

Schools (Consultation) (Scotland) Act 2010

**Statutory Guidance
1 August 2014**

SCHOOLS (CONSULTATION) (SCOTLAND) ACT 2010

STATUTORY GUIDANCE

CONTENTS	Page
1. Introduction	2
2. Preparation for consultation	4
2.1 The basics	4
2.2 Pre-consultation and consulting particular groups	7
2.3 Educational benefits	9
2.4 Proposal paper	13
2.5 Rural aspects	17
3. Consultation	21
3.1 The basics	21
3.2 Questions, inaccuracies and omissions	22
3.3 The consultation report	24
3.4 Rural aspects	25
4. Decision	26
4.1 The basics	26
4.2 Rural aspects	28
4.3 Referral to the Scottish Ministers	29
4.4 Forthcoming changes and transitional arrangements	32
4.5 Restriction on repeating school closure proposals	32
5. Further information	34
5.1 Definitions	34
5.2 Relevant proposals	34
5.3 Relevant consultees	34

1. INTRODUCTION

1. This statutory guidance is issued under section 19 of the Schools (Consultation) (Scotland) Act 2010 (hereinafter referred to as ‘the 2010 Act’) and replaces the guidance which was published in February 2010. The guidance also reflects recommendations made in the Commission on the Delivery of Rural Education’s Report¹, and that Report is a useful source of further information, discussion and advice on many of the issues arising from this guidance or in managing the school estate.

2. The 2010 Act was amended by the Children and Young People (Scotland) Act 2014, and most of those amendments will come into force on 1 August 2014.² This guidance provides advice on those new requirements, and on transitional arrangements for consultations on closure proposals which are underway on 1 August 2014. Further amendments to the 2010 Act have not yet been brought into force, and when they are brought into force early in 2015, this guidance will be further revised. These other amendments relate to the School Closure Review Panels and will only affect section 4.3 of this guidance.

3. The 2010 Act’s principal purpose is to provide strong, accountable statutory consultation practices and procedures that local authorities must apply to their handling of all proposals for school closures and other major changes to schools. These consultation processes are expected to be robust, open, transparent and fair, and seen to be so. They are also expected to be consistent across Scotland.

4. The 2010 Act makes special arrangements in regard to rural schools, establishing a procedural presumption against the closure of rural schools. This requires education authorities to follow a more detailed set of procedures and requirements in formulating a rural school closure proposal and in consulting on and reaching a decision as to whether to implement a rural school closure proposal. These are set out in sections 11A to 14 of the 2010 Act and sections 2.5, 3.4 and 4.2 of this guidance.

5. The 2010 Act applies to a wide range of changes to the school estate, referred to as “relevant proposals” (see section 2(1) and paragraphs 1 to 10 of schedule 1 to the 2010 Act). There are additional requirements for education authorities to comply with, both in carrying out the consultation process for school closure proposals and when the authority decides to implement the proposal. When the authority makes such a decision, the 2010 Act requires this decision to be referred to the Scottish Ministers for their consent and the proposal cannot be implemented in full or in part until the call in period is complete and, if the proposal is called in, consent has been granted. (The arrangements for consent will change significantly when further amendments to the 2010 Act are brought into force early in 2015, establishing the School Closure Review Panels which will review closure proposals that are called in instead of the Scottish Ministers.)

¹ <http://www.scotland.gov.uk/Publications/2013/04/5849>

² The Children and Young People (Scotland) Act 2014 (Commencement No. 2, Transitional and Transitory Provisions) Order 2014 (SSI No. 165) sets out the amendments which come into force on 1 August 2014 and transitional and transitory provisions regarding these.

To whom is this guidance addressed - who should read it?

6. Section 19 of the 2010 Act requires an education authority to have regard to any guidance issued by the Scottish Ministers for the purposes of, or in connection with, the Act. This guidance is therefore issued to local authorities and is intended to assist local authority officers who are involved in overseeing the consultation and decision making processes around proposed changes to their school estate, as set out in the 2010 Act. It is intended to help ensure that full, fair and rigorous consultations are undertaken and does so by providing guidance and illustrative examples of the good practice which is expected to be the norm.

7. This guidance will also be of interest to parents and carers; school pupils and staff; members of the local community; and anyone else with an interest in how authorities undertake consultations on proposed changes to schools. It is important that these stakeholders are reassured that the consultation and decision making process and procedures are fairly, fully and rigorously carried out by the local authority.

8. The structure of this guidance follows the timeline of a consultation from initial preparation, through formal consultation, decision and, where applicable, possible call in of the proposal by the Scottish Ministers. The specific areas covered, and the level of detail offered on those areas, reflect the debate on these issues in recent years. Comments on this guidance are very welcome and should be sent to schoolestate@scotland.gsi.gov.uk.

2. PREPARATION FOR CONSULTATION

2.1 The basics

What type of proposal is being made?

9. It is important to be clear what type of proposal is being made, to understand whether and, if so, how the 2010 Act applies to it. The types of “relevant proposals” covered by the Act are defined in paragraphs 1 to 10 of schedule 1 to the Act, and further detail on these is set out in section 5.2 of this guidance. Authorities should consider whether schools or stages of education will be closed or, as the case may be, established. For some scenarios, for example, where two schools are being brought together on a single site, there can be questions as to whether one or both schools is being relocated or closed, and if there is doubt, it will be helpful to get legal advice at an early stage. In determining what type of proposal is involved it is important to understand the proposed management arrangements and whether, therefore, a school(s) continues as the same entity or changes.

10. These examples may be helpful:

- A new school is to be built in the grounds or adjacent to the existing school, which will then be demolished. This would not require a consultation, as the school address and management does not change.
- A new school building is to be built on a new site, and all the pupils and staff will transfer to the new building. This would be considered as a relocation, not a closure.
- Two schools are to move to a new joint site. Depending on the proposed management arrangements, this might be considered to be a closure and a relocation (if the new school is to retain the name and management of one of the schools), two closures and the establishment of a new school, or, if the site is to be a shared campus and both schools will retain their existing management arrangements, two relocations.
- A standalone nursery is to be incorporated into a local school as a nursery class. This would be considered as the closure of the nursery school and the establishment of a new stage of education, a nursery class, at the school.

Is a rural school closure involved?

11. The authority must consider whether any rural school will be closed as part of the proposal, by checking whether the school is listed on the Rural School List maintained by Scottish Ministers.³ If the proposal does involve a rural school closure, the special provisions in sections 11A to 13 of the 2010 Act apply. More

³ The Rural School List is published at:

<http://www.scotland.gov.uk/Topics/Education/Schools/Buildings/changestoschoolestate/Ruralschoollist>, and an explanation of how the list is compiled and maintained is provided at: <http://www.scotland.gov.uk/Topics/Education/Schools/Buildings/changestoschoolestate/RuralGuidance>

detail on these is given in sections 2.5, 3.4 and 4.2 of this guidance. Specific further steps require to be taken for rural school closures. Authorities may also want to consider taking some of these steps for schools that are not designated as rural, as they are intended to ensure that the consultation and the reasons for the closure proposal are as thoroughly and rigorously examined as possible.

Attention to detail

12. It is essential that authorities seek and achieve high standards both in the information that underpins school consultations and in the consultation documents that are published. These will be examined closely by communities, staff and parents, and errors in details can easily undermine confidence in a proposal. It is a key learning point from the Commission on the Delivery of Rural Education's work that a failure to provide accurate, high quality consultation documents has led to consultations being abandoned, taking much longer than expected and to increased conflict with communities. Significant inaccuracies in the information in consultation documents for a closure proposal could also be grounds for a decision to be called in by the Scottish Ministers.

13. When an authority is using statistics or data to support an argument it must ensure it only makes comparisons where the statistics or data is measured and presented on a like for like basis. For example, comparable statistics on the 'condition' of schools across different authorities is possible because there is detailed national guidance available to all authorities. Particular care should be taken that data relates to the same time period or that any differences and inconsistencies are transparently explained. For example, it would not be appropriate to have some costs covering an academic year and others relating to a financial year, or to use pupil roll data from one year and costs from another.

14. Other areas of difficulty can include allocating central or shared costs for the education authority to individual schools, and accounting for one off maintenance costs which occurred or are projected to occur in a single year but do not recur. Further guidance on presenting financial information, including how to address these areas of potential difficulty, are provided in the financial template referred to in section 2.4. High standards of transparency on how costs have been treated are important, to ensure stakeholders have confidence that costs have been allocated reasonably and consistently.

Timescales for proposals

15. Consultations under the 2010 Act take a significant length of time, particularly where a school closure is involved and if the requirements for rural school closure proposals apply. A sample timeline is available on the Scottish Government website.⁴ It is important to discuss a proposed timetable with Education Scotland (HM Inspectors of Education (HMIE)) at an early stage to ensure that they can allocate an HM Inspector to the proposal and that they are able to complete their report on the proposal without delay to it or disrupting other work. Time must also be allowed for closure proposals to be referred to Ministers – for up to eight weeks –

⁴ The timeline is available at:

<http://www.scotland.gov.uk/Topics/Education/Schools/Buildings/changestoschoolestate>

and the possibility that these might be called in, which could take two to four months⁵ to determine.

