
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the following provisions of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”) on 1st August 2014: sections 76, 77, 78, 79, 80, 81(1)(a), (b) and (c), (3)(b), (4), (5) and (8)(b) (of the provisions commenced by this Order, section 81(4), (5) and (8)(b) are commenced only partially).

Article 2 of the Order appoints 1st August 2014 as the day for the coming into force of the provisions mentioned in the Schedule to the Order. Some are partially commenced for restricted purposes only.

Article 3 makes transitional provision in relation to decisions taken in the period between the coming into force date of this Order and the commencement of section 81(2) of the 2014 Act (the repeal of section 16 of the Schools Consultation (Scotland) Act 2010 (determination of case)). It provides that in relation to section 2A of the Schools (Consultation) (Scotland) Act 2010 (“the 2010 Act”) as inserted by section 77 of the 2014 Act, references to the decision made by the School Closure Review Panel to refuse consent to a closure proposal are to be read as if they were references to the decision made by the Scottish Ministers to refuse such consent. Therefore where the Scottish Ministers decide to refuse consent to a closure proposal once section 2A of the 2010 Act is commenced (and before section 81(2) of the 2014 Act (repeal of section 16 of the 2010 Act) is commenced), there will be a restriction on any further closure proposals in relation to the same school for a five year period.

Article 4 makes transitional provision which provides that section 2A (restriction on closure proposals), as commenced by this Order on 1st August 2014, will not apply to a decision made before that date not to implement a school closure proposal. This applies both to an education authority’s decision not to implement the proposal (following the publication of the consultation report prepared by the authority under section 9(2) of the 2010 Act in relation to the proposal, whether or not the proposal was called in under section 15 of the 2010 Act) and to the Scottish Ministers’ decision to refuse consent to the proposal under section 16(2)(a) of the 2010 Act.

Article 5 makes transitional provision and applies in any case where an education authority has published a proposal paper, in relation to a rural school closure proposal, before 1st August 2014. Article 5(2) provides that the amendments made to the 2010 Act by section 80 of the 2014 Act (special provision for rural school closure proposals) do not apply to such a closure proposal and therefore the current law continues to apply to those cases.

Article 6 makes transitory provision for the period between the coming into force date of this Order and the commencement of section 81(2) of the 2014 Act (the repeal of section 16 of the 2010 Act (determination of case)). Article 6(2) provides that references to “the Panel” in section 17B(3) of the 2010 Act, as inserted by section 81(4) of the 2014 Act, are to be read as references to “the Scottish Ministers”. The reference to “for the purpose of subsection (1)” is to be read as a reference to “for the purpose of their consideration of the matter of consent (including conditions) under section 16(2)”. This therefore requires HMIE to provide the Scottish Ministers with such advice as to the educational aspects of the proposal as the Scottish Ministers may reasonably require of them for the purposes of their determination of a case once called in, until section 81(2) of the 2014 Act is commenced.