

Scottish Government Response to the Commission on Delivery of Rural Education

Ministerial Foreword



The Scottish Government is committed to protecting our rural schools, and supporting their role in preserving, supporting and developing rural communities. The delivery of education in rural communities is about much more than just a building and it is essential that any decisions that affect the delivery of rural education receive full and thorough consideration.

In July 2011, the Government and COSLA announced the establishment of the Commission on the Delivery of Rural Education. The Commission was chaired by Sheriff David Sutherland and was given a remit to review the 2010 Act and its application and making recommendations on best practice on the delivery of education in rural areas. It was also asked to look at innovation and the link between rural education and rural regeneration.

The Commission published its report on 19 April 2013 and I would like to thank Sheriff Sutherland and the members of the Commission for all their hard and thoughtful work over the last two years. The task was not easy or straight forward but the Commission's report provides clear and concise analysis of the issues expressed in 38 helpful recommendations.

I have given very careful consideration to all these recommendations. I can support the vast majority of them and will be taking the steps necessary to implement them. The Government's response to each of the recommendations is published today.

Many can be taken forward administratively through revised guidance; others will require legislative change. Once in place, I am confident that these changes will lead to real improvements and deliver more effectively the policy Parliament intended when it passed the 2010 Act.

However, the Commission's recommendations were not just addressed to the Scottish Government. All of those involved in rural education across Scotland have a crucial role to play if the Commission's vision for rural education is to be realised. I am committed to working with local government, parents and communities to deliver the best outcomes for all our young people.

I believe the work of the Commission will help improve the long term sustainability of our rural communities and enhance rural education in our country. I look forward to seeing these recommendations implemented over the coming weeks and months.

A handwritten signature in black ink, appearing to read 'Michael Russell', with a long horizontal stroke extending to the right.

Michael Russell, Cabinet Secretary for Education and Lifelong Learning

Responses to the Individual Recommendations

Recommendation 1: The Scottish Government and local authorities should agree a coherent rural regeneration strategy to support economic outcomes for rural areas.

The Scottish Government accepts this recommendation

The Scottish Government's national regeneration strategy, *Achieving a Sustainable Future*, outlines our vision for regeneration in Scotland – where all places are sustainable and promote well-being. This is achieved by addressing the social, economic and physical needs of both our urban and rural communities in Scotland. The regeneration strategy recognises the problems facing our most vulnerable rural communities and the support required to help meet the needs of these communities.

The regeneration strategy also recognises the importance of education in rural areas in order to preserve, support and develop rural communities. As the Commission recommends, the regeneration strategy has clear outcomes to help disadvantaged communities to become physically, socially and economically sustainable.

In addition, there are a variety of policies already in place specifically to promote rural development – such as through the Scotland Rural Development Programme (SRDP), Scottish Enterprise and Highlands and Islands Enterprise (HIE).

The Scotland Rural Development Programme provides a comprehensive package of support to rural Scotland delivering measures in support of economic, social and environmental priorities of the Scottish Government. The programme will end on 31 December 2013 and will have delivered around £1.2 billion of support to rural Scotland since it was launched in 2008.

Scottish Enterprise has £21 million invested in rural growth companies. In addition it delivers a number of specific activities to assist the development of rural areas. These include the Scottish Enterprise Rural Leadership Programme which has helped nearly 300 owner/managers of rural organisations; and Planning to Succeed Groups involving rural micro and small businesses working collectively on topics such as mountain biking, agri-tourism, agriculture and tourism destinations. Highlands and Islands Enterprise's Account Management approach involves working intensively with a community or social enterprise over a sustained period of time to support and deliver sustainable growth.

Complementing the approach of national government, local authorities have a key role in delivering local economic development and regeneration by taking account of economic opportunity and need in the design and delivery of policies. They make a vital contribution by ensuring relevant local partners are engaged in delivering joint services, through the Community Planning Partnership, to deliver coordinated and effective local services in line with priority local outcomes and needs.