16. When planning a consultation, it is important that authorities consider not only the requirements of the 2010 Act but the impact on the children and young people most directly affected by the proposal.

17. There needs to be sufficient time from the date of the final decision for the authority to ensure that effective transitional arrangements for children and young people are in place. A timeline that would allow very little time to confirm the school that children and young people would attend in the next school session could be detrimental to their education. In such cases, unless there is overwhelming support for such a proposal, there is a strong probability that HM Inspectors would be critical of this in the Education Scotland report. While there may be occasions when this is not necessary or possible, as a general guideline it will be important to have at the very least a full term to work with children and young people on transition arrangements, and this will require the staff involved to have a further period beforehand in which to prepare for this work. Even where the authority considers there is a high likelihood that a closure decision will be taken, firm transition planning can only take place once there is certainty for all involved. Particular sensitivity is required where there has been a high degree of opposition to a proposal.

18. Authorities will also wish to consider the most appropriate point in the school year for a transition. For a school closure where children and young people will move to another school this would preferably happen at the beginning of a new school year. In other circumstances, for example a relocation to a new building, the issues will be mainly practical and could depend, for example, upon a construction timetable.

Grouping proposals

19. Authorities are required to prepare a proposal paper to set out the detail of the relevant proposal or proposals. In order to minimise confusion, authorities should only consider grouping together more than one proposal in a single paper if the proposals are connected. If proposals are not strongly linked, separate proposal papers would be more appropriate. Different issues and concerns are likely to arise during the course of the consultation process in relation to each school involved. It is important that the authority takes separate decisions on the proposals at the decision making stage of the process – i.e. can accept one or some of the proposals whilst refusing one or some of the other proposals. It is also sensible to be able to adjust the timetable of proposals separately if necessary. Publishing separate consultation documents for each closure proposal will make this possible.

Other statutory obligations relating to education

20. A local authority has other statutory duties relating to the provision of education in its area which it requires to fulfil and therefore needs to consider when assessing proposals to change the way in which education is delivered in its area.

⁵These are target timescales, based on past experience, there is no statutory deadline on Ministers' determination.

The Educational Benefits Statement is the place for the authority to set out the relationship between a proposed change and these other statutory duties regarding education – and how what is proposed fits with the continued fulfilment of these other obligations. The following list of statutory duties is illustrative rather than exhaustive:

Education (Scotland) Act 1980, section 1 of which requires authorities to secure for their area adequate and efficient provision of school education; section 17 which deals with sufficient school accommodation and sections 22C and 22D which deal with change to provision of denominational education (see guidance in section 4.3).

Standards in Scotland's Schools etc. Act 2000, section 3 of which requires authorities to endeavour to raise standards and secure improvement in the quality of school education provided in their schools. Section 2 of this Act states that it is the duty of the education authority to ensure that the education it provides is directed to the development of the personality, talents and the mental and physical abilities of the children or young people to their fullest potential.

Education (Additional Support for Learning) (Scotland) Act 2004 and the Education (Additional Support for Learning) (Scotland) Act 2009. These Acts require authorities to identify and provide support for any children with additional support needs and prepare co-ordinated support plans for those with the most extensive needs. This is a critically important group of pupils whose particular needs require special consideration.

Scottish Schools (Parental Involvement) Act 2006, section 11 of which requires authorities to give advice and information when a Parent Council reasonably requests it from them on any matter. Section 12 requires authorities to give advice and information to a parent of a school pupil when reasonably requested, on any matter relating to the education provided to that pupil.

2.2 Pre-consultation and consulting particular groups

Pre-consultation

21. Sometimes known as informal consultation or pre-statutory consultation, “pre-consultation” can cover a range of engagement with communities regarding a proposal before a formal 2010 Act proposal paper is published. It is not a substitute for, nor does it reduce any of the requirements for formal consultation under the 2010 Act. However, pre-consultation can play an important part in information gathering and sharing in advance of a statutory consultation. For example, it can be a good opportunity to consult the community on detailed aspects of the proposal and seek to resolve these ahead of formal consultation. There is a particular need for engagement with communities in preparing and informing a rural school closure proposal, and this is considered further in section 2.5.

22. There are many different approaches to pre-consultation, from an extension to the authority's regular engagement with parent councils to consider concerns regarding a school's future and possible options, to an authority issuing a pre-consultation paper on a wider range of possible options for the school estate before refining which of these should become closure proposals. In the latter case, it is

important to handle these options carefully. For example, sometimes an authority chooses to pre-consult on a wide range of possible options, which may seem fairer than focusing on a single area. However, if there is little likelihood that some of these options would ever be taken further, a broad approach may simply generate concern and opposition, and distract effort from the details of the proposal that the authority does intend to take to consultation. A disadvantage to pre-consultation is that the process set out in the 2010 Act does not apply to it. This, and the lack of access to those requirements during pre-consultation, for example, to challenge inaccuracies, can leave communities frustrated. For this reason, it may be less successful for highly controversial proposals.

23. It is important for authorities to consider how to engage constructively with communities in advance of statutory consultation, so that the statutory consultation is not a surprise to the community and addresses the issues that concern them.

Consulting with children and young people

24. One way of seeking to ensure that Scotland's children and young people become responsible citizens, a cornerstone of Curriculum for Excellence, is by helping them to understand the decisions that are made about and for them by adults, by involving them and by ensuring that they have an opportunity to have their say. The office of the Commissioner for Children and Young People, and Children in Scotland, produced, in light of the 2010 Act, guidance aimed at assisting local authorities in undertaking their duty to consult children and young people. It is designed to ensure best practice across Scotland and is available at the following link:

www.childreninscotland.org.uk/docs/Participantsnotpawnsguidance20100315.pdf

25. The 2010 Act requires pupils to be consulted in so far as the authority considers them to be of suitable age and maturity (for example in relation to closure proposals, in terms of schedule 2, paragraph 1(d)). Authorities should be aware of Article 12 of the UN Convention on the Rights of the Child which gives a child the right to express a view on matters that affect his or her life and to have that view taken into account, and to consult children and young people wherever possible. The focus should be on where children and young people do have capacity and where decisions are of interest to them – some proposals will be technical or of little interest to some categories and ages of pupil.

26. The 2010 Act therefore provides for the views of children and young people to be sought and taken into account on an equal basis to other statutory consultees and there is a clear expectation that authorities will make all reasonable efforts to ensure that the greatest number of children and young people are meaningfully consulted, in ways that are appropriate to their age and maturity. They should also consider how best to provide feedback to children and young people on how their views have been taken into account in the Council's final decision. This should be done in an accessible and age-appropriate way that will help them understand the process and how and why the decision has been taken.

27. Pupil councils are relatively commonplace throughout Scottish schools and in many cases will provide an ideal platform for proposals to be shared and views to be

expressed and captured. The authority should, however, consider a range of means for communicating and consulting with children and young people of varying age groups and levels of maturity.

28. It is important to ensure that parents and carers are fully informed and, where appropriate, they give consent to consultation with children and young people, and that the children and young people are given an appropriate opportunity to reflect on and consider the issues they are being consulted on.

29. Evidence of an authority not making all reasonable efforts to ensure that the greatest number of affected pupils have been meaningfully consulted on a proposal may result in Ministers calling in the decision.

Consulting widely

30. The 2010 Act prescribes a detailed list of “relevant consultees” who must be consulted on a proposal under the Act. Parents are a key group, and the authority is required to consult the parents of pupils at any affected school, the parents of any children the authority expects to attend any affected school within two years of the publication of the proposal paper, and the Parent Council of any affected school. It will be important for the authority to work with parents to answer their concerns and provide the information they seek.

31. More detail on the “relevant consultees” is given in section 5.3 of this guidance.

2.3 Educational benefits

32. The 2010 Act reflects the Scottish Ministers’ view that educational benefits should be at the heart of any proposal to make a significant change to schools. Consequently, the 2010 Act specifies that the local authority must, for all consultations, prepare an Educational Benefits Statement and publish it within the proposal paper. The 2010 Act requires authorities to consider current and future pupils of any affected school, current users of its facilities, and the pupils of other schools in the authority’s area; and also to explain how the authority intends to minimise or avoid any adverse effects of the proposal. The authority must also include its reasons for reaching the views which it sets out regarding the educational benefits. Reasons should be supported by evidence, including HM Inspector reports or condition or suitability ratings of the schools involved, to assist consultees in their understanding of the projected educational benefits.

33. It is important that the closure of a school, or other relevant changes covered by the 2010 Act, is or are proposed for positive educational reasons, and these are set out for each relevant proposal. The authority is required to produce a comprehensive Educational Benefits Statement that clearly sets out the benefits that would accrue for the children and young people (both those directly affected by the change and more widely those in other schools in the local authority area).

34. The impact of a proposal on a range of educational factors will rarely relate only to benefits – any proposal is likely to involve both pros and cons. The Educational Benefits Statement is the place for the authority to explore that balance.

