

Education, Children and Families Committee

10am, Tuesday, 8 October 2013

Response to Consultation – Amending the Schools (Consultation) (Scotland) Act 2010

Item number	8.1
Report number	
Wards	All

Links

Coalition pledges	P1 and P4
Council outcomes	CO1 and CO2
Single Outcome Agreement	SO3

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Executive summary

Response to Consultation – Amending the Schools (Consultation) (Scotland) Act 2010

Summary

The purpose of this report is to inform Committee of the response which was recently submitted to a Scottish Government consultation [Amending the Schools \(Consultation\) \(Scotland\) Act 2010](#) relating to proposed changes to the Schools (Consultation) (Scotland) Act 2010.

Recommendations

It is recommended that the Committee notes the response from the Council to the Scottish Government's *Amending the Schools (Consultation) (Scotland) Act 2010* consultation as set out in Appendix 1 which was submitted by the Director of Children and Families on 2 September 2013 to meet Scottish Government submission deadlines.

Measures of success

Submission of consultation response by the deadline of 2 September 2013.

Financial impact

There are no financial implications arising from this report.

Equalities impact

There are no negative equality or human rights impacts arising from this report.

Sustainability impact

There are no sustainability impacts arising from this report.

Consultation and engagement

Due to the timing of the invitation and the tight deadline for submission there was limited opportunity for consultation and engagement. Senior management within Children and Families and representatives from Finance and Legal were consulted in preparing the response which was agreed with the Convenor and Deputy Convenor of Education, Children and Families prior to submission.

Background reading/external references

The consultation paper *Amending the Schools (Consultation) (Scotland) Act 2010* can be viewed at <http://www.scotland.gov.uk/Publications/2013/07/5984>.

The Report of the Commission on the Delivery of Rural Education can be viewed at <http://www.scotland.gov.uk/Publications/2013/04/5849>.

Response to Consultation – Amending the Schools (Consultation) (Scotland) Act 2010

1. Background

1.1 On 12 July 2013 the Scottish Government published a consultation paper setting out policy proposals for amendments to the Schools (Consultation) (Scotland) Act 2010 (the 2010 Act). The City of Edinburgh Council was invited to respond.

2. Main report

2.1 The consultation took forward recommendations made by the Commission on the Delivery of Rural Education, which were extensively consulted on, and aimed to clarify the role of Ministers, following the recent ruling by the Court of Session in the case of *Comhairle nan Eilean Siar v Scottish Ministers*.

2.2 The Scottish Government advised that many of the 38 recommendations made by the Commission do not require legislative change, and could instead be taken forward through revision of the statutory guidance which accompanies the 2010 Act or other non-legislative means. Therefore, their consultation only related to actions which might require changes to the law. The consultation paper invited comments on six areas:

1. The presumption against closure of rural schools;
2. Providing financial information on closure proposals;
3. Clarifying and expanding Education Scotland's role;
4. The basis for determining school closure proposals;
5. Establishing an independent referral mechanism; and
6. A five year moratorium on repeating a school closure proposal.

2.3 While the proposals in section 1 relating to the presumption against closure only applied to rural schools, the other proposals would be applicable to both urban and rural schools. Under the 2010 Act, rural schools are those designated as such by Scottish Ministers in the list they maintain for this purpose. In the City of Edinburgh Council area there are three schools which fall within this designation – Hillwood Primary School, Ratho Primary School and Wellington School.

- 2.4 The Government considered it important to provide an opportunity for public consultation on the proposals however the period for the consultation was shorter than would be normally provided and closed on 2 September 2013. This was due to the need to move quickly in order to bring further clarity and certainty to the consultation process for school closures. The Children and Young People (Scotland) Bill, already under consideration by the Scottish Parliament, provides the Scottish Government with an early opportunity to make changes to the 2010 Act, and would enable the changes to be brought into force during 2014. If this opportunity was missed then it was unlikely that the necessary changes to the 2010 Act could be made until 2015.
- 2.5 Due to the timing of the invitation and the tight deadline for submission there was limited opportunity for consultation and engagement. Senior management within Children and Families and representatives from Finance and Legal were consulted in preparing the response which was agreed with the Convenor and Deputy Convenor of Education, Children and Families prior to submission.
- 2.6 The response to the consultation which was submitted to the Scottish Government on 2 September 2013 is included at Appendix 1.