The Commission identifies the crucial role of broadband in supporting rural communities. The Scottish Government is committed to Scotland having world-class digital infrastructure by 2020. In order to realise this ambition, we have allocated more than £240 million of public sector funding to deliver the Step Change

Programme. The Scottish Government is clear that rural areas will not be left behind as we make progress across Scotland.

The Scottish Government has launched Community Broadband Scotland (CBS) to assist rural communities. This programme forms part of the national digital strategy to deliver future-proofed digital connectivity across all of Scotland. As part of CBS we are working with Education Scotland and local partners to ensure that, where possible, connectivity serving schools can also be used to extend broadband services to the wider community in rural areas.

Recommendation 2: Local authorities and their partners should ensure that Professor Deacon's recommendation on the importance of children and family centres is realised as much as possible in rural areas, including support for the development of rural schools as community hubs offering integrated early years services either on a permanent or outreach basis.

And

Recommendation 3: Local authorities should recognise the importance of accessible early years provision in rural areas and work with their rural schools and other providers to ensure this is available in all areas and aligned with school areas where appropriate.

And

Recommendation 4: Local authorities should work closely in partnership with voluntary and third sector services to facilitate viable wraparound care provision in rural areas where there is demand, seeking innovative solutions to support families.

The Scottish Government accepts these recommendations

We welcome exploring innovative and sustainable ways for local authorities to develop rural schools as community hubs to deliver wraparound care and accessible early years provision. The Children and Young People (Scotland) Bill's early learning and childcare provisions require more flexibility of delivery, which may create challenges but also opportunities.

These provisions will reduce the number of wraparound hours needed for young children but the demand for flexible services will remain. Our policy more broadly is to support all forms of early learning and childcare including out of school care, and we are aware of good practice in rural areas, especially by third sector providers.

Another key strand of work in this area is the Early Years Taskforce which is driving forward transformational change in the early years. A Sub Group of the taskforce has been set up to take forward work on family support. This group is overseeing the implementation of an £18 million investment from the Early Years Change Fund to increase the quality and accessibility of family support. The aim of this work is to increase support for parents, based on universal access to a wide range of services, making best use of all the resources available.

Of this funding, £6 million will support the development of a series of Public Social Partnerships which will deliver family support outreach services to communities or client groups where a need has been identified, and will integrate this with existing early years services, including early learning and childcare. The Scottish Government is also working with local authorities to address the barriers to accessing quality childcare, and rural provision has been identified as an area of need.

Recommendation 5: Further and higher education institutions, local authorities and schools should work together to provide the widest range of opportunities to young people and adults in rural areas, helping to widen curriculum provision in small rural secondary schools and working to ensure parity with provision in urban areas.

The Scottish Government accepts this recommendation

One of the strengths of rural schools is the opportunity they provide to implement innovative approaches to learning tailored to the needs of their students. The ability to exchange knowledge between schools and higher education institutions has the potential to be beneficial for all concerned and there are a number of projects on-going across further and higher education providers in this area.

Universities are already engaged in a range of initiatives with local authorities, schools and colleges to break down the barriers that may prevent pupils in rural areas from applying and attending university. In support of this, the Scottish Government has asked the Scottish Funding Council to adopt a more differentiated and outcomes based approach in seeking ways to grow provision in rural areas.

For example, an initiative receiving support is at the University of St Andrews, which is undertaking an Access for Rural Communities (ARC) summer school project in Argyll & Bute, Highland and the Western Isles. The main focus is Secondary 5 pupils in these areas who are underrepresented in applications to the University and who fall into the 40% most deprived category.

In Dumfries and Galloway, the University of Glasgow and University of the West of Scotland are receiving an additional £1.7m each year to sustain and grow the provision available through their unique collaboration at the Crichton campus. The Crichton academic partners are also engaging with Dumfries and Galloway Council on proposals to develop the transitions process for senior phase secondary pupils to enter further and higher education courses.