However, the local authority must demonstrate why the proposal is of overall positive educational benefit to the pupils of the affected school(s), children who would be likely to become pupils at the school(s) and other pupils in the authority area. Consultees reading the Educational Benefits Statement, including of course an HM Inspector within Education Scotland, should be able to clearly identify details of the benefits that would accrue from implementation of the proposal. It is likely that an Educational Benefits Statement which is too brief or general and fails to identify **specific benefits** to the pupils of the **affected school** would result in criticism by HM Inspectors and/or a proposal being called in by Scottish Ministers.

35. HM Inspectors within Education Scotland have prepared guidance and a self-evaluation toolkit which authorities may find helpful in developing an Educational Benefits Statement. This is available from Education Scotland. While HM Inspectors cannot advise local authorities on preparing specific proposals – given their duty to report on the proposal under section 8 of the 2010 Act and their duty to advise the Scottish Ministers – they can support authorities more generally in building capacity to carry out these tasks and in planning timelines for consultations. Past HM Inspector reports on 2010 Act proposals also provide a sound guide to the Educational Benefits Statements which have met their expectations, and these reports are all published on Education Scotland’s website.⁶

Effect on different school users

36. The 2010 Act specifies that the authority must set out, within the Educational Benefits Statement, its assessment of the effect of the proposal on a range of school users. The first such group is the pupils at the affected school or schools. It applies to all pupils, not just some. It will often be important for an authority to distinguish between different groups – for example, those with additional support needs – and how a proposal may benefit/impact on them differently. An affected school would include a school proposed for closure either in its entirety, or in part (e.g. where a stage of education was proposed to be discontinued). Where the proposal was to establish a new school, those schools whose rolls would be consequently reduced or changed as a direct result of the new school should be counted as affected schools. Proposals to change catchment areas (which are not subject to Ministerial call in) normally also affect more than one school – and in some cases schools from across neighbouring authorities. In such cases authorities will want to consider carefully how any proposal might have a consequential effect on other schools.

37. The Educational Benefits Statement must also assess the impact of the proposal on other users of the school’s facilities. That may include, for instance, adult or community users, who perhaps attend school-based classes, or users of a school’s theatre or hall or sport and recreation facilities. The authority must also consider and set out the impact of its proposals on children or young people who would have been likely to have become pupils of the school, if the proposal is not implemented. In the case of a primary school, that would generally be those children who would within two years be expected to attend, or in the case of a secondary school, those children in its associated primary schools. However, authorities should

⁶ Education Scotland school consultation reports:
<http://www.educationscotland.gov.uk/inspectionandreview/reports/schoolconsultations/index.asp>

consider the interests of any and all children and young people they know may come into this category.

38. Finally, the authority is required to set out its assessment of the likely effects of the proposal – its potential implications and consequences – on some or all of the pupils in other schools across the authority's area. Care should be taken to ensure that any such benefits are appropriately specific and can be clearly understood by consultees. For example, sometimes a relatively small saving is projected and it is indicated that it would benefit other pupils in the area. It is important, if that is the case, to be clear that the likely impact on those other pupils would be minor compared to the impact on the pupils directly affected. In such a case, it would be important that the Educational Benefits Statement focused on the educational benefits to the pupils directly affected. As the Commission on the Delivery of Rural Education noted, "it is important to avoid an argument that any cost saving from a closure would leave more funds for other educational purposes and have an educational benefit for the majority of children in the area, as this could be an argument against many aspects of rural service provision. Remoteness should always be a key consideration, recognising the impact of moving education provision an unreasonable distance from any community."⁷

39. In assessing the likely benefits and effects on users, authorities will want to take into consideration a range of factors which will vary from case to case and in scale, depending on the particular circumstances and the type of proposal being consulted on. In many circumstances, the affected groups will not necessarily share a common benefit from what is proposed. In these cases, it will be important that the Educational Benefits Statement demonstrates clearly how the authority has identified and intends to balance these diverse interests. An overall picture of the benefit (or disbenefit) for each of the categories of user set out in section 3(1)(a)(i) to (iv) should be set out, and it is important that this demonstrates a clear educational benefit from the proposal. It is expected that this would normally focus on the children and young people directly affected by the closure.

Factors to cover in the Educational Benefits Statement

40. Neither the 2010 Act nor this guidance are framed in a way that either lists or limits the range of factors that may be relevant in the case of a particular proposal, that an authority might take into consideration and/or articulate in the Educational Benefits Statement. The Scottish Government, however, expects that, as a matter of course, the rationale and arguments offered in the Educational Benefits Statement, indeed in the whole of the proposal paper, will be set within the context of an authority's range of statutory duties, including those set out in paragraph 18 above and in the section below.

41. Also of relevance will be the way a proposal sits within the context of a range of national and local policies. *Curriculum for Excellence* sits at the heart of what both national and local government are looking to achieve in terms of raising levels of achievement and attainment, and improving educational outcomes for all children and young people. It is intended to nurture successful, effective, confident and

⁷ Report of the Commission on the Delivery of Rural Education, paragraph 90.

responsible young people, able to learn and utilise learning in a way that helps them reach their full potential and to respond to the increased variety and pace of change in today's and tomorrow's world.

42. In preparing the Educational Benefits Statement, authorities will want to set out how a proposal will improve the quality of the curriculum and create positive environments for more effective learning and teaching better matched to the needs of children and young people. The Educational Benefits Statement should focus on how the proposals will improve the depth, breadth, coherence, relevance, challenge and enjoyment provided by the curriculum. It should also demonstrate how opportunities for greater personalisation and choice in learning and improved progression will enhance learning experiences. This may include the use of information and communications technology (ICT) and arrangements for assessing and planning learners' progress. Authorities will want to consider setting out clearly how approaches for meeting children and young people's learning, personal, social, health and emotional needs will be improved as a result of implementation of the proposal. A particular aspect is the need to set out the ways in which support for children and young people who require additional support with their learning⁸ will be improved. In making such cases the council may make reference to relevant legislation such as the requirements of the Education (Additional Support for Learning) (Scotland) Act 2004 and Education (Additional Support for Learning) (Scotland) Act 2009.

43. Authorities will want to consider setting out the intended positive impact of the proposal on the overall morale and ethos of the school, including the care and welfare of children and young people and their personal and social development. A key aspect for an authority to consider is the positive impact of the proposal on ensuring equality of opportunity for all⁹ within an inclusive educational experience. The authority also needs to consider setting out the ways in which access to improved accommodation and facilities will bring improvements to the environment for learning for children and young people.

44. Where appropriate, authorities will want to consider how the proposal enhances and builds leadership and leadership capacity within the schools covered by the proposal and improves arrangements for planning and taking forward improvements through effective self-evaluation. Authorities may also consider the ways in which the proposal may improve partnership working and liaison between schools.

45. Other potentially relevant issues in connection with educational benefit might include (but are not limited to):

- the condition and suitability of the school buildings and facilities (and where a proposal would involve children and young people moving from one school to another, the relative condition of both);

⁸ Groups and individuals who may have additional support needs arising from, for example, the learning environment, family circumstances, disability or health needs, or social and emotional factors.

⁹ The proposal may set out how it assists the council to fulfil its duties under the Equalities Act 2010.

- changing patterns of demand for school places if there is a growing mismatch between supply and demand; and
- the travel and transport context and implications of a proposal if, for instance, it would affect pupils' broader social experiences and opportunities to participate in and benefit from out-of-hours learning.

46. Financial and budgetary considerations may also be relevant in situations where the costs of the delivery of education have reached the point where an authority considers that they require to be reviewed.

Personal or attributable information

47. In the Educational Benefits Statement, sensitive or personal information that could be linked to or attributed to individuals – for instance, individual pupils – should be avoided, although it is recognised that this may be more difficult where very small numbers of individuals are involved. The objective should be to couch the text of the Educational Benefits Statement in such a way as to avoid the identification of individuals and focus on the generic or on groups or categories of persons affected.

48. While the Educational Benefits Statement provides the local authority with the opportunity to set out the educational case for their proposal, the proposal paper itself is where the authority can and should set out all the other contextual and relevant evidence and information around and in support of the proposal. This can be presented alongside the Educational Benefits Statement in the published proposal paper.

2.4 Proposal paper

49. Section 4 of the 2010 Act sets out the statutory requirements for a proposal paper.

Factors to cover in the proposal paper

50. In considering what material to include in the proposal paper (in addition to the educational case set out in the Educational Benefits Statement) an authority may wish to explain what has given rise to consideration of the matter being consulted on and why it has decided upon the particular proposal set out for consultees (and this is a requirement in the case of a rural school closure proposal, under section 13(2) of the 2010 Act). An authority's School Estate Management Planning (SEMP) process, described in more detail in the later in this section of the guidance, can play a key role in helping to frame that explanation. The proposal paper would be an appropriate place to make reference to how the proposal fits into this wider authority planning. It may also want to explain clearly why the change is required, what other reasonable alternatives have been considered and why these have been rejected. More detail on the special arrangements for rural school closure proposals is given in section 2.5 of this guidance.

