



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 37/13

28th February 2013

NIAR 166-13

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The Schools (Consultation) (Scotland) Act 2010

Summary

The Schools (Consultation) (Scotland) Act 2010 aimed to improve the consultation process around school closures in Scotland. It also introduced a presumption against rural school closures (by requiring local authorities to take account of certain factors before deciding to consult on a proposed closure), and gave ministers powers to call-in school closure decisions.

Differences between consultation procedures in Scotland and NI

In Northern Ireland the process for a development proposal (required for the closure of or other significant change to a school) broadly involves initial consultation before the publication of a proposal, followed by a period of public consultation.

In Scotland an educational benefits statement must first be developed, followed by publication of a proposal paper which must be consulted on. The Inspectorate also prepares a report on the educational aspects of the proposal.

The key differences between the two approaches are outlined in the following table.

Table 1: Key differences around consultation process for school closures

Area	Northern Ireland	Scotland
Statutory consultees	<ul style="list-style-type: none"> Statutory consultees are parents of pupils; teachers and Board of Governors However guidance advocates wider consultation 	<ul style="list-style-type: none"> Includes parents of children expected to attend in the future Non-teaching staff, trade unions, community council and any other users of the school included
Focus of proposal	<ul style="list-style-type: none"> Intentions should be clearly set out, including dates and transitional arrangements 	<ul style="list-style-type: none"> Educational benefits central
Public consultation	<ul style="list-style-type: none"> Public has 2 months to comment on or object to the proposal 	<ul style="list-style-type: none"> Consultation period must be at least 6 weeks (including 30 school days) A public meeting must be held
Role of the Inspectorate	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> The Inspectorate must prepare a report on the educational aspects of the proposal
Decision process	<ul style="list-style-type: none"> Minister takes a decision – deputations may seek meetings with the Minister 	<ul style="list-style-type: none"> Authorities must publish a consultation report detailing representations and demonstrating how it has taken account of them
Rural schools	<ul style="list-style-type: none"> No differential treatment 	<ul style="list-style-type: none"> Presumption against rural closures

Implementation

A number of difficulties have been reported around the Schools (Consultation) (Scotland) Act. In particular, it has been interpreted differently by local authorities and Government. A Commission on the Delivery of Rural Education was established to consider these issues.

Its report has yet to be released; however leaked findings published by the Times Educational Supplement suggest that the Commission has found the legislation to be ambiguous, leading to potential conflict. Other challenges include the emphasis on educational benefits, considered too restrictive, and that the protection for rural schools disproportionately affects larger, urban schools.

1 Introduction

The Schools (Consultation) (Scotland) Bill was introduced to the Scottish Parliament in March 2009, and received Royal Assent on 5th January 2010. The aim of the legislation was to strengthen the statutory consultation process required for changes to the schools estate, particularly around school closures.¹

This paper sets out the process for school closures in Northern Ireland and Scotland; considers the other provisions of the Schools (Consultation) (Scotland) Act; and discusses its implementation.