3. Recommendations

- 3.1 It is recommended that the Committee notes the response from the Council to the Scottish Government's *Amending the Schools (Consultation) (Scotland) Act 2010* consultation as set out in Appendix 1 which was submitted by the Director of Children and Families on 2 September 2013 to meet Scottish Government submission deadlines.

Gillian Tee

Director of Children and Families

Links

Coalition pledges	<p>P1 - Increase support for vulnerable children, including help for families so fewer go into care</p> <p>P4 - Draw up a long-term strategic plan to tackle both over-crowding and under use in schools.</p>
Council outcomes	<p>CO1 - Our children have the best start in life, are able to make and sustain relationships and are ready to succeed.</p> <p>CO2 - Our children and young people are successful learners, confident individuals and responsible citizens making a positive contribution to their communities.</p>

Single Outcome Agreement SO3 - Edinburgh's children and young people enjoy their childhood and fulfil their potential

Appendices 1 Response to Consultation

APPENDIX 1

RESPONSE TO CONSULTATION

Amending the Schools (Consultation) (Scotland) Act 2010



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

City of Edinburgh Council

Title Mr Ms Mrs Miss Dr **Please tick as appropriate**

Surname

Tee

Forename

Gillian

2. Postal Address

Director of Children and Families

City of Edinburgh Council

Waverley Court

4 East Market Street, Edinburgh

Postcode EH8 8BG

Phone 0131 469 3322

Email

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3. Permissions - I am responding as...

Individual

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

Consultation Questions

Q1. Do you support clarifying the presumption against closure of rural schools by stating it in legislation by means of an amendment to the 2010 Act?

Yes No Don't know

Do you have any comments?

Q2. Do you support amending the 2010 Act to make it clear that relevant financial information should be included in a school closure consultation?

Yes No Don't know

Do you have any comments?

The City of Edinburgh Council has always, in any school closure consultation proposal, sought to provide relevant financial information and, accordingly, this recommendation is welcomed.

However, in light of the number of variables involved within the Local Government Finance Settlement, we think it would be very difficult for individual authorities to quantify any impact on the General Revenue Grant with any accuracy, particularly as it is relative changes that are important for grant distribution purposes. The effect of the funding floor, in particular, is very difficult to predict from one year to the next. Whilst a change in assessed need in one authority, depending on its position relative to the level at which the floor is set, may result in a further change in funding through the floor mechanism, a similar change in the context of another authority may have no impact at all. For these reasons we would not consider it to be feasible to make any reference to the potential impact on the General Revenue Grant in the financial information provided as part of any school closure consultation process.

Q3A. Do you support giving Education Scotland a more sustained role in a school closure proposal?

Yes No Don't know

Do you have any comments?

The proposal to give Education Scotland a more sustained involvement is generally welcomed as any changes which would assist both the authority and Education Scotland in having a clear and shared understanding of expectations from the process, and the circumstances relating to the particular proposal, from the outset would be sensible. One possible

concern would be the reference to Education Scotland assisting authorities before they start preparing an Educational Benefits Statement and any impact that may have on the already lengthy timescales for such consultation processes if there would be prescribed periods within which this involvement would have to take place.

One further point which requires clarification is the extent to which any revised role for Education Scotland in the production of Educational Benefits Statements would extend to consultation processes other than for a school closure such as any proposal to change school catchment boundaries.

In this regard, it would be considered beneficial if a less onerous process could be introduced for any consultation processes which are of a less contentious nature. There are occasions where an authority may not consider progressing matters as the effort required to do so under the existing provisions within the 2010 Act would be disproportionate to the benefits achieved. Whilst it is unquestionably the case that the closure of a school requires a full, open and transparent consultation process, is the same extensive process really necessary for other changes which may be considered such as, for example, introducing a nursery class into a school, relocating part of a nursery class or varying arrangements for the constitution of a special class in a school? Whilst the subject of this consultation is very specific in its focus, if it is the intention to amend the legislation in any event might the opportunity be taken to also simplify the arrangements for progressing less contentious or sensitive matters? This would allow authorities to make better, quicker decisions on the management of their schools and admission processes.