51. The authority should ensure the proposal paper provides sufficient detail on areas likely to be of concern to communities. This would include a clear travel plan for pupils, including identifying safe routes to the new school location and providing clarity, where relevant, on school transport that will be provided and traffic management around the school site(s). If the travel plan has not yet been finalised,

the authority would be expected to include as much detail as possible of what its proposed travel plan would be, with information on how and when it expects to finalise the plan. The proposal paper should also be clear on the authority's plans for the future use of any school building and associated facilities that will be released by the proposal. It is reasonable for communities to be concerned whether a school building would have another public purpose, be available for the community, sold or may remain vacant for a significant period, and authorities should provide as much certainty and transparency as possible.

Financial information

52. There is a new requirement that all proposal papers for school closures published from 1 August 2014 must include information about the financial implications of the proposal (section 4(2A) of the 2010 Act). The purpose of this requirement is that information on all likely financial implications should be provided in a clear, complete and consistent form for all school closure proposals, rigorously evidencing any financial argument that is deployed.

53. Authorities are strongly recommended to base their financial information on the financial template¹⁰ which has been developed by COSLA in close collaboration with local authorities. The template is a direct response to recommendation 22 of the Commission on the Delivery of Rural Education and is supported by the Scottish Government. The template has been trialled with a number of authorities but detailed comments or feedback are still valuable. Comments on the template should be sent to COSLA or to the Scottish Government School Infrastructure Unit (schoolestate@scotland.gsi.gov.uk), and this feedback will be helpful in updating and improving the template as experience is gained applying it to different scenarios.

54. It is expected that the financial information provided should include both actual costs and a narrative. This narrative should explain the costs as well as covering other relevant factors which do not have a direct cost estimate.

55. The financial information required will depend on the circumstances of the proposal. For example, where one school is to be closed and the pupils to attend another existing school, the actual current costs for the school proposed for closure should be given. These should cover a full financial year and assume that the school remained open for the full year. The additional financial impact on the receiving school as a result of taking in extra pupils should also be given for a full financial year. By taking the second set of costs from the first, the annual recurring saving or cost of the proposal can be calculated. However, many scenarios may be more complicated than this, for example, where two schools are to be closed and a new school built, where the children and young people are dispersed to more than one receiving school or where only a stage of education is to be closed. The template is designed to be flexible, with authorities adding to and omitting parts of the 'standard information' to make it best suit a particular closure proposal.

¹⁰ The financial template and technical note are available at:
<http://www.scotland.gov.uk/Topics/Education/Schools/Buildings/changestoschoolestate>

56. Data should also be given on the capital costs of the school(s) proposed for closure and the receiving school(s). Care should be taken to ensure that these are comparable and reflect the expected life cycle of a school, as costs are unlikely to be evenly spread through its life cycle. Annual property costs for a closed school before it is disposed of should also be given; and any non-recurring revenue costs.

57. The impact of the closure, if any, on the authority's Revenue Grant from the Scottish Government should also be given. Revenue Grant is based on a Grant Aided Expenditure (GAE) formula with almost 100 categories. One of these is most relevant to school closures, the Primary School Teaching Staff line, which has a secondary indicator based on pupils in primary schools with fewer than 70 pupils. Authorities should indicate clearly whether GAE is likely to be affected by the proposal, and the level of this impact, providing a narrative explanation where appropriate.

58. There are some costs which it would be less appropriate to include, such as central management support costs within an education department. A closure of a school is unlikely to lead to a reduction in these costs and any such costs allocated to a school proposed for closure would not normally constitute a real saving.

Capacity

59. The Scottish Government has been working with local authorities to prepare guidance for authorities on calculating the capacity of their schools. This is due to be published shortly, and authorities are recommended to take this guidance into account once it is available. The new capacity guidance is intended to help authorities to make clear and consistent estimates of the capacity of schools, and this will, in turn, allow comparison not only within an authority but across Scotland.

Other legislation

60. There may also be legislation - other than that directly relating to matters educational - that is relevant to the proposal and its context. This includes:

- Local Government in Scotland Act 2003, section 1 of which sets out what a local authority is expected to demonstrate in fulfilment of a series of obligations placed upon it. One such obligation is the duty to secure best value by continuous improvement in performance of the authority's functions, while maintaining an appropriate balance between quality and cost and having regard to economy, efficiency, effectiveness, equal opportunities and the achievement of sustainable development.

An authority may wish to demonstrate how a proposal helps to fulfil this duty and to achieve best value by setting out clearly cost benefit analyses of the financial and budgetary factors and implications of the proposal. Aspects of this may already have been covered in the Educational Benefits Statement but if there are cost issues which go beyond the purely educational, the proposal paper is where these should be set out, again, with full financial details and supporting evidence where these are significant factors in relation to the proposal.

- Equal opportunity legislation – it will also be important in the proposal paper to set out how the proposal assists the authority in fulfilling its obligations under the Equalities Act 2010. Preparing and publishing an Equality Impact Assessment in the proposal paper would be one way of fulfilling this.

School Estate Management Planning

61. *Building Better Schools*¹¹, is the Scottish school estate strategy which sets out the shared vision of national and local government of creating and maintaining a school estate which is fit for purpose, in good condition, well designed and accessible to all parts of the community. Local authorities' School Estate Management Plans (SEMPs) form a cornerstone of the strategy for the future of the school estate in Scotland. The plans should be an essential tool to local authorities for the proactive, effective and efficient management of their school estate. They should provide a focus for identifying and drawing together needs, priorities and funding streams to enable authorities to modernise and sustain their estate. Long term strategic changes to the school estate, such as a need for rationalisation in particular areas, should be part of this process and will help provide a context to support specific decisions to consult on individual proposals. It will also be important to link to an authority's wider estate management strategy and opportunities for co-location and integration of services.

Mothballing

62. In considering alternatives to closure, authorities may choose to consider "mothballing" a school (or a stage of education such as a nursery class at a school). This is a temporary closure which does not lead to a consultation under the 2010 Act. It is only appropriate in very restricted circumstances. When a school roll falls very low, the authority and/or community may consider that the school is not presently viable but do not wish to close it immediately because there is a reasonable prospect that the possible school roll will increase such that it should be re-opened in the future.

63. It is vital that this flexibility to close a school for a temporary period is not used to undermine the requirements under the 2010 Act to consult on all school closure proposals. Mothballing is only appropriate for a temporary period and should be subject to regular review, at least annually, against the same requirements which led to the original decision to mothball the school (or stage of education). The maximum length of its duration is likely to depend on the location of the school and the desirability of maintaining capacity to re-open a school there, but it is unlikely that it should exceed 3 years in areas that are not very remote. The condition of the school building and cost of maintaining the mothballed provision will also be relevant.

64. A school can be mothballed where the school roll has fallen to zero and continues to be zero. It *may* also be appropriate where the roll or potential roll is very low and the authority considers the only other option to be closure. However, in circumstances where a school is mothballed rather than closed and some children and young people remain in the catchment area, this decision should be taken in consultation with the parents involved, and the possibility should be raised as early

¹¹<http://www.scotland.gov.uk/Publications/2009/09/22154600/0>

as possible, in order to ensure that families can understand the options open to them. Mothballing should not be a way of denying parents access to the statutory consultation process required under the 2010 Act and if the majority of parents oppose mothballing, it would be appropriate to move to statutory consultation on closure as soon as possible.

2.5 Rural aspects

Presumption against closure

65. Sections 11A to 13 of the 2010 Act (as inserted into that Act or amended by section 80 of the Children and Young People (Scotland) Act 2014¹²) make specific requirements for rural school closures, and these take effect from 1 August 2014. It will be essential for authorities considering proposing a rural school closure to understand these new requirements before fully formulating a proposal.

66. Section 11A provides that the authority may not decide to close a rural school unless it has complied with the requirements in sections 12, 12A and 13 and is satisfied that such a decision is the most appropriate response to the reasons it has identified for making the proposal. Section 11A is referred to as a “presumption against closure”, as compliance with specific requirements are necessary before a closure decision can be made. Section 12 requires an authority to carry out very thorough consideration of why it wishes to close a rural school prior to consulting on a closure proposal, to assess all reasonable alternatives to closure, and only to proceed, following consultation, if the authority is satisfied that the closure proposal is the most appropriate response to the issues identified.

When do the new requirements apply?

67. The new requirements for rural school closure proposals set out in sections 11A to 13 of the 2010 Act **as amended** will apply to all closure proposals for rural schools that are published from 1 August 2014. Proposals which **have been published before 1 August 2014** are not subject to the new requirements in sections 11A to 13.¹³

68. This means that there will be a small group of ‘transitional’ rural school closure proposals for which the authority has published the proposal paper prior to 1 August 2014 which will complete their consultation and decision making processes in accordance with the requirements in the 2010 Act prior to the amendments to that Act made by the Children and Young People (Scotland) Act 2014.

¹²As set out in The Children and Young People (Scotland) Act 2014 (Commencement No. 2, Transitional and Transitory Provisions) Order 2014 (SSI No. 165)

¹³The transitional and transitory provisions regarding the amendments of the 2010 Act to insert new sections 11A, 12A and a substituted section 13 are set out in the above Order.