The University of the Highlands and Islands (UHI) has received 1,000 additional funded places in 2012-13 (rising to 2,500 by 2015-16) for their work to develop widening access and the skills relevant to UHI's regional context.

For further education, one of the key elements of the Post 16 Education Reform programme has been the introduction of Outcome Agreements for colleges. When the 13 strategic bodies are introduced in 2014, they will have a responsibility to ensure that college provision in their region is responsive to the needs of learners.

Regional bodies and colleges will work with their communities to ensure that college provision supports the needs of rural learners.

Recommendation 6: Local authorities, the Scottish Government, teaching institutions and trade unions should work together to explore innovative solutions to reduce the barriers to teaching in remote areas; and to ensure effective delivery of CPD to teachers in rural schools, learning from international best practice to reduce teachers' isolation and sustain skills and development.

The Scottish Government accepts this recommendation

The Scottish Government is committed to working in partnership with local authorities, teaching institutions and trade unions to find solutions to the barriers to teaching and recruitment in remote areas. For example, the Teacher Induction Scheme provides a financial incentive to those probationer teachers who choose to waive their right to specify in which authority they would like to work during their probationer year. This enables them to be placed in authorities, many of which include rural areas, where probationer teachers are needed but might not otherwise choose to go.

We also welcome the flexible learning routes being developed to support those in rural areas seeking to qualify as teachers. For example, the University of Aberdeen's proposal to offer a part-time distance learning Professional Graduate Diploma in Education (PGDE) Primary, in partnership with Highland and Aberdeenshire Councils, will widen the opportunity for those already working in rural schools, in a non-teaching capacity, to qualify as teachers. In the case of Gaelic, we recognise the difficulties that are often faced in recruiting staff and that is why we continue to work in partnership with Bòrd na Gàidhlig, local authorities and teaching institutions to address issues of recruitment and retention including the creation of new courses to train potential teachers.

The National Implementation Board is currently taking forward a large programme of work to implement the recommendations of Teaching Scotland's Future and the National Partnership Group. The National Implementation Board and partner organisations will ensure teachers working in rural areas do not miss out on newly developed professional learning opportunities.

Recommendation 7: There must be a commitment to resource the curriculum in small rural secondary schools to support the achievement of positive outcomes and destinations for young people. This will require innovative and flexible arrangements to be developed including use of local primary school teachers and other experts within the local community.

The Scottish Government accepts this recommendation

We are committed to ensuring positive outcomes for pupils in rural locations, giving young people the skills to compete in the international job market. We would encourage schools and local authorities to find innovative ways to deliver this aim,

for example taking into account Education Scotland's guidance on use of external experts.

Recommendation 8: Local authorities should work in partnership with universities and the General Teaching Council for Scotland to facilitate and support a streamlined process for teachers who have the appropriate skills and wish to gain a dual qualification.

The Scottish Government accepts this recommendation

We are aware that the issue of 'dual qualification' is a concern for education authorities, schools and teachers and it has been raised in a number of stakeholder forums recently.

The Scottish Government will work with interested parties including the General Teaching Council for Scotland to explore how this recommendation can be taken forward.

Recommendation 9: Strengthened guidance on school closures should address the links to be made between council services, and with regional and national bodies, when considering a potential school closure.

The Scottish Government accepts this recommendation

A number of the Commission's recommendations suggest revision of the statutory guidance or amendment of the Schools Consultation (Scotland) Act 2010 (2010 Act). We welcome the careful consideration that the Commission has given to how this legislation can be strengthened or made clearer, including the implications of the recent court case *Comhairle nan Eilean Siar v. Scottish Ministers*.

The Government agrees that there should be strengthened guidance on many aspects of school closures, including making clear links between council services that are impacted by, or impact on, the presence of a school in a particular community. We will work closely with stakeholders and, most importantly, local authorities to develop revised guidance to address this recommendation.

