

# Schools (Consultation) (Scotland) Act 2010

**Overview and guidance for local authorities**

**Revised August 2022**

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Links to:

Relevant legislation, guidance and Education Scotland reports on council proposals:

- [Schools \(Consultation\) \(Scotland\) Act 2010](#)
- [Schools \(Consultation\) \(Scotland\) Act 2010: guidance](#)
- [Children and Young People \(Scotland\) Act 2014](#)
- [Early learning and childcare: statutory guidance - July 2021](#)
- [Education Scotland reports on council proposal](#)

## Introduction and Overview

This guide has been prepared by Education Scotland to support councils when they propose changes to the school estate. It has been prepared to complement the Statutory Guidance produced by Scottish Government. It summarises the key points set out in the [Schools \(Consultation\) \(Scotland\) Act 2010](#).<sup>1</sup>

The Act establishes a rigorous, open and transparent system for consulting on school closures and other changes to the school estate as proposed by councils. The Act requires all councils to follow the same basic sequence, the key phases of which are:

- a council makes the decision to consult on a proposal;
- the council prepares a proposal paper, including an educational benefits statement and other required information;
- the council publishes the proposal paper, advertises the fact and notifies Education Scotland and mandatory consultees;
- the council meets certain consultation requirements, including holding a public meeting;
- the consultation ends, after a minimum of six weeks, including at least 30 school days<sup>1</sup>;
- once the consultation period is complete and upon receipt of relevant papers from the council, HM Inspectors have three weeks<sup>2</sup> to prepare and finalise a report on the proposal and send it to the council;
- upon receipt of the report from HM Inspectors, the council reviews the proposal having regard to the report by HM Inspectors and representations received during the consultation period and then prepares and publishes a final consultation report; and
- following publication of the final consultation report, the council must allow three weeks to elapse before taking its final decision on the proposal.

If the proposal concerns a school closure, the council must notify Scottish Ministers within the period of six working days starting with the day of its final decision. At the same time, the council must publish on its website the fact that it has notified Scottish Ministers of its decision and specify the period during which consultees have the opportunity to make representations to Ministers, including the date on which that period ends. There are additional requirements which relate to rural school closures. Once notified, Ministers will be involved in the following way.

- Ministers have a power to call in a closure decision, but only where it appears to Ministers that the council may have failed in a significant regard to comply with the Act's requirements or, in coming to its decision, may have failed to take proper account of a material consideration relevant to the proposal. Ministers have up to eight weeks from the date of the council's decision to decide whether or not to issue a call-in notice.
- During the first three weeks of this period, anyone is able to make representations to Ministers on whether the decision should be called-in.
- During this period, the council may not proceed further, in whole or part, with the proposed closure. Ministers may come to a decision in less than eight weeks (but not before the three weeks for representations to be made to them has elapsed).
- The Act, as amended, gives Ministers and School Closure Review Panels the right to call on advice from Education Scotland in relation to a proposal at the call-in or determination stage.

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<sup>1</sup> The Act defines a school day as a day on which a school is ordinarily open to pupils for the purpose of their school education.

<sup>2</sup> The three week period can be extended by agreement between the council and Education Scotland.

This guide is organised in such a way that it provides an overview and summary of the Act. It also provides a summary of the timeline for consultation and the various activities that take place during the period of consultation.

## Summary of the Act

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. To achieve this, the Act's provisions 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 requiring referral of closure decisions to the Scottish Ministers for review with a power to call in decisions for determination by an independent School Closure Review Panel.

## 1. Consultation Process

### Proposals requiring consultation

The Act defines ten 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 all nursery classes in a primary school or a special class in a mainstream school or where the council proposes to discontinue Gaelic medium provision);
- establish a new school or stage of education (except a nursery school or a nursery class) in a school;
- relocate a school or part of a school (except a nursery school or nursery class);
- vary any admission arrangements for a school, including the catchment area or modify the guidelines for placing requests (note that these two types of changes are illustrative rather than exhaustive);
- vary the arrangements for the transfer of pupils<sup>3</sup> 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.

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<sup>3</sup> Throughout, the Act makes reference to pupils rather than children and young people. The use of pupils in this document relates to its specific use within the legislation.

## Proposal Paper

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; and
- a summary of the consultation process.

There are two 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; and
- 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.

## Educational Benefits Statement<sup>4</sup>

Within the proposal paper, the council must produce an educational benefits statement. The educational benefits statement should set out the council's assessment of the likely educational benefits that it believes will result from implementation of the proposal. The council should set out its assessment of the effects of the proposal (if implemented) on:

- the pupils of any affected school(s);
- other users of the school(s);
- children who would be likely to become pupils at the school(s) within two years of the publication of the proposal paper; and
- other pupils in the council area.

The statement should include an analysis of the following:

- any other likely effects of the proposal;
- how the council intends to minimise or avoid any adverse effects that may arise from the proposal; and
- benefits which the council believes will result from implementation of the proposal, and the council's reasons for coming to these beliefs.

It is important that the educational benefits statement sets out clearly the positive benefits that would accrue from implementation of a proposal. It will be important for the council to set out and summarise clearly why it believes implementation of a proposal is of overall benefit to the pupils of the affected school, children who would be likely to become pupils at the school(s) within two years of the publication of the proposal paper and other children and young people in the council area.