Preliminary requirements for rural school closures

69. An authority that is formulating a rural school closure proposal must satisfy the preliminary requirements set out in section 12A of the 2010 Act before starting to prepare its proposal paper. It must identify the reasons for formulating the proposal. These will be the key challenges which the school faces and the authority requires to address. The authority is required to consider when making its decision on a proposal or any reasonable alternatives, so it is important that these are clear and as specific as possible. For example, reasons might relate to a falling school roll, difficulties delivering the curriculum or concerns about the school building. Rather than simply stating that the school is no longer viable, the authority is expected to set out the reasons why it considers the school to no longer be viable.

70. There is a new duty on the authority in terms of section 12A(2) to identify **any reasonable alternatives to the proposal** which might also address the reasons for the proposal. Full consideration should be given to including maintaining the current school as an option here unless it is clear that this would not address the reasons for the proposal. The authority is required to invite representations on these alternatives as well as suggestions for other reasonable alternatives (in terms of the additional consultation requirements in section 13(3)(b) and (c)).

71. The authority is required to assess, for the proposal and all reasonable alternatives that have been identified:

- the likely educational benefits;
- the likely community impact (assessed in accordance with section 12(4)); and
- the likely effect of any different travelling arrangements (assessed in accordance with section 12(5)).

72. The authority cannot make a decision as to whether to proceed to consultation until these preliminary requirements have been carried out and unless they are satisfied that that implementation is the most appropriate response (section 12A(4) to the 2010 Act). It is for the authority to determine how to meet these requirements and whether this requires formal or informal engagement and consultation with the school and community. It is expected that this type of engagement would lead to higher quality proposal papers and better statutory consultations.

Identifying reasonable alternatives

73. The policy intention here is to ensure that when an option to close is proposed, the decision to consult on that option is only taken after very careful consideration, and after all other reasonable alternatives have been considered. Early engagement with the local community and others with an interest will allow an authority to fully consider all suggestions and provide a clear assessment of the merits of these suggestions and their viability. Preliminary, informal discussions (pre-consultation) with members of the affected school and the affected community are a recommended way of establishing possible alternatives. It is important to ensure that all reasonable alternatives that the authority identifies are properly explored before the authority proceeds to consult on closure.

74. Schools are major public and community assets; it is important that their future is considered not just from an education perspective but across the full range of an authority's responsibilities. Consideration of alternatives to closure could include whether there is scope for the school to be better integrated into an authority's wider asset management and community planning processes. This could, for example, include building effective links with local community regeneration strategies. Examples of alternatives to closure that might merit consideration include:

- using the school as a 'community hub' where it accommodates and supports provision of a range of community services, e.g. health, community education, sport, recreation, social and cultural activity etc.;
- how the school roll might be increased, for example by realigning catchment areas, or encouraging or supporting community initiatives aimed at attracting employment or other inward migration to the area;
- how recruitment to teaching posts in remote areas might be improved;
- whether other management options might be a possibility, e.g. joint management arrangements between the authority and the local community, or input to the running of the school from other sources;
- suspension of consideration of a closure proposal for an agreed period to enable a community time to instigate a project/initiative aimed at, for example, increasing local development or employment opportunities in the community, which in turn may increase the viability of the school.

75. Once the authority has identified all the "reasonable alternatives", the authority is required to assess their educational benefits, community impact and effect on travel arrangements. This might be along similar lines to the assessment of the educational benefits for the proposal, to be included in the Educational Benefits Statement. However, HM Inspectors are not required to report on the educational benefits of the reasonable alternatives.

76. The proposal paper must set out the alternatives to the proposal it has identified, give the authority's assessment of these and explain why the authority considers, in the light of that assessment, that implementation of the closure would be the most appropriate response to the reasons for the proposal. The authority is required to consult on these alternatives and whether there are any further reasonable alternatives, by informing consultees of the alternatives and their opportunity, firstly, to make representations regarding these as well as the main proposal, and, secondly, to suggest further alternatives (in terms of section 13(3)).

Likely effects of closure on the local community

77. The authority is then required to assess the likely effect of the school's closure on the local community (assessed in accordance with section 12(4)) – whether closure of the school will affect the local community's sustainability and whether the asset of the school's buildings, facilities and grounds would still be accessible, or lost, to the community. Whilst the quality of educational experience of affected pupils remains the primary consideration, the purpose of this requirement is to ensure that the future of a rural school is also considered in the wider context of rural development planning and the sustainability of rural communities.

78. There are many considerations that are likely to be relevant in terms of community impact, for example:

- whether closure would encourage families with school-age children to leave the community or discourage young families from moving to the community;
- what impact closure might have on other services provided locally, for instance if the school is the only remaining public building in a community;
- whether, or not, the school is a real hub of community life, used for other purposes – such as public meetings, local events, fetes, surgeries, and other get-togethers – which would either cease or be diminished by being required to move elsewhere.
- whether, or not, the loss of the school, and potentially families, would have a detrimental effect on the wider economy of the community.

79. Early engagement and communication with the local community is a good way of establishing and understanding all of the relevant factors.

Likely effects of different travelling arrangements as a result of closure

80. The authority is required to assess the likely consequences of the closure on travelling arrangement (assessed in accordance with section 12(5)) of the school's pupils, staff and other users, and the effect on them as well as the overall environmental impact (for instance as a result of increased car or bus usage). Relevant considerations in terms of the affected pupils include their health and wellbeing and impact on their education. For example, if pupils would be less able to walk or cycle to school, or less able to participate in pre- and after-school clubs, societies or activities. In some instances longer journeys to school may increase the likelihood of bad weather impacting on home to school travel.

Steps taken to address the reasons for the proposal

81. The proposal paper for a rural school closure has one further significant additional component. As well as explaining the reasons for the proposal, there is a duty on the authority to **set out the steps it has taken, if any, to address these reasons before formulating the proposal**. For example, the reason for the proposal might be the falling roll at the school and understanding what action, if any, the authority has taken in the past to seek to address this would help to understand whether such measures should be tried now, or have little prospect of success. Additionally if the authority has not taken any steps to address the reasons for the proposal, the authority is required to explain why it did not do so (in terms of section 13(2)(c)).

3. CONSULTATION

3.1 The basics

Notice and consultation period – section 6 of the 2010 Act

82. An authority must notify the relevant consultees of the proposal and the consultation period cannot commence until this has been done. The authority must also set a consultation period of at least 6 weeks, to include 30 days when the school is open to pupils. For example, if a consultation period commenced a week before the Easter holidays, the 30 day period would be calculated by excluding the Easter holidays, the early May bank holiday, if that is also a school holiday, and any intervening inset days. It might therefore last nearly 9 weeks in total.

The public meeting – section 7 of the 2010 Act

83. A public meeting at which the authority is represented must be held during the consultation period and advance notice given of its date, time and location to the relevant consultees and to HM Inspectors within Education Scotland. Maximum advance notice of the details of the public meeting is desirable. It is most efficient to give this information in the notice issued just prior to the start of the consultation period advising consultees of the proposal. A separate notice can be issued and would be necessary if the details changed or additional meetings were scheduled after the consultation had started.

84. The 2010 Act leaves the details of how the public meeting is conducted to authorities. In deciding when to hold the public meeting, authorities will wish to balance the need to give interested parties enough time to read and digest the proposal paper, in order to inform discussion and questions at the meeting, with the need to allow sufficient time after the meeting for those consulted to reflect and consider what response to make to the consultation. Unless there are good reasons to do otherwise it would be appropriate to avoid holding the public meeting during the first week of the consultation period and instead to arrange for it take place around half way through the period.

85. For the convenience of consultees and other interested parties, the public meeting should take place outwith normal/office working hours and at a convenient location.

86. If an authority considers it appropriate to hold more than one public meeting, for example, in each school that is affected by a proposal, the requirement in section 7(2) and this guidance applies in relation to each public meeting.

HM Inspectors' Involvement – Section 8 of the 2010 Act

87. The 2010 Act provides for Her Majesty's Inspectors of Education's (HMIE's, now part of Education Scotland but retaining their statutory responsibilities as HM's Inspectors of Education) involvement in the consultation process. This involvement will culminate in HM Inspectors preparing and submitting to the authority a professional and independent report on the educational aspects of the proposal being consulted on. As this guidance is addressed to local authorities rather than to HMIE, it focuses on authorities' responsibilities in relation to this section of the 2010 Act.

88. An authority will wish to engage with HM Inspectors before a consultation on a proposal is taken forward to ensure that practical arrangements are in place. For example, to ensure that papers and representations are sent to the appropriate person within Education Scotland. The three week period within which HM Inspectors must prepare and submit their report (unless the authority and HM Inspectors agree a longer period) does not commence until the proposal paper and representations received by the authority have all been forwarded to HM Inspectors.

89. The authority is required to send HM Inspectors a summary of the oral representations made at a public meeting and any other representations made to the authority. In most cases, an HM Inspector does attend the public meeting. However, the absence of an HM Inspectors' representative does not invalidate a public meeting. Where an HM Inspectors' representative does attend a public meeting it is important to emphasise to those present that he/she is doing so exclusively as an observer and cannot be asked to participate or offer any comment.