Recommendation 10: Local authorities should give consideration to rural proofing their policies where relevant, including changes to education provision, using approaches such as a rural proofing toolkit.

The Scottish Government accepts this recommendation

The Scottish Government has mainstreamed the needs of rural Scotland into all its policies. Policy makers at national and local level should take the needs of rural areas into account and adapt their policies to meet local needs and circumstances wherever possible.

We are happy to discuss approaches such as rural proofing with local authorities although the detailed policy for an authority is a matter for each local administration to take forward.

Recommendation 11: There is a strong need for research evaluating the impact on children and communities following a school closure and this should be sought by the Scottish Government.

The Scottish Government accepts this recommendation

We accept this recommendation in principle and are investigating options for taking research forward. This is a complex area and we wish to ensure that any research undertaken adds to the research base which already exists and provides a useful output to inform the debate on the impact of school closures on our rural communities.

Recommendation 12: Local authorities, together with their health and other Community Planning partners, should consider rural education holistically for their area, from early years to further and higher education, actively seeking solutions to enhance the viability of rural communities.

The Scottish Government accepts this recommendation

Community Planning Partnerships are well placed to decide on priorities for their area, based on their local knowledge, and the Government would welcome their consideration of rural education in their area. In many partnerships the range of organisations involved will cover the stages from early years to higher education to allow a holistic approach to be taken. In addition, Highlands and Islands Enterprise and Scottish Enterprise are active partners in the Community Planning Partnerships across Scotland promoting economic growth. It is important that we all embrace opportunities for innovation that have the potential to deliver benefits for rural communities.

Recommendation 13: Local authorities should do everything they can to develop clear plans for travel arrangements and ensure adequate responsibility is taken for pupils' safety. This planning should be undertaken at an early stage in any proposal for change.

And

Recommendation 27: All local authorities should clearly articulate their travel policy for school pupils and allow it to be debated locally on a regular basis.

The Scottish Government accepts these recommendations

Local authorities already have statutory responsibilities in this area. The 2010 Act already contains provisions on factors of special regard which must be applied in the

case of rural school closures, including the impact of changes to travelling arrangements.

Local authorities considering school closures should continue to consult the local community on school travel plans and communicate the impact any proposed closures would have on children travelling to and from school, including any impact on their safety and well-being and taking into account their age. As part of the review of the statutory guidance for the 2010 Act, the Scottish Government will consider how guidance to local authorities on planning and communicating changes to travelling arrangements can be improved.

In addition, local authorities have responsibilities in relation to school transport under the Education (Scotland) Act 1980, including a statutory duty to take forward the development of their travel plans, which should include engagement with the local community. We will engage with local authorities to discuss how they maintain their local school travel plans to ensure these are made available and subject to appropriate local consultation.

We are aware of concerns about pupils' safety when travelling to and from school and for that reason Transport Scotland funded the Transport Research Laboratory (TRL) to produce a guide to improving school travel safety in 2010 and we would encourage local authorities to put in place the measures outlined in this guide, if they have not already done so. Following the "Review of the Guide to Improving School Transport" published in February 2013, we are currently looking to set up workshops designed to best meet the needs of the local authorities carrying out the provision of school transport safety.

The Scottish Government provides funding to Sustrans to work with schools and local authorities to encourage schools to develop sustainable travel plans for their pupils and teachers and to identify safe routes in their areas. We would encourage local authorities to continue working with Sustrans and the local community in drawing up and regularly reviewing school travel plans.

Recommendation 14: Schools and local authorities should promote use of school buildings by community groups.

The Scottish Government accepts this recommendation

This is in line with existing national and local government policies. The Scottish Government school estate strategy emphasises the need for schools which best serve their communities. One of the programme goals for funding for school projects under our school building programme, Scotland's Schools for the Future, is that they must deliver the nine principles contained in Building Better Schools: Investing in Scotland's Future, one of which is schools which best serve their communities.

