

CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 15 - School Closure Proposals, etc

Section 81 – Call-in of closure proposals

230. **Section 81** amends the provisions in the 2010 Act regarding call-in and determination of school closure proposals. It inserts new sections 17A, 17B, 17C and 17D and schedule 2A into the 2010 Act which make new provision for a proposal which has been called-in by the Scottish Ministers under section 15 of the Act to be referred to the Convener of School Closure Review Panels for determination by a Panel. There is also detailed provision in relation to the appointment and role and functions of the Convener and the School Closure Review Panels.
231. Subsection (1)(a) amends section 15 of the 2010 Act to provide that when an authority notifies Ministers of its decision to implement a rural school closure proposal, it must give them a copy of the notice it publishes on its website under section 11A(3) (setting out why it is satisfied that implementation is the most appropriate response to the reasons for formulating the proposal). Subsection (1)(b) inserts a new subsection (2A) into section 15 which requires the authority, at the same time as it notifies Ministers of the decision under subsection (2)(a) to implement a closure proposal, to publish on its website notice of the fact that the Ministers have been so notified and of the opportunity for making representations to the Ministers in connection with subsection (4) of section 15, including the date on which the 3 week period referred to in that subsection is to end.
232. Subsection (1)(c) amends section 15(3), 15(4) and 15(6) of the 2010 Act to amend the period for the Scottish Ministers to issue a call-in notice to the education authority. This is amended from 6 weeks to 8 weeks and has the effect of giving the Scottish Ministers an additional 2 weeks to consider whether to issue a call-in notice.
233. Subsection (1)(d) repeals section 15(5) of the 2010 Act, which provided that a call-in notice issued by the Scottish Ministers under section 15(3) has the effect of remitting the closure proposal to the Scottish Ministers. New section 17A to the 2010 Act, put in by subsection (4), makes new provision for closure proposals which have been called-in by the Scottish Ministers.
234. Subsection (2) repeals section 16 of the 2010 Act, which provided for the Scottish Ministers to determine closure proposals which had been called-in. Subsection (3)(a) makes a consequential repeal of section 17(3)(b) of the 2010 Act which refers to the Scottish Ministers' consideration of the matter of consent under section 16(2).
235. Subsection (3)(b) adds a new subsection (3A) following section 17(3) of the 2010 Act. This places a duty on HMIE to provide the Scottish Ministers with any advice that they

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reasonably require in considering whether to issue a call-in notice. This advice is to concern the educational aspects of a closure proposal.

236. Subsection (4) inserts 4 new sections into the 2010 Act, sections 17A, 17B, 17C and 17D.
237. New section 17A(1) and (2) (Referral to the Convener of the School Closure Review Panels) of the 2010 Act provides that a school closure proposal which has been called-in by the Scottish Ministers must be referred to the Convener of the School Closure Review Panels. Section 17A(3) provides that the Convener has a period of 7 days to constitute a School Closure Review Panel which is to consider the case that has been referred to the Convener.
238. Section 17A(4) prevents an education authority from implementing a closure proposal which has been referred to the Convener unless the School Closure Review Panel reviewing the proposal grants consent to it and either the period during which that decision may be appealed to the sheriff has expired or an appeal has been abandoned or the sheriff has confirmed the Panel's decision to consent to the proposal. Section 17A(5) puts a new schedule 2A into the 2010 Act which makes further provision about the Convener and School Closure Review Panels including provision for the appointment of the Convener and Panel members.
239. New section 17B (Review by Panel) of the 2010 Act provides for the review that a School Closure Review Panel is required to carry out when it is constituted under section 17A(3). Section 17B(1) requires the Panel to consider both: whether the education authority has failed to comply with the requirements imposed on the authority under the 2010 Act and whether the education authority has failed to take proper account of a material consideration relevant to its decision. These are the same issues which the Scottish Ministers are required to consider under section 17(2) of the 2010 Act in considering whether to call-in a closure proposal (although Ministers only have to consider if the authority *may* have failed to comply with the requirements imposed on the authority under the 2010 Act or to take proper account of a material consideration).
240. New sections 17B(2), (3) and (4) relate to providing information and advice that a School Closure Review Panel reasonably requires in conducting its review of closure proposal. Section 17B(2) places a duty on the education authority to provide information to the Panel. Section 17B(3) places a duty on HMIE to provide a Panel with advice that it reasonably requires in conducting its review of closure proposal. This advice is concerning the educational aspects of a closure proposal. Section 17B(4) provides a power for a School Closure Review Panel to request information or advice from any other person for the purpose of its review. This could include experts providing information or advice on issues that are relevant to the proposals, or those who made representations regarding the proposal.
241. New section 17B(5) provides a power for the Scottish Ministers to make provision in regulations as to the procedures to be followed by a School Closure Review Panel in carrying out a review under section 17B(1). This power, which is subject to the negative procedure, ensures that Ministers can specify procedures for the Panels to follow in carrying out their review of a school closure proposal once called-in by Ministers.
242. New section 17C(1) (Decision following review) sets out the decisions available to a School Closure Review Panel following a review of a school closure proposal. Section 17C(2) requires the Panel to give reasons for its decision. In addition to the options currently available to Ministers under section 16 of the 2010 Act (which is repealed by section 81(2)) - to consent, consent with conditions or refuse consent to a school closure proposal - the Panel has the option to refuse consent to the proposal and remit it back to the education authority to reconsider and make a fresh decision as to implementation (section 17C(1)(b)).

