

SCHOOLS (CONSULTATION) (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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.
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.