Children and Young People (Scotland) Act 2014

2014 asp 8

PART 15 S

SCHOOL CLOSURE PROPOSALS, ETC.

76 References to the Schools (Consultation) (Scotland) Act 2010 S

In this Part, references to the 2010 Act are to the Schools (Consultation) (Scotland) Act 2010.

Commencement Information

I1 S. 76 in force at 1.8.2014 by S.S.I. 2014/165, art. 2, **Sch.**

77 Restriction on closure proposals S

After section 2 of the 2010 Act, insert—

"**2A Restriction on closure proposals**

(1) This section applies where a decision is made not to implement a closure proposal in relation to a school.

(2) For the purposes of subsection (1)—

(a) a decision not to implement a closure proposal is—

(i) a decision not to implement the proposal made by the education authority following the publication of a consultation report in relation to the proposal (whether or not the proposal was called-in under section 15),

(ii) a decision of a School Closure Review Panel in relation to the proposal under section 17C(1)(a),

Changes to legislation: *Children and Young People (Scotland) Act 2014, PART 15 is up to date with all changes known to be in force on or before 04 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(b) such a decision is made by a School Closure Review Panel on the day on which the Panel notifies the decision to the education authority in pursuance of section 17C(5).

(3) The education authority may not publish a proposal paper concerning a further closure proposal in relation to the school during the period of 5 years beginning with the day on which the decision is made unless there is a significant change in the school's circumstances.”.

Commencement Information

I2 S. 77 in force at 1.8.2014 by S.S.I. 2014/165, art. 2, **Sch.** (with arts. 3, 4)

78 Financial implications of closure proposals S

In section 4 of the 2010 Act (proposal paper), after subsection (2) insert—

“(2A) Where a proposal paper relates to a closure proposal, it must also contain information about the financial implications of the proposal.”.

Commencement Information

I3 S. 78 in force at 1.8.2014 by S.S.I. 2014/165, art. 2, **Sch.**

79 Correction of proposal paper S

(1) Section 5 of the 2010 Act (correction of the proposal paper) is amended in accordance with subsections (2) to (4).

(2) In subsection (2)—

(a) the word “and” immediately following paragraph (a) is repealed,

(b) after that paragraph insert—

“(aa) inform the notifier of its determination under paragraph (a), and the reasons for that determination,”,

(c) in paragraph (b), for “subsection (3)” substitute “ subsection (4) and of the reasons why it is, or is not, taking such action ”,

(d) after paragraph (b) insert “, and

(c) invite the notifier to make representations to the authority if the notifier disagrees with the authority's determination under paragraph (a) or its decision as to whether to take action under subsection (4).”.

(3) After that subsection insert—

“(2A) Where the notifier makes representations to the authority in pursuance of subsection (2)(c), the authority may—

(a) make a fresh determination under subsection (2)(a),

(b) make a fresh decision as to whether to take action under subsection (4).

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(2B) The authority must inform the notifier if it takes a step mentioned in subsection (2A)(a) or (b).”.

(4) For subsection (3) substitute—

“(3) Subsection (4) applies—

(a) where, in a situation mentioned in subsection (1)(a), the education authority determines that—

(i) relevant information has (in its opinion) been omitted from the proposal paper, or

(ii) there is (in fact) an inaccuracy in the proposal paper,

(b) in a situation mentioned in subsection (1)(b).

(4) Where—

(a) the information that has been omitted or, as the case may be, the inaccuracy relates to a material consideration relevant to the education authority's decision as to implementation of the proposal, it must take action as mentioned in subsection (5)(a) or (b),

(b) that information or inaccuracy does not relate to such a material consideration, the authority may—

(i) take action as mentioned in subsection (5)(a) or (b), or

(ii) take no further action (except by virtue of section 10(3)).

(5) The action referred to in subsection (4)(a) and (b)(i) is—

(a) to 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) to 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.

(6) Where the education authority issues a notice mentioned in subsection (5)(b) after the end of the consultation period—

(a) the notice may, instead of extending the consultation period, specify such further period during which representations may be made on the proposal as is reasonable by reference to the significance of the information provided or, as the case may be, the nature of the correction, and

(b) any such further period is to be treated as part of the consultation period for the purposes of sections 8, 9 and 10.”.

