.htm#Col1044 – Official Report, 24 March 2009, Columns 1044 - 1045
Stage 1 Report (Education, Lifelong Learning and Culture Committee) published on 19 June 2009	http://www.scottish.parliament.uk/s3/committees/ellc/report-s-09/edr09-07.htm
Stage 1 Parliamentary debate, 2 September 2009	http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0902-02.htm#Col19104 – Official Report, 02 September 2009, Columns 19104 - 19152
Stage 2	
<i>(a) Education and Lifelong Learning Committee</i>	
26 th Meeting, 30 September 2009	http://www.scottish.parliament.uk/s3/committees/ellc/or-09/ed09-2602.htm#Col2747 – Official Report, 30

*These notes relate to the Schools (Consultation) (Scotland) Act 2010 (asp 2)
which received Royal Assent on 5 January 2010*

Proceedings and Reports	Reference
	September 2009, Columns 2747 - 2775
Bill as amended at Stage 2, 1 October 2009	http://www.scottish.parliament.uk/s3/bills/23-Schools/b23s3-stage2-amend.pdf - SP Bill 23A – Session 3 (2009)
Stage 3	
Stage 3 Parliamentary debate, 19 November 2009	http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor1119-02.htm#Col21402 – Official Report, 19 November 2009, Columns 21402 - 21445
Bill passed, 19 November 2009	http://www.scottish.parliament.uk/s3/bills/23-Schools/b23bs3-aspassed.pdf - SP Bill 23B – Session 3 (2009)
Royal Assent, 5 January 2010	

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