

SCHOOLS (CONSULTATION) (SCOTLAND) ACT 2010

EXPLANATORY NOTES

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.