(5) In section 10 of the 2010 Act (content of the consultation report), in subsection (3)—

(a) in the opening text, after “applies,” insert “ including any alleged omission or inaccuracy notified to the education authority, ”,

(b) in paragraph (a), after “inaccuracy” insert “ , or (as the case may be) the alleged omission or inaccuracy, ”,

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(c) in paragraph (b), after "inaccuracy" insert " , or (as the case may be) the alleged omission or inaccuracy, ",

(d) after that paragraph insert—

"(c) any representations made to the authority in pursuance of section 5(2)(c).".

Commencement Information

I4 S. 79 in force at 1.8.2014 by S.S.I. 2014/165, art. 2, **Sch.**

80 Special provision for rural school closure proposals S

(1) Before section 12 of the 2010 Act (factors for rural school closure proposals), insert—

"11A **Presumption against rural school closure**

(1) This section applies in relation to any closure proposal as respects a rural school.

(2) The education authority may not decide to implement the proposal (wholly or partly) unless the authority—

(a) has complied with sections 12, 12A and 13, and

(b) having so complied, is satisfied that such implementation of the proposal is the most appropriate response to the reasons for formulating the proposal identified by the authority under section 12A(2)(a).

(3) The authority must publish on its website notice of—

(a) its decision as to implementation of the proposal, and

(b) where it decides to implement the proposal (wholly or partly), the reasons why it is satisfied that such implementation is the most appropriate response to the reasons for formulating the proposal identified by the authority under section 12A(2)(a).".

(2) In that section—

(a) subsection (3)(a) is repealed,

(b) in subsection (4), after "(3)(b)" insert " and sections 12A(2)(c)(ii) and 13(5)(b)(ii) ",

(c) in subsection (5), after "(3)(c)" insert " and sections 12A(2)(c)(iii) and 13(5)(b)(iii) ".

(3) After that section, insert—

"**12A Preliminary requirements in relation to rural school closure**

(1) This section applies where an education authority is formulating a closure proposal as respects a rural school.

(2) The authority must—

(a) identify its reasons for formulating the proposal,

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(b) consider whether there are any reasonable alternatives to the proposal as a response to those reasons,

(c) assess, for the proposal and each of the alternatives to the proposal identified under paragraph (b) (if any)—

(i) the likely educational benefits in consequence of the implementation of the proposal, or as the case may be, alternative,

(ii) the likely effect on the local community (assessed in accordance with section 12(4)) in consequence of such implementation,

(iii) the likely effect that would be caused by any different travelling arrangements that may be required (assessed in accordance with section 12(5)) in consequence of such implementation.

(3) For the purposes of this section and section 13, reasonable alternatives to the proposal include (but are not limited to) steps which would not result in the school or a stage of education in the school (within the meaning of paragraph 12 of schedule 1) being discontinued.

(4) The authority may not publish a proposal paper in relation to the proposal unless, having complied with subsection (2), it considers that implementation of the closure proposal would be the most appropriate response to the reasons for the proposal.

(5) In this section and section 13, the references to the reasons for the proposal are references to the reasons identified by the education authority under subsection (2)(a).”.

(4) For section 13 of the 2010 Act substitute—

“**13 Additional consultation requirements**

(1) This section applies in relation to any closure proposal as respects a rural school.

(2) The proposal paper must additionally—

(a) explain the reasons for the proposal,

(b) describe what (if any) steps the authority took to address those reasons before formulating the proposal,

(c) if the authority did not take such steps, explain why it did not do so,

(d) set out any alternatives to the proposal identified by the authority under section 12A(2)(b),

(e) explain the authority's assessment under section 12A(2)(c),

(f) explain the reasons why the authority considers, in light of that assessment, that implementation of the closure proposal would be the most appropriate response to the reasons for the proposal.

(3) The notice to be given to relevant consultees under section 6(1) must—

(a) give a summary of the alternatives to the proposal set out in the proposal paper,

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(b) state that written representations may be made on those alternatives (as well as on the proposal), and

(c) state that written representations on the proposal may suggest other alternatives to the proposal.

(4) In sections 8(4)(c), 9(4) and 10(2)(a), the references to written representations on the proposal include references to written representations on the alternatives to the proposal set out in the proposal paper.

(5) When carrying out its review of the proposal under section 9(1), the education authority is to carry out—

(a) for the proposal and each of the alternatives to it set out in the proposal paper (if any), a further assessment of the matters mentioned in section 12A(2)(c)(i) to (iii), and

(b) an assessment, in relation to any other reasonable alternative to the proposal suggested in written representations on the proposal, of—

(i) the likely educational benefits in consequence of the implementation of the alternative,

(ii) the likely effect on the local community (assessed in accordance with section 12(4)) in consequence of such implementation,

(iii) the likely effect that would be caused by any different travelling arrangements that may be required (assessed in accordance with section 12(5)) in consequence of such implementation.