Through Scotland's Schools for the Future Programme, we encourage and support local authorities to take the opportunity to consider their wider asset management agenda. Where appropriate, many of the schools being replaced include other council services for example community library or leisure facilities. This provides

greater benefit to local communities and puts a school at the heart of the community it serves.

As part of our engagement on school estate management plans with local authorities, the Scottish Government actively encourages local authorities to include wider community participation in the use of school facilities, however, it is for individual local authorities to make decisions in relation to community use and access to school buildings.

Recommendation 15: Local authorities should encourage and accept help with school fabric and maintenance from parents and communities where appropriate.

The Scottish Government accepts this recommendation

As highlighted in the Commission's report, there are examples of this type of parental involvement successfully taking place in a number of authority areas already. This is in line with the local school being at the centre of the community, and encouraging increased parental involvement in children's education.

Whilst such assistance from parents or the community is not a replacement for investment from local authorities in their school estate, local authorities should consider options for putting this recommendation into practice, where feasible, and how it can complement their own school maintenance programme.

Recommendation 16: The Scottish Government should seek to provide more clarity and support on the legal issues faced by local authorities over some school buildings, to help resolve the future of these buildings without lengthy delays.

The Scottish Government accepts this recommendation

We understand that issues sometimes arise around the historic ownership of school sites and the implications this can have if a school is closed. We would welcome the opportunity to discuss this matter further with local authorities in order to establish the legal issues involved. Following discussions the Scottish Government will consider whether a change to legislation may be required.

Recommendation 17: Local authorities should address clearly the future use of a school building in any consultation document proposing school closure.

The Scottish Government accepts this recommendation

The consultation process on school closures should be as inclusive and transparent as possible and it makes sense that communities are informed about the possible future use of a school building in order that they might better understand the impact of a school closure proposal on the local community. This is one of the areas that we will work with local government to address in preparing revised statutory guidance to accompany the 2010 Act.

Recommendation 18: Education Scotland should have a wider role in providing a detailed response to the proposed educational benefits and a more sustained involvement in a school closure proposal.

The Scottish Government accepts this recommendation

We welcome more sustained input from Education Scotland, as the Scottish Government's professional expert advisors on education, during the school closure process.

The Scottish Government would like to explore options for Education Scotland to provide additional advice to Ministers during their consideration of school closure proposals. We will work with Education Scotland, local authorities and other stakeholders to determine the most appropriate scope and format to this enhanced involvement. Following these discussions we will consider whether the recommendation requires a change to legislation or should be delivered by other means.

Recommendation 19: Educational Benefits Statements must continue to be a very important part of a closure proposal and further guidance should be provided to ensure these are of a higher quality.

The Scottish Government accepts this recommendation

The Scottish Government believes educational benefit and improving the standard of education should be at the heart of any proposal for a major change to the school estate, and especially so in the case of school closures. We agree that there is a need to improve the quality and consistency of approach to Educational Benefits Statements to provide the detail that parents and communities require to understand the impact of a closure proposal. We will work with key partners including Education Scotland, COSLA, the Association of Directors of Education in Scotland (ADES) and parent groups to revise this aspect of the statutory guidance for the 2010 Act by autumn 2013.

Recommendation 20: It should be acceptable for an Educational Benefits Statement to conclude that the educational impact is neutral, with no overall educational detriment to the children directly concerned. In such circumstances, if a closure continued to be proposed, it would be essential that any other factors are fully and transparently scrutinised, including identifying clear overall benefit to the rural communities involved.

The Scottish Government does not accept this recommendation

When the 2010 Act was passed, the need to produce an Educational Benefits Statement was considered to be a crucial part of any school closure proposal. The Scottish Government is firmly of the view that establishing educational benefits for the children involved must continue to be the key requirement for all school closures.