2 Consultation requirements for school closures in Northern Ireland

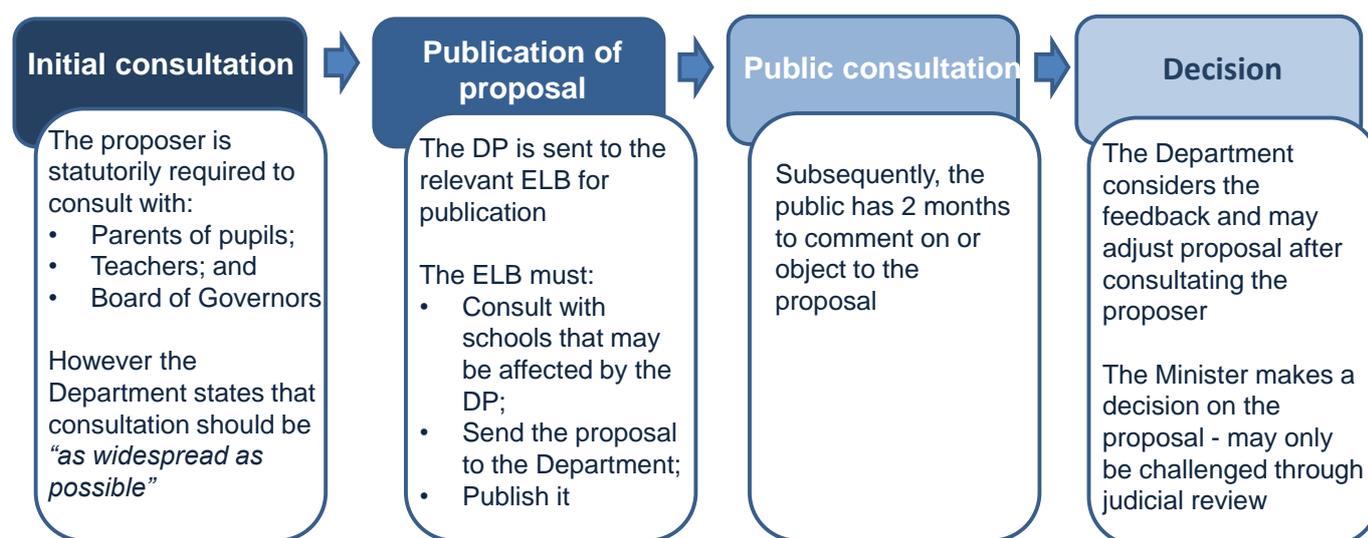
Development proposals

Article 14 of the Education and Libraries (NI) Order 1986 requires a development proposal (DP) for a grant-aided school before any significant change can be made to it. It is required in a number of cases, including for school closures and amalgamations. The aim is to ensure that all stakeholders are informed about proposed changes to schools and have an opportunity to comment before decisions are taken.²

Process

An Education and Library Board (ELB) or anyone representing a school can take forward a development proposal. Development proposals are required to be published in one or more newspapers. The following figure provides an overview of the process.

Figure 1: Overview of the development proposal process in NI³



¹ SPICe (2009) *SPICe Briefing: Schools (Consultation) (Scotland) Bill* The Scottish Parliament

² Development proposals [online] Available at: http://www.deni.gov.uk/index/85-schools/13-schools_estate_pg/13-schools_estate_glossary_pg/14-schools_estate_devprop_pg.htm

³ As above

3 Background to the Scottish legislation

The closure of rural schools in Scotland has provoked strong community hostility, with many stakeholders calling for a legislative presumption against the closure of rural schools. Previous concerns around school closures in Scotland included:⁴

- The quality of consultations around school closures;
- Perception that school closure proposals are motivated by mainly financial or capacity concerns without taking into account educational benefits for students;
- Concerns around the role of the school in the local community.

4 Overview of provisions

The main provisions of the Schools (Consultation) (Scotland) Act 2010 centre on:⁵

- The consultation procedures for school closures and other proposals which local authorities must follow;
- A new duty on local authorities to take into account certain prescribed factors before deciding to consult on a proposed school closure;
- Replacement of the system of referring certain local authority decisions to Ministers for consent with a power to call in decisions relating to closures.

5 Required consultees

The 2010 Act stipulates the parties that must be consulted where a closure is proposed; outlined in Table 2.

Table 2: Required consultees for potential school closures

Group	Details
Parents	<ul style="list-style-type: none"> • The Parent Council • Parents of pupils at any affected school • Parents of any children expected to attend the school within 2 years
Pupils	<ul style="list-style-type: none"> • The pupils at any affected school
Staff and representatives	<ul style="list-style-type: none"> • Staff (teaching and other) at any affected schools • Any trade union appearing to the authority to represent them

⁴ SPICe (2009) *SPICe Briefing: Schools (Consultation) (Scotland) Bill* The Scottish Parliament

