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<b>Report To:</b>	<b>Education and Communities Committee</b>	<b>Date:</b>	<b>04 November 2014</b>
<b>Report By:</b>	<b>Corporate Director Education, Communities &amp; Organisational Development</b>	<b>Report No:</b>	<b>EDUCOM/76/14//WB</b>
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<b>Subject:</b>	<b>Amendments to the Schools (Consultation) (Scotland) Act 2010</b>		

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## 1.0 PURPOSE

- 1.1 This report is to give members of the Education and Communities Committee an overview of the key points set out in the Schools (Consultation) (Scotland) Act 2010.
- 1.2 This Act was amended in part 15 of the Children and Young People (Scotland) Act 2014.

The overarching objective of the Act and its amendments is to establish consistent consultation practices and procedures across Scotland that apply to all proposals for school closures and other major changes to the school estate.

## 2.0 SUMMARY

- 2.1 The Schools (Consultation) (Scotland) Act 2010 sets a rigorous, open and transparent system for consulting on school closures and other changes to the school estate as proposed by Councils.
- 2.2 Education Scotland has produced guidance in relation to the amended Schools (Consultation) (Scotland) Act 2010 designed to support Councils when they propose changes to the school estate.
- 2.3 The Act gives HM Inspectors a role in the process.
- 2.4 The majority of amendments to the Act came into effect on 1 August 2014.

## 3.0 RECOMMENDATIONS

- 3.1 It is recommended that the Education and Communities Committee note the key points set out in the Schools (Consultation) (Scotland) Act 2010.

**Patricia Cassidy**  
**Corporate Director**  
**Education, Communities and Organisational Development**

## **4.0 BACKGROUND**

4.1 The Schools (Consultation) (Scotland) Act 2010 was amended in 2014 in part 15 of *The Children and Young People (Scotland) Act 2014*. The amended Act stipulates that a Council has to consult with parents, children, young people and the wider community when it proposes changes to its school estate. This includes changes such as proposals to close schools or change a school's catchment area. The Schools (Consultation) (Scotland) Act 2010 sets out the process that Councils must follow when they do this.

## **5.0 PROPOSALS**

5.1 It is proposed that the Education and Communities Committee note the key points set out in the Schools (Consultation) (Scotland) Act 2010.

## **6.0 SCHOOLS (CONSULTATION) (SCOTLAND) ACT 2010**

6.1 The Act's provision are three-fold:

1. to establish a coherent and robust, workable, open and transparent consultation process for all school closures and other proposals affecting schools;
2. to ensure that a decision by a Council to close a rural school is only taken after the Council has taken into account a number of other considerations, explored all reasonable alternatives and assessed the likely implications of the closure; and
3. to establish a system for referring closure decisions to the Scottish Ministers for consent with a power to call in decisions and determine these. In due course, School Closure Review Panels will be introduced to determine closure proposals when Scottish Ministers have called in a proposal.

6.2 The Act defines 10 types of proposal that trigger the consultation process. Proposals requiring consultation are those where a Council proposes to:

- discontinue permanently a school (this includes special schools and nursery schools) or a stage of education in a school (this includes years in a secondary school or special class in a mainstream school or where the Council proposes to discontinue Gaelic medium provision);
- establish a new school or stage of education in a school;
- relocate a school or nursery class;
- vary the catchment area or modify the guidelines for placing requests for a school;
- vary the arrangements for the transfer of pupils from a primary school to a secondary school;
- change the school commencement date of a primary school;
- vary arrangements for the constitution of a special class in a school other than a special school;
- discontinue arrangements for the provision of transport by the Council for pupils attending a denominational school;
- change a denominational school into a non-denominational school; and
- discontinue a further education centre which is managed by the Council.

6.3 The Council must publish a proposal paper containing the following:

- details of the proposal

- proposed date for implementation
- the educational benefits statement
- other appropriate supporting evidence or information
- a summary of the consultation process

There are 2 additional requirements:

- where a proposal relates to closure of a school or stage of education, it must also contain information about the financial implications of the proposal
- for rural school closure proposals, it must detail the steps the Council has taken to comply with sections 12, 12A and 13 of the Act, as amended.