(6) The consultation report must additionally explain—

(a) the education authority's assessment under subsection (5)(a),

(b) how that assessment differs (if at all) from the authority's assessment under section 12A(2)(c),

(c) the authority's assessment under subsection (5)(b),

(d) whether and, if so, the reasons why the authority considers that implementation of the proposal (wholly or partly) would be the most appropriate response to the reasons for the proposal.”.

(5) In section 1 of the 2010 Act (overview of key requirements), after subsection (4) insert—

“(4A) In the case of a closure proposal in relation to a rural school, the education authority must also comply with—

(a) the preliminary requirements set out in section 12A when it is formulating the proposal,

(b) the additional consultation requirements set out in section 13.”.

Commencement Information

I5 S. 80 in force at 1.8.2014 by S.S.I. 2014/165, art. 2, **Sch.** (with art. 5)

81 Call-in of closure proposals S

(1) In section 15 of the 2010 Act (call-in of closure proposals)—

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(a) in subsection (2), after paragraph (b)(ii) insert—

"(iii) where the decision relates to a rural school, the notice published under section 11A(3).",

(b) after that subsection insert—

"(2A) At the same time as it notifies the Scottish Ministers of the decision under subsection (2)(a), the education authority must publish on its website notice of—

(a) the fact that the Scottish Ministers have been so notified, and

(b) the opportunity for making representations to the Scottish Ministers in connection with subsection (4), including the date on which the 3 week period referred to in that subsection ends.",

(c) in each of subsections (3), (4) and (6) for "6" substitute " 8 ",

(d) subsection (5) is repealed.

(2) Section 16 of the 2010 Act is repealed.

(3) In section 17 of the 2010 Act (grounds for call-in etc.)—

(a) in subsection (3)—

(i) the word "or" immediately following paragraph (a) is repealed,

(ii) paragraph (b) is repealed,

(b) after that subsection insert—

"(3A) HMIE must provide the Scottish Ministers with such advice as to the educational aspects of a closure proposal as the Scottish Ministers may reasonably require of HMIE for the purpose of the Scottish Ministers' consideration of whether to issue a call-in notice.".

(4) After section 17 of the 2010 Act insert—

"**17A Referral to the Convener of the School Closure Review Panels**

(1) This section applies where a call-in notice is issued as respects a closure proposal.

(2) The Scottish Ministers must refer the proposal to the Convener of the School Closure Review Panels.

(3) The Convener must, within the period of 7 days beginning with the day on which the call-in notice is issued, constitute a School Closure Review Panel to review the proposal under section 17B(1).

(4) The education authority may not implement the proposal (wholly or partly)—

(a) unless the Panel grants its consent to it under section 17C(1), and

(b) until—

(i) the period mentioned in section 17D(2)(c) has expired without any appeal to the sheriff being made, or

(ii) where such an appeal is made, it is abandoned or the sheriff confirms the Panel's decision.

(5) Schedule 2A makes further provision about the Convener and School Closure Review Panels.

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(6) In this Act—
  (a) "the Convener" is the Convener of the School Closure Review Panels,
  (b) a "School Closure Review Panel" is a School Closure Review Panel constituted under subsection (3).

17B Review by Panel

(1) A School Closure Review Panel must consider both of the following in relation to a closure proposal—
  (a) whether the education authority has failed 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 proposal,
  (b) whether the education authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.

(2) The education authority must provide the Panel with such information in connection with the proposal as the Panel may reasonably require of it for the purpose of subsection (1).

(3) HMIE must provide the Panel with such advice as to the educational aspects of the proposal as the Panel may reasonably require of them for the purpose of subsection (1).

(4) The Panel may request such other information and advice from any other person as it may reasonably require for the purpose of subsection (1).

(5) The Scottish Ministers may by regulations make further provision as to the procedures to be followed by the Panel when carrying out a review under subsection (1).

17C Decision following review

(1) Following a review of a closure proposal under section 17B(1), the School Closure Review Panel may—
  (a) refuse to consent to the proposal,
  (b) refuse to consent to the proposal and remit it to the education authority for a fresh decision as to implementation,
  (c) grant consent to the proposal—
    (i) subject to conditions, or
    (ii) unconditionally.

(2) The Panel must give reasons for its decision.

(3) Where the Panel remits the proposal to the education authority under subsection (1)(b), the Panel may specify any steps in the process provided for in sections 1 to 11 and (in relation to a closure proposal as respects a rural school) 12A that the authority must take again in relation to the proposal before making a fresh decision.