3.2 Questions, inaccuracies and omissions

90. Concerns about inaccuracies and omissions from proposal papers frequently arise, and where these are significant, can undermine confidence in any part of a proposal. It is important that authorities act quickly and openly to consider these and, if necessary, to correct information. This is underpinned by the requirements in section 5 of the Act. Section 5 has been significantly amended by the Children and Young (People) (Scotland) Act 2014 from 1 August 2014¹⁴ to place additional duties on an authority in this regard.

91. There is a requirement for the authority to consider any allegation of an inaccuracy or omission and determine whether it is accurate. This determination and the reasons for it must be notified to the person who has raised the issue, and they must be invited to make any further representations if they disagree with the authority's view (in terms of section 5(2)(aa) and (c)). Section 5(3) allows the authority to make a fresh determination if further representations are raised and to make a fresh decision as to whether or not to take action to address the inaccuracy or omission. The authority is required to inform the person who has made the further representations if they make a fresh determination or decision to address the inaccuracy or omission.

92. If the authority has found, either itself or through a concern being raised, that there is an inaccuracy or omission in the proposal paper, it must decide whether it relates to a material consideration relevant to the proposal. Where the omission or inaccuracy does not relate to a material consideration, in terms of section 5(4)(b), an authority may decide to take the action mentioned in section 5(5)(a) or (b) (to publish a corrected proposal paper, give revised notice of the corrected proposal in accordance with section 6 and send a copy of the corrected paper to HM Inspectors or to issue a notice to the relevant consultees and HM Inspectors providing the

¹⁴ As set out in The Children and Young People (Scotland) Act 2014 (Commencement No. 2, Transitional and Transitory Provisions) Order 2014 (SSI No. 165)

omitted information, or as the case may be correcting the inaccuracy, and if the authority considers it appropriate, extending 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). Or the authority may take no further action, except by virtue of section 10(3) (which requires the consultation report to contain information as to any allegations of or actual omissions or inaccuracies in the proposal paper).

93. Where the confirmed inaccuracy or omission relates to a material consideration, there is a duty on the authority to correct it (in terms of section 5(4)(a)). There are two ways to correct information. In extreme circumstances, the omission or inaccuracy may be so significant that it would materially affect the consultees' ability to understand or respond to the proposal paper. In such a scenario, the authority would be expected to withdraw the proposal and either abandon it or start again with a revised proposal paper for the full consultation period (in terms of section 5(5)(a)). If the authority issues a revised proposal paper, it is required to give notice of the revised proposal paper to relevant consultees.¹⁵ Alternatively, for less significant corrections, the authority may issue an erratum or corrected proposal paper and send consultees and HM Inspectors a notice with the correct or omitted information. This issuing of a corrected paper or erratum note may include extending the consultation period if this is considered warranted (in terms of section 5(5)(b)).

94. As stated previously, the robustness of all information in the proposal paper is paramount to the process, and in some cases fundamental to the arguments for supporting the proposal under consideration. If this information is significantly inaccurate or missing, and if it is material to the question as to whether to implement the proposal or not, the inaccuracy or omission would undermine the process.

95. Concerns under section 5 of the 2010 Act must be raised during the consultation period and the authority is expected to determine them as quickly as possible and before the end of the consultation period if possible. However, if a determination under section 5 is made when the consultation period has finished, and an inaccuracy or omission is found to relate to a material consideration relevant to the proposal, the authority is still required to either publish a corrected proposal paper or a correction notice. Where the authority opts to issue a correction notice, it must consider whether the correction requires an additional consultation period which would be treated as part of the original consultation period (in terms of section 5(6)). If a concern is raised after the end of the consultation period, the authority is not required to make a determination under section 5 and instead should address the issue in whichever manner it considers reasonable in the circumstances and in accordance with any other relevant statutory obligations, such as the Freedom of Information (Scotland) Act 2002.

96. Section 10 of the Act requires that all inaccuracies and omissions in the proposal paper, including allegations of these, are detailed in the authority's

¹⁵ Section 5(5)(a) to the 2010 Act, as inserted by section 79(4) to the Children and Young People (Scotland) Act 2014

consultation report. This should include a statement of the action taken in respect of these or, if no action has been taken, of that fact (and why).

Requests for additional information

97. In considering questions or requests for additional information or advice on the proposal, from parents or Parent Councils, authorities will be mindful of their obligations under the Scottish Schools (Parental Involvement) Act 2006. That Act places two specific duties on authorities – to give advice and information when a Parent Council reasonably requests it from them on any matter (section 11(1)) and to give advice and information to a parent of a school pupil when reasonably requested, on any matter relating to the education provided to that pupil (section 12(1)).

98. Beyond those statutory obligations it is also important that authorities – as a matter of good practice and courtesy – attempt to answer all relevant questions and requests for additional information timeously and, as far as is reasonably practicable, before the end of the consultation period. This particularly applies where the question or request is raised by a relevant consultee. Doing so will enable people to digest and consider the answer and/or additional information provided, before submitting their consultation response.

99. In some cases the questions posed or requests for additional information will be personal, sensitive or relate to individuals, in which case it will be appropriate for the authority to keep its response entirely confidential. In other cases, however, authorities are encouraged to consider whether the matters raised and answers provided or additional information supplied would be of wider interest to other consultees. In the latter case, the authority should consider how best to share and publicise the material – perhaps via its website (the FAQ section or some other prominent part) or some other means.

100. It will also be good practice to publicise the corrected or additional information as widely as possible, for instance on the Council's website.

3.3 The consultation report

101. The 2010 Act requires the authority to review the proposal consulted on in light of the written and oral representations it has received and HM Inspector's report, and then prepare and publish its consultation report.¹⁶ Section 10 sets out what the consultation report must contain. It should provide the number of written representations received, a summary of the written and oral representations made and the authority's response to those representations, the full text of the HM Inspector's report and finally a statement explaining how the authority has reviewed the proposal in light of the representations and HM Inspector's report.

102. In addition, the consultation report must address inaccuracies and omissions raised under section 5, as set out above.

¹⁶ Section 9(1) and (2) to the 2010 Act

103. In the case of closure proposals, the consultation report must also explain the opportunity which people have for making representations to the Scottish Ministers in the event that the Council decided to close a school. The consultation report should make clear that they have a period of 3 weeks after the Council decision is taken to bring to Ministers' attention any matter which they considered would justify the decision being called in under section 15(3) of the 2010 Act. This is explained more fully in section 4.

New or different option(s)

104. The consultation report must reflect the option or options that were included in the original proposal paper, or in a revised proposal paper, and consulted on. A genuine consultation process should, of course, allow for new or revised ideas or options to emerge during the process, and some variation is reasonable. However, the consultation report should not contain an altogether new or different option that consultees have not had the opportunity to respond to for the authority to take a decision on. If a new or revised option, which is significantly different to anything set out in the proposal paper, emerges during the process, an authority should either suspend the consultation and issue an erratum or revised proposal paper and extend the consultation period, or prepare a revised proposal paper and begin the consultation process again.

3.4 Rural aspects

105. Special requirements apply to preparing the consultation report on a rural school closure proposal. Following the consultation period, when the authority is reviewing its proposal under section 9(1) to the 2010 Act, the authority is required to carry out a further assessment for the proposal and each of the alternatives that were set out in the proposal paper (in terms of section 13(5)). This involves an assessment of the same matters that the authority was required to assess in formulating the proposal (under section 12A(2)(c)): the likely educational benefits, the likely effect on the community and the likely effect of different travelling arrangements. The purpose of this further assessment is to take into account any further information that has come forward through the consultation or otherwise.

106. The authority is also required to make this assessment for any new reasonable alternative to the proposal that has been suggested through the written representations.

107. In its consultation report, the authority is required to explain its assessment of the proposal and reasonable alternatives that it identified, how this assessment differs from their earlier assessment (if at all); and its assessment of any further reasonable alternatives. Finally, the authority is required to confirm whether it considers the implementation of the proposal (wholly or partly) to be the most appropriate response to the reasons for the proposal. The authority must give its reasons for this conclusion (section 13(6)).

4. DECISION

4.1 The basics

Further consideration – section 11 of the 2010 Act

108. The purpose of section 11 of the 2010 Act is to ensure that a period of three weeks elapses between the authority's publication of the consultation report and the Council actually taking the decision on whether to implement the proposal(s). The intention is that interested parties should have time to see and digest the contents of the consultation report and also have time if they so wish to make the authority aware of final issues and opinions regarding its decision.

109. The Council's decision is taken on the day that the decision is binding for the authority. This will depend on the decision making structures within the individual authority. In some authorities, these decisions are taken by the full Council, but in other authorities, the decision will be taken by a committee with the possibility that the committee's decision might be reviewed by another committee or the full Council. Once the authority's decision is final, the authority will confirm the date that it was effective from in the notice it publishes under section 15(2A).

Notification and notices

110. When an authority takes a decision to approve a school closure proposal, section 15(2) and (2A) requires it to notify Scottish Minister, within 6 days of making the decision, and place a notice on its website of this fact and of the opportunity to make representations to the Scottish Ministers.

111. When the authority notifies the Scottish Ministers, it is required under section 15(2) to provide copies of the proposal paper, the consultation report and, where the decision relates to a rural school, the notice the authority has published under section 11A(3) of the 2010 Act.