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243. Section 17C(3) provides that in the case of remitting the proposal back to the authority, the Panel may specify which steps under the 2010 Act must be taken again before the authority can take a fresh decision on the proposal. The grounds on which a Panel may refuse consent to a proposal or to remit a proposal back to the education authority are set out in 17C(4). Section 17C(4) also provides that the Panel may refuse to consent to a proposal for either or both of the grounds or reasons set out in paragraphs (a) or (b), and this is irrespective of the grounds on which Ministers called in the proposal.
244. Sections 17C(5) and (6) provide time limits for a Panel to make its decision. A Panel is required to make a decision within 8 weeks of being constituted, unless it has issued a notice that a further period is required and, in such a case, this further period is to be no longer than 16 weeks in total from when the Panel was constituted.
245. Section 17C(8) provides that any conditions set by a Panel as part of its consent to a proposal are binding on an education authority.
246. New section 17D (Appeal against decision of the Panel) provides that a decision of a School Closure Review Panel may be appealed to the sheriff by the education authority or a relevant consultee in relation to the closure proposal. An appeal can only be made on a point of law, must be made by summary application and must be made within 14 days of the Panel's decision. Section 17D(3) provides that the sheriff may confirm the Panel's decision or quash the decision and refer the matter back to the Panel, and section 17D(4) provides that this decision by the sheriff is final and is not subject to further appeal.
247. Subsection (5) of section 81 inserts a new schedule 2A (School Closure Review Panels) into the 2010 Act.
248. Paragraph 1 of schedule 2A makes provision for the establishment of the office of the Convener of the School Closure Review Panels, for the appointment by the Scottish Ministers of a person to hold that office, and for the status of the office-holder. It also provides that the Convener may delegate his or her functions, and for Ministers to appoint a person to act as Convener if the office is vacant or the office holder is unable to perform their functions for whatever reason. Paragraph 1(9) provides a regulation making power that allows Ministers to make provision for or about eligibility for and disqualification from appointment, tenure and removal from office and about the payment of salary etc. to the Convener, and these regulations are subject to negative procedure.
249. [Paragraph 2](#) makes provision for the appointment of persons eligible to serve as members of the School Closure Review Panel, for the appointment of those persons to individual Panels, for the Convener to make arrangements to train those persons appointed and for a regulation making power to allow Ministers to make provision about eligibility for and disqualification from appointment, tenure, removal from office, payment of expenses and fees etc. to Panel members.
250. [Paragraph 3](#) allows Ministers to provide such property, staff and services to the Convener as they think necessary or expedient in connection with the exercise of the Convener's functions (including the payment of grants to allow the Convener to employ staff etc.) and requires the Convener to provide a Panel with such staff and services the Convener thinks necessary or expedient in connection with the exercise of the Panel's functions.
251. [Paragraphs 4](#) and [5](#) allow Ministers to issue directions to the Convener as to the exercise of the Convener's functions and require the Convener to prepare an annual report on the exercise of their functions and of the Panel's functions during the year and for this to be submitted to Ministers.
252. Subsections (6), (7), (8) and (9) of section 81 make consequential and technical amendments to various other provisions of the 2010 Act, including requiring the

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Convener and School Closure Review Panels to have regard to guidance issued by the Scottish Ministers.

253. Subsections (10), (11) and (12) of section 81 amend the Scottish Public Services Ombudsman Act 2002, the Freedom of Information (Scotland) Act 2002 and the Public Appointments and Public Bodies etc. (Scotland) Act 2003 to add the Convener to the list of authorities which are respectively subject to investigation by the Ombudsman, subject to Freedom of Information requests and whose appointments are subject to the Public Appointments Code of Practice.