(4) The Panel may refuse to consent to the proposal under subsection (1)(a) or (b) only if the Panel finds either or both of the following—

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(a) that the education authority has failed 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 proposal,

(b) that the authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.

(5) The Panel must notify the education authority of its decision within the period of 8 weeks beginning with the day on which the Panel is constituted unless (before the end of that period) the Panel issues a notice to the education authority—

(a) stating that the Panel does not intend to notify the decision within that period,

(b) specifying the reason why that is so, and

(c) indicating the likely date for notifying the decision.

(6) Where the Panel issues a notice under subsection (5), it must notify the education authority of its decision within the period of 16 weeks beginning with the day on which the Panel is constituted.

(7) After the Panel notifies the education authority of its decision, the Panel must—

(a) notify the Scottish Ministers of the decision, and

(b) publish notice of the decision in such manner as it considers appropriate.

(8) Where the Panel grants consent to the proposal subject to conditions, the education authority must comply with the conditions.

17D Appeal against decision of the Panel

(1) An appeal may be made to the sheriff against a decision of a School Closure Review Panel under section 17C(1) by—

(a) the education authority,

(b) a relevant consultee in relation to the closure proposal.

(2) An appeal under subsection (1)—

(a) may be made only on a point of law,

(b) must be made by way of summary application,

(c) must be made within the period of 14 days beginning with the day on which the Panel publishes notice of the decision under section 17C(7)(b).

(3) In the appeal, the sheriff may—

(a) confirm the decision, or

(b) quash the decision and refer the matter back to the Panel.

(4) The sheriff's determination of the appeal is final.”.

(5) After schedule 2 to the 2010 Act, insert—

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"SCHEDULE 2A S

(introduced by section 17A)

SCHOOL CLOSURE REVIEW PANELS

Convener of the School Closure Review Panels

1 (1) There is established the office of the Convener of the School Closure Review Panels.

(2) The Scottish Ministers must appoint a person to hold that office.

(3) A person so appointed—

(a) is not to be regarded as a servant or agent of the Crown and does not have any status, immunity or privilege of the Crown,

(b) subject to any provision made in regulations under sub-paragraph (9), holds and vacates office on such terms and conditions as the Scottish Ministers may determine.

(4) The Convener—

(a) may delegate a function conferred on the Convener by this Act,

(b) must delegate such a function if required to do so by directions issued under paragraph 4.

(5) Nothing in sub-paragraph (4)(a) prevents the Convener from carrying out any function delegated under that sub-paragraph.

(6) Sub-paragraph (7) applies during any period when—

(a) the office of the Convener is vacant, or

(b) the person holding that office is unable to perform the functions conferred on the office because the person is incapacitated.

(7) The Scottish Ministers may appoint a person to act as Convener during that period.

(8) A person appointed to act as Convener under sub-paragraph (7)—

(a) is to be appointed on such terms and conditions as the Scottish Ministers may determine,

(b) while acting as such, is to be treated for all purposes, except those of any regulations made under sub-paragraph (9), as the Convener.

(9) The Scottish Ministers may by regulations make provision for or about—

(a) eligibility for, and disqualification from, appointment under sub-paragraph (2),

(b) tenure and removal from office of a person appointed under sub-paragraph (2),

(c) payment of—

(i) salary, fees, expenses and allowances to such a person,

(ii) pensions, allowances or gratuities (including by way of compensation for loss of office) to, or in respect of, such a person,

(d) such other matters in relation to the appointment of the Convener as the Scottish Ministers consider appropriate.

Panel members

2 (1) The Convener is to appoint such number of persons as the Convener considers appropriate to be eligible to serve as members of a School Closure Review Panel.

(2) Each Panel is to consist of 3 of the persons appointed under sub-paragraph (1).

(3) It is for the Convener to select—

(a) the members of the Panel,

(b) one of those members to chair the Panel.

(4) The Convener is to make appropriate arrangements for the training of persons appointed under sub-paragraph (1).

(5) The Scottish Ministers may by regulations make provision for or about—

(a) eligibility for, and disqualification from, appointment under sub-paragraph (1),

(b) tenure and removal from office of persons so appointed,

(c) the process for the selection of Panel members under sub-paragraph (3),

(d) payment of expenses, fees and allowances to persons selected under that sub-paragraph,

(e) such other matters as the Scottish Ministers consider appropriate in relation to—

(i) the appointment of persons under sub-paragraph (1),

(ii) the selection of Panel members under sub-paragraph (3).