112. The notice the authority publishes should provide the appropriate contact details for submitting representations: schoolclosure@scotland.gsi.gov.uk or post to The Scottish Government, School Infrastructure Unit, 2A (South), Victoria Quay, Edinburgh, EH6 6QQ, and set out the deadline for making representations to the Scottish Ministers.¹⁷ This is calculated as three weeks from the decision date, including that day, therefore if a decision is taken on Tuesday, 1 March, the three week period ends at midnight on Monday, 21 March.

Next steps

113. There are three weeks for stakeholders to make representations either against or in support of the closure. In making a representation, it will be important to understand the grounds on which Scottish Ministers could call in a decision. These are set out in section 17 to the 2010 Act and are that *"it appears to the Scottish Ministers that the education authority may have failed:*

¹⁷ Section 15(2A)(b) of the 2010 Act

“(a) in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the closure proposal, or

“(b) to take proper account of a material consideration relevant to its decision to implement the proposal.”¹⁸

114. Representations which clearly set out concerns that are relevant to these possible grounds will be more likely to result in a decision being called in if it is considered that they may be valid.

115. The Scottish Ministers understand that school closure decisions can be emotive and attract wide community interest, sometimes leading to high volumes of requests for call in or petitions. All representations are welcome, and of course these indicate the level of community feeling and concern. Nevertheless, the number of representations is not of itself a reason for the Scottish Ministers to call in a closure proposal, and it is the evidence of a failure under section 17(2)(a) or (b) of the 2010 Act as set out above that will decide whether a case is called in. Therefore, a single detailed representation providing evidence of a potential failing may carry much more weight than a number of representations raising issues which would not amount to potential failures in terms of the grounds specified in section 17(2)(a) or (b).

Considering whether to call in a decision

116. The Scottish Ministers have (from 1 August 2014) a period of eight weeks¹⁹ following an authority’s decision in which to decide whether to call in the decision or not (a further five weeks following the deadline for representations to be submitted). If the Scottish Ministers do not make a decision by that deadline, the implementation of the proposal is automatically permitted to go ahead. Normally, if Ministers decide not to call in a proposal, for the avoidance of doubt and to allow proposals to be taken forward expeditiously, Ministers write to the authority before the end of the eight week period to confirm that they do not intend to call-in a proposal and they try to do that as early in the further five week period as they can.

117. The purpose of the five weeks is to allow Ministers to consider all the evidence available to them from the documents submitted by the authority and all representations, if any, received and to reach a conclusion as to whether there appears to be a failure under section 17(2)(a) or (b) as set out above. Ministers will want to consider any issues raised in the HM Inspector’s report and also any issues that are apparent from the consultation report. It may be helpful for Ministers to consult HM Inspectors at this stage, and HM Inspectors are required, under section 17(3A) to provide Scottish Ministers with any advice which they reasonably require at this stage. Equally, Ministers may follow up issues with the education authority, which has a duty (under section 17(3) to the 2010 Act) to provide any information in connection with the closure proposal which Ministers may reasonably require for

¹⁸ Section 17(2) of the 2010 Act

¹⁹ Section 15(3), (4) and (6) of the 2010 Act, as amended by section 81(1)(c) of the Children and Young People (Scotland) Act 2014. Section 81 has been partially commenced by The Children and Young People (Scotland) Act 2014 (Commencement No. 2, Transitional and Transitory Provisions) Order 2014 (SSI No. 165).

their consideration at this stage. The purpose of Ministers' consideration at this stage is to seek maximum clarity so that cases need not be called in unnecessarily.

118. The eight week period in which Ministers may issue a call in notice comes into force from 1 August 2014 and applies to decisions taken from and including that date. The previous six week deadline continues to apply to any decisions taken by an authority before that date, but which have not yet been determined.²⁰

Decisions which are called in

119. If Ministers decide to call in a closure proposal, the authority cannot proceed with the proposal until it has been determined by Ministers (under section 16 of the 2010 Act as **unamended** by section 81 of the Children and Young People (Scotland) Act 2014).

120. Significant amendments to this section of the 2010 Act are due to be brought into force in 2015 (including the repeal of section 16, amendments to section 17 and the insertion of new sections 17A to 17D and new schedule 2A²¹). These will not affect the call-in consideration or decision by Scottish Ministers but will mean that once a proposal has been called in, it will be referred to the Convener of the School Closure Review Panels for consideration by a Review Panel. These new provisions will apply to decisions that are called in after the Convener and the School Closure Panels are appointed and take on their responsibilities, currently expected to be in early 2015. Further guidance on how the School Closure Review Panel process will operate will be provided in advance of that date.

4.2 Rural aspects

121. Section 11A makes specific requirements in relation to an authority's decision to implement a rural school closure proposal. The authority may only decide to implement the proposal (wholly or partly) if it has complied with the requirements in sections 12, 12A and 13 (relating to formulating a rural school proposal and consulting on it) and is satisfied that such implementation is the most appropriate response to the reasons it identified for formulating the proposal.

122. Following a decision as to whether or not to implement a rural school proposal, section 11A(3) requires the authority to publish a notice on its website of that decision. Where the authority decides to implement the proposal, the notice must also give the reasons why it is satisfied that such implementation is the most appropriate response to the reasons it identified for formulating the proposal.

123. This notice must be sent to the Scottish Ministers, under section 15(2)(b)(iii), when the authority notifies Scottish Ministers of its decision to implement a rural school closure proposal. As that notification must be made within six working days starting with the day on which the decision is made, this has the effect of requiring the notice under section 11A (3) to be published within the same timescale.

²⁰ Article 2 to The Children and Young People (Scotland) Act 2014 (Commencement No. 2, Transitional and Transitory Provisions) Order 2014 (SSI 2014 No. 165 (C. 12))

²¹ Under section 81 of the Children and Young People (Scotland) Act 2014

124. In determining any closure proposals relating to rural schools under section 16 as unamended, Ministerial consideration will include whether the authority has complied with the requirements placed on it under sections 11A to 14 of the Act (unless, as previously stated, the education authority published its proposal paper before 1 August 2014, in which case Ministerial consideration will be restricted to consideration of the requirements in the 2010 Act as unamended²²).

4.3 Referral to the Scottish Ministers

Grounds for call in

125. As stated earlier, the grounds on which Ministers may call in a closure proposal are set out in section 17 of the 2010 Act. These are very limited. Call in is permissible only where Ministers consider that the education authority may have failed to comply with the requirements imposed on it under the 2010 Act in a significant regard; or where the education authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.

126. The 2010 Act does not further define what might or would constitute a 'material consideration' (in terms of section 17(2)(b)) – any particular closure proposal will be considered on a case by case basis. This Ministerial power is intended as a safeguard, in closure cases, to help to ensure that the consultation and decision-making processes and procedures are fairly, fully, correctly, openly and transparently carried out. The following examples are, however, included by way of illustration of the sort of issues and scenarios that could constitute a material consideration relevant to an authority's decision to implement a closure proposal (these are by no means exclusive or exhaustive):

- a school closure proposal is consulted on so far in advance of its implementation date that it would not be possible to identify all of the children and young people that would be affected or that consultees might not engage fully with a proposal that was a very long period into the future. The timeframe that is reasonable will vary – for a new school, there may well be a long planning phase;
- a consultation on a proposal to close a school that contains a special support unit, which includes details of where pupils in the mainstream section of the school would move to if the proposal is implemented, but does not contain appropriate information regarding the pupils at the special unit;
- a consultation on a proposal to close a school, which contains details of one alternative school but no details on another school which could reasonably be considered as a suitable alternative, where evidence would suggest that it is a popular school that parents are already choosing to send their children to (instead of the school proposed for closure or the school formally proposed as the alternative); or
- a consultation that fails to take account of the number of times when the road between the school proposed for closure and the alternative school would be

²² Article 5 to The Children and Young People (Scotland) Act 2014 (Commencement No. 2, Transitional and Transitory Provisions) Order 2014 (SSI No. 165)

shut due to bad weather (in an area where this was a known occurrence) – meaning that the pupils could not get to the new school.

127. In their consideration of whether or not there may have been a failure on the part of the education authority to comply with the requirements imposed on it by (or under) the 2010 Act, Ministers are also required to consider whether any procedural failure amounts - or could amount - to a failure in a significant regard. The 2010 Act does not define what might be a “failure in a significant regard”. An example might be a consultation that failed to notify *all* the relevant consultees in one of the groups set out in schedule 2, paragraph 1. Ministers would consider how significant the omission was, and a consultation that had failed to make reasonable efforts to notify the parents of the pupils at an affected school would be likely to be considered to have a significant failing, whereas a consultation that had failed to notify one parent might not be considered significant, especially if it was clear that the information had been available to the parent from other sources.

128. Since the grounds for call-in focus entirely on the activities of the authority, much will depend on how the authority has responded to concerns raised by consultees or by HM Inspectors. For example, how the authority reviews the proposal in light of these issues and how it reaches and explains its overall conclusion and final decision on the proposal is important.