6.4 The amendments to the Act have clarified the duties for Councils. Where a Council is notified of any alleged inaccuracy or omission in a proposal paper or where an inaccuracy or omission is discovered, the Council must investigate and then inform the notifier of its decision and its reasons for reaching its decision. The Council must also invite the notifier to make representation to it if the notifier disagrees with the Council's decision. When the omission or inaccuracy relates to a material consideration, the Council must take action. This should include:

- publishing a corrected proposal paper
- sending the corrected paper to Education Scotland
- issuing a notice to all consultees correcting the inaccuracy or providing omitted information

6.5 The Council must give the relevant mandatory consultees notice of the proposal which would include:

- a summary of the proposal, where to get a copy of the proposal paper and how to make written representations
- the closing date of the consultation, which will be a minimum of 6 weeks to include at least 30 school days
- the time, date and venue of the public meeting, if these are known at the time, otherwise the information must follow in an additional notice

6.6 The Act requires that in respect of every proposal, a Council must consult (for at least 6 weeks):

- the pupils at any affected school(s), (in so far as the Council considers them to be of a suitable age and maturity)
- the Parent Council(s) of those affected school(s)
- the parents of pupils and children, including those expected by the Council to attend any affected school within 2 years of the date of publication of the proposal paper
- all staff (teaching and other) at the school, including relevant trade unions and professional associations

6.7 For certain categories of proposal, authorities must consult other relevant people or groups. The Council must also consult other users of any affected school as the Council consider relevant, but only in cases of proposals to close, establish or relocate provision. Finally, the Council must also consult such other Councils as it considers relevant.

6.8 The Council must also hold and be present at a public meeting and give advance notice of the date, time and venue of the meeting to relevant consultees and Education Scotland. It is not a legal requirement for HM Inspectors to attend the public meeting. However, when HM Inspectors attend, they do solely as an observer and should not be

drawn into discussion or debate. The responsibility for conducting the public meeting rests solely with the Council.

- 6.9 The Act requires that reports are prepared by HMIE (Education Scotland). HM Inspectors have 3 weeks to consider the educational aspects of a Council's proposal and submit a report to the Council. The Act requires the Council to consider the report from HM Inspectors and then prepare its final consultation report.
- 6.10 The final consultation report must contain:
- an explanation of how the Council has reviewed the proposal
  - the report in full from Education Scotland
  - a summary of points raised during the consultation – both written and oral – and the Council's responses to them
  - the substance of any alleged inaccuracies and details of the Council's response and any action taken
  - any omitted information
- 6.11 The Act requires a number of factors to be taken into account as part of a preliminary consideration of a proposal to close a rural school. The Scottish Government maintains a rural school list that lists all those schools that are considered to be rural schools for the purposes of the Act.
- 6.12 If the proposal relates to the closure of a school or stage of education, the Council must notify Scottish Ministers within the period of 6 working days after taking its final decision. The Council must also publish on its website the fact that it has notified Scottish Ministers of its decision and of the period during which consultees have the opportunity to make representation to Ministers. Ministers have a power to call in a closure decision, but only when it appears to Ministers that the Council has failed in a significant regard to comply with the Act's requirements or, in coming to its decision, has failed to take proper account of a material consideration relevant to the proposal.
- 6.13 Education Scotland has developed guidance to support Councils to meet the requirements of the amended Act when they propose changes to the school estate. This guidance includes an overview of the key points from the amended Schools (Consultation) (Scotland) Act 2010; a timeline summary relating to consultation; and a self-evaluation toolkit designed to assist Councils in the preparation of educational benefits statements within proposals taken forward under the terms of the amended Schools (Consultation) (Scotland) Act 2010.

## 7.0 IMPLICATIONS

- 7.1 There are no direct financial costs associated with the information provided in this paper.

### Financial Implications:

#### One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report £000	Virement From	Other Comments
N/A					

## Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact £000	Virement From (If Applicable)	Other Comments
N/A					

### 7.2 Legal

Failure to comply with the Schools (Consultation) (Scotland) Act 2010 will result in a breach of our statutory requirements.

### 7.3 Personnel

There are no personnel implications.

### 7.4 Equalities

It would be appropriate to undertake an equality impact assessment of proposals made to ensure equality of opportunity for all.

### 7.5 Repopulation

N/A

## 8.0 CONSULTATIONS

8.1 N/A

## 9.0 BACKGROUND PAPERS

9.1 'Schools (Consultation) (Scotland) Act 2010 as amended – Overview and guidance for education authorities August 2014'. This document is available from the Education Scotland website ([www.educationscotland.gov.uk](http://www.educationscotland.gov.uk)).