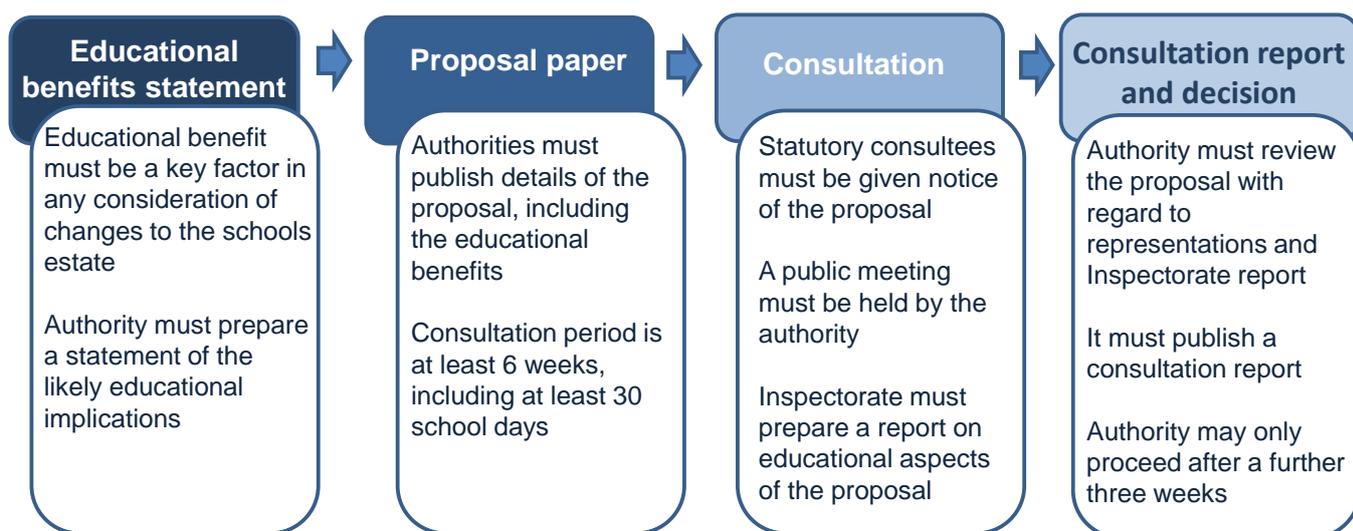
⁵ Legislation.gov.uk *The Schools (Consultation) (Scotland) Act 2010: Explanatory notes* [online] Available at: <http://www.legislation.gov.uk/asp/2010/2/notes/contents>

Group	Details
Community	<ul style="list-style-type: none"> Community council (if any)
Education authorities	<ul style="list-style-type: none"> Any body established by the local authority Any other education authority that the authority considers relevant
Other	<ul style="list-style-type: none"> Any other users of any affected school that the education authority considers relevant

6 Consultation procedures for all school closures

The legislation revised the consultation process for **all** school closures and other significant changes to schools, aiming to make the process more open, rigorous and transparent.⁶

Figure 2: Overview of consultation procedures for changes to Scottish schools



Educational benefits statement

The legislation requires education authorities to prepare a statement of its assessment of the likely effects of the proposal on the following groups:⁷

- The pupils;
- Any other users of the school’s facilities;
- Any children who would in the future be likely to become pupils of the school;
- The pupils of any other schools in the authority’s areas.

⁶ SPICe (2009) *SPICe Briefing: Schools (Consultation) (Scotland) Bill* The Scottish Parliament

⁷ Legislation.gov.uk *The Schools (Consultation) (Scotland) Act 2010 [online]* Available at: <http://www.legislation.gov.uk/asp/2010/2>

It must also detail the authority's assessment of any other likely effects of the proposal, how it intends to minimise or avoid any adverse effects; and a description of the benefits it believes will arise from the proposal.⁸

Proposal paper

Education authorities are required to prepare a proposal paper setting out the details of the proposal; proposing a date for its implementation; and stating its educational benefits. The paper must be published and available, and the consultees must be given notice of it. At least six weeks (including at least 30 school days) must be allowed for the consultation⁹

If the authority is informed of an inaccuracy or omission from the paper, it has a duty to determine whether relevant information has been omitted (in its opinion), and if there is (in fact) an inaccuracy. It may publish a corrected paper.¹⁰

Public meeting

The legislation requires education authorities to hold and be represented at a public meeting on the proposal. Previous research has found that public meetings can play a key role in influencing a community's perception of a proposal's credibility and support a feeling that they have been listened to.¹¹

Role of the Inspectorate

The 2010 legislation introduced a new role for Her Majesty's Inspectorate of Education (HMIE) in the consultation process. The education authority must send a copy of the proposal paper to HMIE, together with representations received during the consultation period. HMIE has a duty to prepare a report on the educational aspects of the proposal, and in doing so, may enter any affected school and make relevant enquiries.¹²

Consultation report and decision

The education authority must subsequently review the proposal having regard to the HMIE report and to any written or oral representations. It is required to publish a consultation report incorporating:¹³

- The number of written representations;
- A summary of written and oral representations;
- A statement of the authority's response to representations and the HMIE report;

⁸ Legislation.gov.uk *The Schools (Consultation) (Scotland) Act 2010* [online] Available at: <http://www.legislation.gov.uk/asp/2010/2>

⁹ As above

¹⁰ As above

¹¹ SPICe (2009) *SPICe Briefing: Schools (Consultation) (Scotland) Bill* The Scottish Parliament

¹² Legislation.gov.uk *The Schools (Consultation) (Scotland) Act 2010* [online] Available at: <http://www.legislation.gov.uk/asp/2010/2>

¹³ As above

- A copy of HMIE's report;
- A statement detailing how the authority has reviewed the proposal and fulfilled its duty to have regard to the representations and the HMIE report;
- Details of any inaccuracy and actions taken.