The consultation makes no reference to Recommendation 20 of the Commission on the Delivery of Rural Education which was 'It should be acceptable for an Educational Benefits Statement to conclude that the educational impact is neutral, with no overall educational detriment to the children directly concerned. In such circumstances, if a closure continued to be proposed, it would be essential that any other factors are fully and transparently scrutinised, including clear overall benefit to the rural communities involved'. This recommendation recognises that it is often difficult to prove educational benefit between schools and is an approach which we would welcome being applied to any closure proposals for either rural or urban schools.

Q3B. If so, would you prefer Education Scotland's role to be clarified through legislation or a Memorandum of Understanding?

Legislation Memorandum of Understanding Don't know

Q4. Do you support amending the 2010 Act to provide clarity regarding Ministers' role in considering both the process and merits of the closure proposal?

Yes No Don't know

Do you have any comments?

It is agreed that, in order to bring transparency to the 2010 Act so that there is no dubiety in the role of Scottish Ministers, it would be sensible to amend the Act to provide clarity regarding Ministers' role in considering both the process and merits of the closure proposal. However it is equally important that this merits based approach should respect the primacy of the education authority who are best placed to take these types of decisions based on their local knowledge. Whilst this necessity is acknowledged in paragraph 4.2 of the consultation paper, in paragraph 4.5 it is not clear how it is proposed that the necessity to respect the primacy of the education authority would be delivered in any final proposals nor with whom any further consultation would be undertaken in developing them. This would benefit from clarification.

Q5A. Do you agree that the criteria specified in paragraph 5.6 are appropriate as a dispute resolution process under the 2010 Act?

Yes No Don't know

If not, what criteria would you support?

Q5B. Do you support replacing the current Ministerial determination of school closure proposals that have been called in with an independent referral mechanism such as arbitration?

Yes No Don't know

If not, what other options for dispute resolution would you suggest?

Q6A. Do you support a five year moratorium between closure proposals for the same school?

Yes No Don't know

Do you have any comments?

The acceptability, or otherwise, of this proposal would be entirely dependent on the definition applied to a 'significant, relevant change'. The consultation report does not include any clear definition of what would constitute 'a significant, relevant change' and, indeed, in providing examples makes reference to what this 'might include, but should not be limited to'. Ambiguity on such important matters, and what 'significant' and 'relevant'

actually mean in this context, would result in a lack of clarity for both local authorities and communities alike and would be open to considerable challenge, possibly through the courts. A local authority should have an unfettered ability to pursue changes in policy which it considered to be appropriate taking into consideration any changes in local circumstances.

The consultation document asks whether a change in the council's financial circumstances should be considered a 'significant relevant change'. Should this recommendation be adopted, then it is certainly considered that a significant change to a local authority's resources should be considered a 'significant relevant change' however, once again, what would constitute a 'significant' change in council finances? Also what if there had been several changes, none significant in themselves, but collectively they could be considered to be significant and influence a decision? There are significant risks of introducing such a challengeable phrase into either legislation or guidance. Taking all things into consideration it would be preferable, if this is pursued, that it is in guidance rather than legislation.

Regarding the question of when the recommendation should take effect this should be from the point when any new guidance or legislation takes effect and we agree that it would not be reasonable to apply the principle retrospectively.

Q6B. If so, would you prefer this provision to be made in guidance or legislation?

Guidance

Legislation

Don't know

Please send this form to schoolestates@scotland.gsi.gov.uk or

School Infrastructure Unit, Area 2-A South, Victoria Quay, Edinburgh EH6 6QQ

Email is preferred, if possible, and if you use email it is not necessary to send an additional copy by post.

If you have any queries, please contact Lucy Carmichael on 0131 244 0373 or using the email address above.