Property, staff and services

3 (1) The Scottish Ministers may—

(a) provide, or ensure the provision of, such property, staff and services to the Convener as they consider necessary or expedient in connection with the exercise of the Convener's functions,

(b) pay grants to the Convener for the purposes of enabling the Convener to employ staff and obtain services in connection with the exercise of the Convener's functions.

(2) The Convener is to provide a School Closure Review Panel with such staff and services as the Convener considers necessary or expedient in connection with the exercise of the Panel's functions.

Directions

4 (1) The Scottish Ministers may issue directions to the Convener as to the exercise of the Convener's functions (and the Convener must comply with them).

(2) Directions under sub-paragraph (1) may vary or revoke earlier such directions.

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(3) The Scottish Ministers must publish any directions issued under sub-paragraph (1) in such manner as they consider appropriate.

Reports

5 (1) As soon as practicable after the end of each calendar year, the Convener must prepare a report on—

(a) the exercise of the Convener's functions during that year, and

(b) the exercise of the functions of any School Closure Review Panel which has carried out a review under section 17B during that year.

(2) A report prepared under sub-paragraph (1) must be—

(a) submitted to the Scottish Ministers, and

(b) published in such manner as the Convener considers appropriate.”.

(6) In section 4 of the 2010 Act (proposal paper), in subsection (2) for “17” substitute “ 17D ”.

(7) In section 19 of the 2010 Act (guidance)—

(a) the existing text becomes subsection (1),

(b) after that subsection insert—

“(2) The Convener, and a School Closure Review Panel, must have regard to any such guidance in exercising their functions under this Act.”.

(8) In section 20 of the 2010 Act (regulations)—

(a) in subsection (3) for “17” substitute “ 17D ”,

(b) after subsection (6) insert—

“(7) Regulations under section 17B(5) and paragraphs 1(9) and 2(5) of schedule 2A—

(a) may make different provision for different purposes,

(b) may make supplemental, incidental, consequential, transitional, transitory or saving provision,

(c) are subject to the negative procedure.”.

(9) In section 21(2) of the 2010 Act (definitions)—

(a) after the definition of “consultation period” insert—

““the Convener” is defined in section 17A(6),”,

(b) after the definition of “rural school” insert—

““School Closure Review Panel” is defined in section 17A(6).”.

(10) In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities), before paragraph 21C insert—

“21ZC The Convener of the School Closure Review Panels.”.

(11) In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities)—

(a) before paragraph 62C insert—

"62ZC The Convener of the School Closure Review Panels.",

(b) after paragraph 76 insert—

"76A A School Closure Review Panel constituted under section 17A(3) of the Schools (Consultation) (Scotland) Act 2010.".

(12) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (the specified authorities), before the cross-heading "Executive bodies" insert— " the Convener of the School Closure Review Panels ".

Commencement Information

I6 S. 81(1)(a)-(c)(3)(b) in force at 1.8.2014 by S.S.I. 2014/165, art. 2, **Sch.**

I7 S. 81(1)(d)(2)(3)(a)(6)(8)(a)(11)(b) in force at 30.3.2015 by S.S.I. 2015/104, **art. 2** (with art. 3)

I8 S. 81(4)(5)(8)(b) in force at 1.8.2014 for specified purposes by S.S.I. 2014/165, art. 2, **Sch.** (with art. 6)

I9 S. 81(4)(9) in force at 6.10.2014 for specified purposes by S.S.I. 2014/251, **art. 2(a)**

I10 S. 81(4) in force at 9.1.2015 for specified purposes by S.S.I. 2014/365, **art. 2(a)**

I11 S. 81(4)(5) in force at 9.1.2015 for specified purposes by S.S.I. 2014/353, **art. 2(1)(a)**

I12 S. 81(4)(8)(b) in force at 30.3.2015 in so far as not already in force by S.S.I. 2015/104, **art. 2** (with art. 3)

I13 S. 81(7)(10)(11)(a)(12) in force at 9.1.2015 by S.S.I. 2014/353, **art. 2(1)(b)**

I14 S. 81(9) in force at 9.1.2015 in so far as not already in force by S.S.I. 2014/365, **art. 2(b)**

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View outstanding changes

Changes and effects yet to be applied to :

– specified provision(s) revocation of earlier commencing provision S.S.I. 2016/60, art. 2(a)(i)(ii) by S.S.I. 2016/233 art. 2

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

– Pt. 16A inserted by 2024 asp 5 s. 25(2)