129. If the Scottish Ministers do call in a closure decision, the authority cannot proceed to implement the decision – either in full or in part – until Ministers have informed the authority of their own decision in the case.²³ Ministers may refuse to consent to the decision or grant their consent to it, either unconditionally or subject to conditions. During the eight week period when Ministers are deciding whether to call in a closure decision, and subsequently if they do call it in, authorities are required to provide Ministers with such information as they may reasonably require in relation to their consideration either of the call-in or, following call-in, their determination.²⁴

Determination by the Scottish Ministers

130. Following call-in, Ministers will look at the totality of what has been considered by the education authority and thereafter determine whether the education authority has either failed in a significant regard to comply with the requirements imposed on it by (or under) the 2010 Act so far as they are relevant to the closure proposal in terms of section 17(2)(a) of the 2010 Act; or has failed to take proper account of a material consideration relevant to its decision to implement the proposal in terms of section 17(2)(b) of the 2010 Act.

131. Where, following such consideration, Ministers conclude there is no such failure by the education authority and the decision is a reasonable one, then consent will be granted either unconditionally, or subject to condition(s). The consideration at this stage may comprise any issue where Ministers have grounds to have concerns under section 17(2)(a) or (b) and is not limited to issues which are set out in their call

²³ Section 16(3) of the 2010 Act as unamended

²⁴ Section 17(3) of the 2010 Act as unamended

in notification as new issues may arise following call in of the decision which require consideration by Ministers.

132. Where, following such consideration, Ministers conclude there is a failure by the education authority, they are required to consider whether they should still grant consent, either unconditionally, or subject to condition(s). If, following that consideration, Ministers conclude that the failure is so serious that it cannot be remedied by the imposition of a condition(s), or if the decision is so unreasonable that no reasonable education authority could have taken it, then Ministers will refuse to give their consent.

133. Determination letters from Ministers will set out clearly the reasoning behind their decision to grant consent (either unconditionally or subject to condition(s)) or refuse consent.

Denominational schools

134. As a safeguard for the continued provision of denominational education in denominational schools, authorities must submit for Ministerial consent proposals which fall to be considered under section 22C and 22D of the Education (Scotland) Act 1980. The 2010 Act revoked sections 22A and 22B, but left sections 22C and 22D untouched. Specific criteria apply in both sections before a proposal would fall to be considered:-

- Section 22C requires an education authority to submit for Ministers' consent a proposal which, if implemented, will have the effect that all or some of the pupils who attend the school will no longer receive school education in a denominational school, or that all or some of the children who would, but for the implementation of the proposal, have been likely to receive their education in a denominational school will not receive education in a denominational school. Ministers must not grant consent under section 22C unless satisfied that adequate arrangements have been made for the religious instruction of pupils and children who would, as a result of implementation of the proposal, no longer receive or be likely to receive school education in a denominational school.
- Section 22D requires an education authority to submit for Ministers' consent a proposal which relates to a change to a denominational school e.g. closure or amalgamation, where the church or denominational body concerned disagree with the proposal. After consultation with the authority and the church or denominational body, if Ministers are satisfied that the proposal if implemented would result in a significant deterioration for pupils in the local authority area (or to pupils belonging to the area of any other authority) in the provision, distribution and availability of school education in denominational schools compared with the provision, distribution and availability of school education in other public schools, consent to the proposal must be withheld.

135. Ministers will consider such a referral separately to their call-in powers under the 2010 Act and, if required, grant or withhold consent to a closure proposal under sections 22C or 22D of the Education (Scotland) Act 1980.

4.4 Forthcoming changes and transitional arrangements

136. As previously stated, the Children and Young People (Scotland) Act 2014 made further amendments to the 2010 Act which are not brought into force on 1 August 2014 by The Children and Young People (Scotland) Act 2014 (Commencement No. 2, Transitional and Transitory Provisions) Order 2014 (SSI No. 165). These relate to the establishment of a Convener of the School Closure Review Panels and of those Panels. These Panels will, once the amendments are brought into force, take on responsibility for determining school closure decisions that have been called in by Scottish Ministers. It is currently expected that the Convener and Panels will be in place in early 2015. Once they are ready to take up their responsibilities, this guidance will be further updated to reflect their existence and role. Any transitional arrangements that are necessary will also be clarified at that point.

4.5 Restriction on repeating school closure proposals

137. Authorities are expected to seek to maintain a stable school estate, with strong community engagement around prospective changes well in advance and in such a way as to provide stability and certainty for children and young people, parents and the wider community. School closure consultations can have a substantially damaging effect on a school community. It is important that they are carried out properly and decisively so that communities receive a clear outcome and can adjust to that, rather than facing the prospect of a proposal nearly succeeding and then being repeated until it does eventually succeed, possibly due to the repeated nature of the process eroding opposition.

138. Section 2A of the 2010 Act (inserted by section 77 of the Children and Young People (Scotland) Act 2014) provides for a restriction on making a school closure proposal in relation to the same school for a period of 5 years following either:

(a) a decision to refuse closure...; or

(b) a decision made by the education authority following the publication of consultation report not to proceed with the closure.

139. Section 2A comes into force on 1 August 2014 by virtue of The Children and Young People (Scotland) Act 2014 (Commencement No. 2, Transitional and Transitory Provisions) Order 2014 (SSI No. 165). However, Article 3 of this Order amends the provision on a transitional basis so that it refers to a decision taken by the Scottish Ministers under section 16(2)(a) as opposed to a decision taken by the School Closure Review Panels under section 17C(1)(a) (until such time as the provisions which establish the School Closure Review Panels are commenced).

140. This means that any decision taken (either by the authority not to implement the closure proposal or by the Scottish Ministers to refuse consent for closure) on or after 1 August 2014 is affected by this restriction. Article 4 of The Children and Young People (Scotland) Act 2014 (Commencement No. 2, Transitional and Transitory Provisions) Order 2014 (SSI No. 165) clarifies that no restriction applies in regard to decisions taken before this date.

141. Section 2A is intended to provide a period of certainty and stability for a school that has been threatened with closure, its pupils, parents and community, by setting a minimum period before a closure proposal in relation to that school can be repeated.

142. However, the authority may still decide to repeat the school closure proposal. It may do this at the end of the five year period, in which case the authority may only publish a proposal paper when the period has expired. It would be acceptable for the authority to undertake preparation for consultation before the restriction has expired, for example, informal consultation with the community or preparation of the consultation documents.

143. Alternatively, if there has been a significant change to the school's circumstances, the authority may, in terms of section 2A(3), proceed with a closure proposal within the five year period of the restriction. Examples might include, but are not restricted to, where the parents request the authority to take this action, where the school roll falls very significantly, or where the school building requires urgent, significant investment. However, even in these circumstances, the authority will want to consider whether it would be better to wait until the five year period has expired, or whether mothballing the school or another solution would be more appropriate.

144. Following a consultation under the 2010 Act, occasionally an authority may decide that the elements of the proposal should be revised before it takes a decision as to whether to implement the proposal or not. In some cases, this will be a small revision which the authority concludes does not require further consultation. In other cases, the change may be such that further consultation is considered appropriate before the authority takes its decision. It may be however that a change is so significant that it would mean that the authority was in effect making a decision not to implement a closure proposal in terms of the 2010 Act, and that it was making a wholly different proposal which would therefore require the authority to start the process from the beginning again. This will have to be determined by the authority on a case by case basis. In the latter scenario, the restriction in section 2A to the Act would apply.

5. FURTHER INFORMATION

5.1 Definitions and extent of the 2010 Act

145. Section 21 of the 2010 Act provides definitions of terms in the 2010 Act.

146. In particular, the schools to which this Act refers are public schools as defined in section 135(1) of the Education (Scotland) Act 1980. This means any school under the management of an education authority and includes nursery schools which are under authority management, i.e. are run by them.

147. The 2010 Act does not cover independent schools or nursery schools or nurseries which are managed and run independently, i.e. managed and run by persons or bodies other than local authorities.

5.2 Relevant proposals

148. Schedule 1 to the 2010 Act sets out all the categories of proposals to which this Act applies.

149. The provisions of sections 15-17 of the 2010 Act, relating to closure proposals, relate to all the categories of closure covered by paragraph 1 of the Schedule, not just to proposals for the closure of a whole school.

150. The reference in paragraph 10 of this Schedule to further education centres is only to such centres which are managed by local authorities. At the present time, such centres exist only in Orkney and Shetland.

5.3 Relevant consultees

151. Schedule 2 to the 2010 Act identifies a core set of relevant consultees who should be consulted in connection with every type of proposal set out in Schedule 1. These are the Parent Council, parents of pupils attending an affected school as well as the pupils themselves, parents of pupils likely to attend an affected school, staff at an affected school, any trade union which appears to the education authority to be representative of those staff, and any other users whom the authority considers relevant. The Schedule also specifies other relevant consultees in relation to specific categories of proposal - for instance the Community Council is included where the impact is likely to affect the wider community. Additionally, paragraph 11 to the Schedule specifies that Bòrd na Gàidhlig is to be consulted when a proposal affects the provision of Gaelic medium education (GME) such as where a GME class is to be established or discontinued or a GME school's catchment is to be changed. Paragraph 12 to the Schedule makes clear that where a change is being proposed which affects a denominational school, the relevant church or denominational body must be consulted.



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