

CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 15 - School Closure Proposals, etc

Section 77 – Restriction on closure proposals

206. **Section 77** inserts a new section 2A (restriction on closure proposals) after section 2 of the 2010 Act. Section 2A(3) provides that, following a decision not to implement a closure proposal, an education authority would not be able to publish a proposal paper under section 4(4) of the 2010 Act for the same school within 5 years (beginning with the day on which the decision not to implement a closure proposal is made) unless there had been a significant change in the school’s circumstances.
207. Subsection (2) of section 2A makes it clear what is meant by “a decision not to implement a closure proposal”, which is a decision taken by an education authority not to implement the proposal after it has published a consultation report on the proposal, or a decision by a School Closure Review Panel to refuse consent to the proposal.

Section 78 – Financial implications of closure proposals

208. **Section 78** amends section 4 of the 2010 Act (proposal paper), adding a new subsection (2A) which requires education authorities, as part of the proposal paper prepared under that section, to provide information about the financial implications of a proposal, where the proposal paper relates to a school closure. This will ensure that school closure consultations prepared by education authorities contain financial information. Further detail on the type and level of financial information required to be provided by education authorities in their proposal paper can be set out in statutory guidance issued under section 19 of the 2010 Act.

Section 79 – Correction of proposal paper

209. **Section 79(2)** amends section 5(2) of the 2010 Act (correction of paper) by inserting new paragraph (aa) which requires an education authority to inform a person who notifies it of an alleged omission of relevant information or an alleged inaccuracy in a proposal paper, of its determination under paragraph (a) of section 5(2) (whether the authority considers that relevant information has been omitted or there has in fact been an inaccuracy) and the reasons for that determination. It amends section 5(2)(b) to require the authority to inform the notifier as to the action (if any), it is taking under new subsection (4) and of the reasons why it is, or is not, taking such action. It also inserts a new paragraph (c) into section 5(2) to require the authority to 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).

210. **Section 79(3)** inserts new subsections (2A) and (2B) into section 5 to provide that where the notifier makes any such representations, the authority may make a fresh determination or a fresh decision as to whether to take action under new subsection (4), and to require the authority to inform the notifier if it takes either of those steps.
211. **Section 79(4)** substitutes new subsections (3) to (6) of section 5 which provide that where an authority has been notified of an alleged omission or inaccuracy, and the authority determines that there has in its opinion been an omission or that there has in fact been an inaccuracy, where that omission or inaccuracy relates to a material consideration relevant to the education authority's decision as to implementation of the proposal, it **must** take the action mentioned in subsection (5)(a) or (b). Where the omission or inaccuracy does not relate to such a material consideration, the authority **may** take the action mentioned in subsection (5)(a) or (b) or take no further action (except by virtue of section 10(3) of the 2010 Act which requires an authority to include information in the consultation report as to any omissions, alleged omissions or inaccuracies or alleged inaccuracies in the proposal paper).
212. The actions mentioned in subsections (5)(a) and (b) are, in (a) for the authority to publish a corrected proposal paper to give revised notice in accordance with section 6, and to send a copy of the corrected paper to HMIE, or alternatively in (b) for the authority to issue a notice to the relevant consultees and HMIE, to provide the omitted information or, as the case may be, correct the inaccuracy, and if the authority considers it appropriate, to extend 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.
213. New subsection (6) provides that where an authority issues a notice mentioned in subsection (5)(b) after the end of the consultation period, the notice may 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 any such further period is to be treated as part of the consultation period for the purposes of sections 8, 9 and 10.
214. **Section 79(5)** makes minor modifications to section 10 of the 2010 Act (content of the report) to require the authority to include details of any alleged omission or inaccuracy in its consultation report, a statement of action taken in respect of an alleged omission or inaccuracy, or, if no action has been taken, a statement of this fact and why. It also inserts a new paragraph (c) into section 10(3) to provide that the authority must also include information in relation to any representations made to the authority in pursuance of section 5(2)(c) (representations by the notifier of an alleged omission or inaccuracy if they disagree with the authority's determination in relation to the alleged inaccuracy or omission) in the report.

Section 80 – Special provision for rural school closure proposals

215. **Section 80** inserts a number of new sections into the 2010 Act (sections 11A, 12A and a substituted section 13) which impose additional requirements on education authorities in terms of the process to be followed for rural school closure proposals. It also makes consequential amendments to section 12 of the 2010 Act (Factors for rural school closure proposals).
216. Subsection (1) of section 80 inserts a new section 11A (Presumption against rural school closure) into the 2010 Act. Section 11A(1) provides that section 11A only applies to closure proposals for rural schools (which are those designated as such under section 14 of the 2010 Act). Section 11A(2) prevents an education authority from making a decision to implement a closure proposal unless it has complied with the additional requirements that apply to rural schools in sections 12, 12A and 13, and having so complied, unless it is also satisfied that such a closure proposal is the most appropriate response to the reasons for formulating the proposal (which it is required to identify under section 12A(2)(a)). Section 11A(3) requires the authority to publish

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on its website notice of its decision as to implementation of the proposal, and 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).