The education authority may only proceed with the relevant proposals three weeks after it has published the consultation report.

7 Presumption against rural school closure

The legislation places additional requirements on authorities when they are considering any rural school closure.

The Act does not explicitly include the words 'presumption against' closure. However, it requires that before an education authority decides to consult on a proposal to close a rural school, it must take into account particular factors, and demonstrate in the proposal paper how it has done so. These factors are outlined in Table 3.¹⁴

Table 3: Factors that must be considered for potential rural school closures

Factor	Detail
Any viable alternative to closure	Decision to consult should not be taken until any viable alternative has been considered
The likely effect on the local community	To be assessed by reference to: <ul style="list-style-type: none"> • The sustainability of the community • The availability of the school's premises and its other facilities by use of the community
The likely effect of any different travelling arrangements	Effects include: <ul style="list-style-type: none"> • Those on pupils, staff and any other users of the school's facilities • Any environmental impact

¹⁴ Legislation.gov.uk *The Schools (Consultation) (Scotland) Act 2010* [online] Available at: <http://www.legislation.gov.uk/asp/2010/2>

8 Call-in of closure proposals

The 2010 legislation gives Ministers the power to call-in closure decisions for any schools within six weeks of a decision being made. This replaced the previous system whereby the authority's decision was referred to the Minister for consent.¹⁵

Ministers may call-in a decision where it appears that the local authority may have failed to comply with the Act's requirements or to take proper account of a material consideration. Once Ministers have called-in the decision, and after due consideration and investigation of the proposal, they may refuse consent; or give consent conditionally or unconditionally.¹⁶

9 Implementation of the legislation

The Schools (Consultation) (Scotland) Bill 2010 is reported to have been interpreted differently by local authorities and Government. To address this, a Commission on the Delivery of Rural Education was established. The Commission is responsible for reviewing the legislation and its application.¹⁷

A moratorium on school closures ran for a year until June 2012 to allow the Commission to undertake its work. The Commission's report has not yet been released, having been delayed by legal proceedings. However, leaked findings from the report were published by the Times Educational Supplement - as such; the findings may be subject to change.¹⁸

Table 4: Reported findings on the 2010 Act

Finding	Detail
The 2010 Act is ambiguous	<ul style="list-style-type: none"> • The presumption against closure causes conflict because it can be interpreted in different ways
Focus on educational benefits too restrictive	<ul style="list-style-type: none"> • The inability to cite financial pressures has damaged local authorities' credibility and prevented "honest debate" • Basing proposals solely on this is not 'realistic', pitting one school against another and magnifying small differences
Protection disadvantages larger schools	<ul style="list-style-type: none"> • The protection afforded to rural schools by the legislation means that larger, urban schools are disproportionately affected by the current financial climate

¹⁵ SPICe (2009) *SPICe Briefing: Schools (Consultation) (Scotland) Bill* The Scottish Parliament

¹⁶ Legislation.gov.uk *The Schools (Consultation) (Scotland) Act 2010*

¹⁷ Commission on the Delivery of Rural Education [online] Available at: <http://www.scotland.gov.uk/About/CommissionRuralEducation>

¹⁸ Times Educational Supplement (2013) *Rural schools report leaked* [online] Available at: <http://www.tes.co.uk/article.aspx?storycode=6313518>

Western Isles case

A recent appeal to the Court of Session in Scotland may have implications for the implementation of the 2010 Act. The Western Isles Council education authority proposed to close three schools, following the consultation procedures within the Schools (Consultation) (Scotland) Act 2010.¹⁹

The Ministers issued call-in notices in December 2010 for each school. For the first school the call-in was on the grounds that insufficient consideration had been given to alternatives; for the second on the basis that insufficient consideration had been given to the effect of travel arrangements, and in the case of the third insufficient consideration had been given to the effect on the community.²⁰

The council called for judicial review of the call-in notices. The ruling highlighted that ministers cannot only examine the procedural elements of a proposal, but must also consider its merits and how closure will affect the community.²¹

¹⁹ Extra Division, Inner House, Court of Session (2013) *Opinion of the Court in the cause of Comhairle nan Eilean Siar against the Scottish Ministers* [online] Available at: <http://www.scotcourts.gov.uk/opinions/2013CSIH6.html>

²⁰ As above

²¹ Times Educational Supplement (2013) *Campaigners hail ruling on rural closures* [online] Available at: <http://www.tes.co.uk/article.aspx?storycode=6319982>