We are aware that the Commission carefully considered this issue and respect the reasons why the Commission made its recommendation. However, the Scottish Government is committed to strengthening the protection of rural schools and if implemented this recommendation would weaken the central principle of the 2010 Act, that a local authority must be able to demonstrate educational benefits to children affected by a school closure. Furthermore, while it is appreciated that financial factors are a consideration, there is a need to protect communities from decisions that are primarily financially driven. For these reasons we are unable to accept this recommendation.

The Scottish Government understands that local authorities would welcome further guidance and support in identifying and explaining educational benefits. Working closely with COSLA, we will explore options for this and for an enhanced role for Education Scotland in the consultation process in order to improve the consistency and quality of Educational Benefits Statements.

Recommendation 21: School closure proposals should be accompanied by transparent, accurate and consistent financial information, rigorously evidencing any financial argument that is deployed. The impact, if any, of the proposal on the General Revenue Grant that the authority would receive in future should be clearly provided.

And

Recommendation 22: Clear guidance and a template for financial information should be developed to ensure financial information is presented in a complete and consistent manner.

The Scottish Government accepts these recommendations

We recognise it is vitally important that school closure proposals provide accurate and transparent financial information. Understanding the financial impact of a proposal is necessary for responsible administration and it is right that these should be openly presented and debated.

We will work with key partners including COSLA, ADES and the Scottish Rural Schools Network (SRSN) to produce a template and associated guidance to enable local authorities to set out the financial information in relation to a school closure proposal in a clear and consistent manner. We expect to have this part of the revised statutory guidance ready in autumn 2013.

Recommendation 23: A consistent approach to school capacity modelling should be agreed between the Scottish Government and local authorities.

The Scottish Government accepts this recommendation

The Scottish Government will review the statutory guidance on determining school capacities which accompanies the Standards in Scotland's Schools etc. Act 2000.

We will work closely with COSLA, ADES and others to develop a consistent approach which can be applied to capacity modelling in Scotland in future. We intend to consult on a school capacity model over the coming months with the aim of agreeing and publishing a model by March 2014.

Recommendation 24: A new, clearer understanding of ‘a presumption against closure’ should be set out by the Scottish Government in the statutory guidance accompanying the 2010 Act to reduce conflict and provide clarity and protection for communities and local authorities.

And

Recommendation 25: Clearer statutory guidance should be provided to ensure a more thorough and uniform approach to the matters of special regard, ensuring that these are given **full** consideration **before** conducting a closure consultation under the 2010 Act so that this consultation is on the local authority’s conclusions in relation to each matter.

And

Recommendation 26: When considering alternatives during a closure proposal, the local authority should always include keeping the school open as an option.

The Scottish Government accepts these recommendations

The Scottish Government is clear that the decision to close a rural school should only be taken after having fully considered and taken account of all relevant information and representations, including the rural factors. The 2010 Act already contains provisions which set out the matters of special regard which must be applied in the case of rural school closures, these are:

- consideration of viable alternatives;
- impact on the local community;
- and travelling arrangements.

It is sensible, and in line with the original intention of the 2010 Act, that closure proposals should always include the option of keeping a school open.

We accept the desirability of providing further clarification on how the rural factors under the 2010 Act should be applied by local authorities, and what is meant by a presumption against closure. We plan to issue revised statutory guidance for the 2010 Act by autumn 2013 and will incorporate these recommendations as part of this work. If amendments to legislation are necessary, the statutory guidance will be further revised as required.

Recommendation 27: All local authorities should clearly articulate their travel policy for school pupils and allow it to be debated locally on a regular basis.

The Scottish Government accepts this recommendation

See response to Recommendation 13

Recommendation 28: The Scottish Government and local government should review section 5 (Correction of the paper) of the 2010 Act, with a view to providing clear statutory guidance on the minimum information to be provided by local authorities and addressing issues that arise during a consultation.