217. Subsection (2)(a) amends section 12 of the 2010 Act (Factors for rural school closure proposals). It repeals subsection (3)(a), which provided for “any viable alternatives to the closure proposal” to be one of the factors to which an education authority must have special regard in proposing a rural school closure (new sections 12A and 13 to the 2010 Act make new provision requiring education authorities to consider alternatives to the closure proposal).
218. Subsections (2)(b) and (c) amend section 12(4) and (5) to provide that for the purpose of sections 12A(2)(c)(ii) and 13(5)(b)(iii) and of sections 12A(2)(c)(iii) and 13(5)(b)(iii), the effect on the community and the effect caused by any different travelling arrangements of any reasonable alternatives to the closure proposal which an education authority identifies or which are identified by consultees in their written representations on a closure proposal, must be assessed by reference to the factors specified in section 12(4) and (5).
219. These sections (sections 12A(2)(c)(ii) and (iii) and section 13(5)(b)(ii) and (iii)) require an education authority to assess, both when formulating a closure proposal and when carrying out a review of the proposal under section 9(1) respectively, the likely effect on the community and the likely effect caused by any different travelling arrangements, in relation to the closure proposal and reasonable alternatives to the proposal identified before and during the consultation process.
220. Subsection (3) of section 80 inserts a new section 12A (Preliminary requirements in relation to rural school closure) into the 2010 Act. This new provision outlines preliminary steps that an education authority must take before it can publish a proposal paper for the closure of a rural school.
221. Section 12A(2) requires the education authority to identify its reasons for the closure proposal (12A(2)(a)) and consider whether there are any reasonable alternatives to the proposal which could respond to those reasons (12A(2)(b)). For the proposal and each and any alternatives identified, the education authority is required to assess the likely educational benefits, the likely effect on the local community and the likely effect of different travelling arrangements (12A(2)(c)). Section 12A(3) provides that reasonable alternatives to the closure proposal may be steps or actions that could be taken which would not result in the school or part of the school closing. However, they are not limited to this and could also include alternative steps or actions that could be taken which would result in the school or part of the school closing.
222. Section 12A(4) places a duty on the education authority not to publish a proposal paper unless, following the consideration required under section 12A(2), it considers that implementation of the proposal is the most appropriate response to the reasons for the proposal.
223. Subsection (4) of section 80 substitutes a new section 13 (additional consultation requirements) into the 2010 Act. The new section 13 imposes more comprehensive and additional requirements on education authorities in consulting on a rural school closure proposal.
224. Section 13(2)(a) to (f) lists the additional information or explanations an education authority must include in a proposal paper for the closure of a rural school, over and above the information specified in section 4 of the 2010 Act. This requires the education authority to inform consultees of the reasons why the proposal is being made, the steps the education authority has taken (if any) to address those reasons (and if no such steps have been taken, why not), and any reasonable alternatives to the closure proposal identified by the authority, and it requires the authority to explain to the consultees

their assessment under section 12A(2)(c) of the educational benefit, the effect on the community and effect of different travelling arrangements that would result from the proposal and any alternatives identified, and to explain the reasons why the authority considered, in light of that assessment, that implementation of the proposal would be the most appropriate response to the reasons for the proposal.

225. Section 13(3) provides that for rural school closure proposals, the notice an education authority must give to relevant consultees under section 6(1) of the 2010 Act must additionally summarise the alternatives to the closure proposal identified in the proposal paper and state that written representations can be made on those alternatives and that written representations can suggest other alternatives.
226. Section 13(4) provides that references to written representations in sections 8(4)(c), 9(4) and 10(2)(a) of the 2010 Act also include written representations regarding the alternatives to the proposal set out in the consultation paper.
227. Section 13(5) imposes additional assessment requirements on an education authority in terms of the review it must carry out of the proposal under section 9(1) of the 2010 Act (the review which follows the authority's receipt of HMIE's report after public consultation on the proposal). It is required, for rural school closure proposals, that the authority must carry out a further assessment in relation to the educational benefit, community effect and effect on travelling arrangements of the proposal and reasonable alternatives set out in the proposal paper following the receipt of the HMIE report, and that it must also carry out an assessment of any reasonable alternatives suggested by consultees in their written representations (section 13(5)(a) and (b)).
228. Section 13(6) provides that the consultation report the authority prepares under section 9(2) of the 2010 Act must additionally explain the assessments it makes under section 13(5)(a) and (b) and how these differ (if at all) from the authority's assessment carried out before consultation (under section 12A(2)(c)). It must also explain 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.
229. Subsection (5) of section 80 amends section 1 of the 2010 Act (overview of key requirements), inserting a new subsection (4A) which makes it clear that in the case of rural school closure proposals, the key requirements an education authority must comply with in formulating a closure proposal in relation to a rural school include complying with the preliminary and additional requirements set out in new sections 12A and 13.

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

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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 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)).
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

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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 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.