The Scottish Government accepts this recommendation

We are aware concerns have been raised that section 5 of the 2010 Act has not operated as intended and will work to address these. We wish to consult on the operation of section 5 of the 2010 Act in order to better understand the nature of concerns about this section. Following consultation, we will determine how best strengthen the statutory guidance in order to establish a framework setting out the minimum requirements for information to be provided by a local authority consulting on a school closure proposal. In doing so we will consider and highlight examples of best practice.

Recommendation 29: There should be stronger guidance on how to undertake informal consultation, and a clear expectation that this is an important and effective preparation for statutory consultation. A new title such as 'pre-statutory' consultation would make this clearer.

The Scottish Government accepts this recommendation

We understand that the Commission heard evidence of local authorities undertaking informal or non-statutory consultation on school closures in advance of statutory consultations and that this was welcomed by communities. However, we also understand that there can be difficulties in undertaking this type of consultation and therefore that care needs to be taken in ensuring that the appropriate type of consultation is adopted in each case.

The Scottish Government would welcome the opportunity to explore this issue further. We will work with local authorities to identify best practice on how to undertake informal consultations with parents and communities on proposed changes to the school estate. We will then consider whether any amendment to the legislation or statutory guidance is required.

Recommendation 30: Local authorities should ensure that all school closure consultations receive sufficient attention to detail, in order that communities have confidence in both the specifics regarding their school and the local authority's wider plans and commitments.

The Scottish Government accepts this recommendation

The Scottish Government wishes to ensure that the consultation process for school closures is consistent, fair and transparent across Scotland. We will work with COSLA and key stakeholders to revise the statutory guidance for the 2010 Act, identify good practice and establish a framework covering the requirements for local authorities consulting on school closures.

Recommendation 31: Once a school closure proposal has undergone full consideration under the 2010 Act and it is agreed not to close the school, local authorities should make no further closure proposal for at least five years unless there is a significant relevant change.

The Scottish Government accepts this recommendation

We agree that repeated consultations on the closure of the same school lead to uncertainty and distress for the communities involved. Implementing this recommendation would give communities a reassurance that, in future, following a public consultation in connection with a proposed school closure under the 2010 Act, if a local authority decides not to close the school or consent to close is refused, no further closure consultation should take place for at least 5 years unless there is a significant relevant change relating to the school. We will consult on whether this recommendation should be implemented through revision of the statutory guidance or through amendments to the 2010 Act.

Recommendation 32: Local authorities should ensure that all school closure consultations include appropriate consultation with children and young people and use the results of these exercises in their statutory consultation.

The Scottish Government accepts this recommendation

We welcome this recommendation. It is important that children and young people affected by a school closure proposal understand what is being proposed, the impact it will have on them and have the opportunity to voice their views and concerns. The 2010 Act already places a statutory duty on a local authority to consult with children and young people and expects the local authority to reflect their views in the consultation report and respond to the concerns raised.

Scotland's Commissioner for Children and Young People has produced guidance for local authorities on pupil consultations under the 2010 Act: "Participants, not pawns" which sets out good practice in this area.

Consultation of children and young people is already addressed in the statutory guidance for the 2010 Act and we will consider whether any further clarification is required when revising this guidance.

Recommendation 33: Scottish Ministers' role under the 2010 Act, as set out in the judgment in the case of *Comhairle nan Eilean Siar v. Scottish Ministers*, requires consideration of both the process followed and the merits of a school closure

proposal that has been called in. Ministers should have three options in relation to these proposals, to:

- (a) Consent, including consent with conditions;
- (b) Refuse consent; or
- (c) Remit the proposal back to the local authority for reconsideration.

And

Recommendation 34: The referral mechanism for school closure decisions should continue to be to Scottish Ministers, as an accessible mechanism that communities value. Once a sufficient period of time has elapsed for the impact of the Commission's other recommendations to be assessed, a further review could consider the effectiveness of alternative approaches.

The Scottish Government accepts recommendations 33 and 34 and wishes to build upon them

The Scottish Government understands the basis for these recommendations and agrees with the Commission that it is essential that there is an accessible referral mechanism for communities; that this should include reviewing the merits of a school closure proposal; and that it might well be helpful for there to be an additional option of referring a decision back to the local authority. However, we are concerned that there is a perception that Ministers' role in this process can never be impartial. We think it is important to explore now further options for determination of school closures as proposed in Recommendation 34.

Over the coming months we would like to work with local government to explore possible options including arbitration, reference to an adjudicator or the establishment of an appeals panel. We recognise the importance of the principles identified by the Commission so we would wish to ensure that any future mechanism for making representations would be freely accessible to local communities and should continue to value the primacy of local government decision making. Our aim would be to also ensure that such options were independent of both local and national government and the political process.

The Commission's proposal for an additional option to remit called in closure proposals back to the local authority would allow local authorities an opportunity to improve flawed proposals without starting the whole process again. We judge that this could be helpful and will consider whether it can be included in the changes to the 2010 Act once the other changes to the referral mechanism have been developed.

Recommendation 35: The Scottish Government should provide more clarity and transparency around the Ministerial call-in process and decision, including the provision of clear, detailed reasons in the letter of decision, within a set timescale. There should also be a short increase in the time for Ministers to consider representations prior to a decision to call-in a school closure proposal.

The Scottish Government accepts this recommendation

We are happy to accept this recommendation, and believe that a small increase in time to consider representations should reduce the risk that closure proposals are called in unnecessarily.

Each school closure proposal is determined on its individual circumstances. Better articulated closure proposals in future should result from taking forward the other recommendations in the Commission's report on stronger guidance to improve the clarity and accuracy of information presented by local authorities. High quality, evidence-based consultations and reports should make it easier for the Scottish Government to determine whether or not there are grounds to call-in a proposal for further investigation on whether an education authority may have failed ("in a significant regard") to comply with the 2010 Act or take proper account of a material consideration. These improvements in school closure consultations should lead to fewer closure proposals being called-in for further investigation.

The Scottish Government notes the recent Court judgments regarding call-in decisions under the 2010 Act, as well as the Commission's view about the benefits of detailing the reasons for call-in to provide clarity for local authorities and communities alike. We will endeavour to provide detailed reasons when issuing future call-in and determination letters, granting consent, conditional consent or refusal to grant consent.

Recommendation 36: There should be no change to the consultation timescales set down in the 2010 Act. The Scottish Government should provide a clear timeline for closure consultations to assist authorities and communities.

The Scottish Government accepts this recommendation

We are happy to provide further clarity on the timeline for closure consultations and will take this forward as part of the work to amend the statutory guidance.

Recommendation 37: The current definition of a rural school should not be altered. The Scottish Government should carry out a narrow and restricted review in conjunction with local authorities to address any anomalies that arise from the current definition.

The Scottish Government accepts this recommendation

We agree with the Commission that the definition of a rural school should not be changed. However, we agree that we have also been made aware of a very small number of anomalies that occur on the rural/urban school list, and we intend to consult on how to reduce or eliminate these. In doing so, we will be sensitive to concerns that any change from following the accepted postcode based Urban Rural Classification should be fully justified.

Recommendation 38: The Scottish Government should provide more guidance on mothballing schools, including the safeguards necessary to ensure that any greater use of this approach is appropriate and in keeping with the presumption against closure.

The Scottish Government accepts this recommendation

Whilst mothballing has been used effectively by local authorities in some instances, we are aware that some communities have raised concerns about its use. We will work with local authorities and other stakeholders to consider whether any amendment to legislation is required to clarify exactly what is meant by the term and consequently whether revision or additions to the statutory guidance would be appropriate.



© Crown copyright 2013

You may re-use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

ISBN: 978-1-78256-647-2 (web only)

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by APS Group Scotland
DPPAS14368 (06/13)

Published by the Scottish Government, June 2013

w w w . s c o t l a n d . g o v . u k