Statements of educational benefits prepared under the terms of the Act need to be comprehensive and detailed. They need to be specific to a particular proposal and not rely on generalised assertions. For example, it is not sufficient for a council to say the creation of a larger school will enable it to improve the curriculum. If it makes this claim, a council will need to demonstrate the specific improvements to the curriculum implementation of the proposal will bring.

In setting out the educational benefits of a proposal a council needs to set out clearly and specifically how a proposal will improve outcomes for children and young people and enable them to do their best<sup>5</sup>. This may include how the proposal will help improve levels of children

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<sup>4</sup> Education Scotland has produced a self-evaluation toolkit for councils to assist in the preparation of educational benefits statements. For details please see [Annex 2](#).

<sup>5</sup> Section 3 of the Standards in *Scotland's Schools etc Act 2000* requires councils to endeavour to raise standards and secure improvement in the quality of school education provided in their schools for all learners.

and young people's achievements and broaden the range of opportunities for young people to develop their skills for life, work and learning. An educational benefits statement that merely states a proposal will be of benefit without setting out clearly the specific benefits implementation of a proposal will bring will be open to criticism.

In preparing educational benefits statements, councils may wish to consider how a proposal will improve the quality of the curriculum and create a more positive environment for effective learning and teaching better matched to the needs of learners. A council may wish to consider the ways in which a proposal will improve the depth, breadth, coherence, relevance, challenge and enjoyment provided by the curriculum. It may also consider the ways in which the proposal creates opportunities for greater personalisation and choice for children and young people with improved continuity and progression in their learning. The proposal may also wish to consider how the proposal will create more opportunities for children and young people to participate in well-judged paired and group activities.

A strong educational benefits statement will set 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. This will include setting out how implementation of the proposal will improve support for children and young people who require additional support for learning<sup>6</sup>. 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](#).

The council may also wish to consider setting out the positive impact implementation of the proposal will have 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 a council may wish to consider is the positive impact of the proposal on ensuring equality of opportunity for all<sup>7</sup> within an inclusive educational experience. The council may also wish to set out the ways in which access to improved accommodation and facilities will bring improvements to the environment for learning for children and young people.

Where appropriate, the council may wish to consider how implementation of the proposal will enhance and build leadership and leadership capacity within the schools covered by the proposal and will improve arrangements for planning and taking forward improvements through effective self-evaluation. The council may also wish to consider the ways in which the proposal will improve school improvement planning, partnership working and liaison between schools. When considering the impact of the proposal on other children and young people in the council area within the educational benefits statements, it is appropriate for a council to take appropriate and relevant account of financial and budgetary considerations<sup>8</sup>. This is particularly the case where the costs of the delivery of education may be to the detriment of the quality of education provided to other children and young people in the council area. However, in doing so, the council must set out in an open and transparent way the financial case for the proposal and how it will enable the council to secure best value through the effective, efficient and sustainable use of its resources. Any financial information needs to be accurate, clearly set out and rigorously evidenced. The impact, if any, of implementation of the proposal on the General Revenue Grant needs to be set out clearly.

In assessing the likely benefits and effects on other users, councils will need to take into consideration a range of factors that may vary in scale and from case to case, depending on the particular circumstances and the type of proposal. In many circumstances, the affected groups

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<sup>6</sup> In terms of the Education (Additional Support for Learning) (Scotland) Act 2004 additional support needs may arise from a wide range of factors and circumstances, including, for example, the learning environment, family circumstances, disability or health needs, or social and emotional factors.

<sup>7</sup> The proposal may set out how it assists the council to fulfil its duties under the Equality Act 2010, including the Public Sector Equality Duty.

<sup>8</sup> Section 1 of the Education (Scotland) Act 1980 requires councils to secure for their area adequate and efficient provision of school education. Section 17 of the Act requires councils to provide sufficient school accommodation.

will not necessarily share a common benefit from what is proposed. In these cases, it is important that the educational benefits statement demonstrates clearly how the council has identified and intends to balance these diverse interests.

### Notice and consultation period

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 must be open for a minimum of 6 weeks and include at least 30 school days; and
- the time, the date and venue of the public meeting, if these are known at the time, otherwise this information must follow in an additional notice.

### Correction of the proposal paper

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 should also invite the notifier to make representations to it if the notifier disagrees with the council's decision. Where 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; and
- issuing a notice to all consultees correcting the inaccuracy or providing the omitted information.

If it is appropriate, the council may choose to extend or restart the consultation period. The council's final consultation report must set out the actions it has taken to address any alleged inaccuracies and omissions notified to it.

### Consultees

The Act requires that in respect of every proposal, a council must consult:

- the pupils at any of the 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 two years of the date of publication of the proposal paper; and
- all staff (teaching and other) at the school, including relevant trade unions and professional associations.

For certain categories of proposal, authorities must consult other relevant people or groups. These include persons authorised by the relevant church or denominational body (where the school is a denominational school), community councils and community planning partnerships (where there is a direct community interest in the proposal), Bòrd na Gàidhlig (where the proposal affects Gaelic medium education). The council must also consult such other users of any affected school as the council considers relevant, but only in cases of proposals to close, establish or relocate provision. These may include adult users of the school's educational facilities, community users of the buildings or users of the sports facilities both indoor and outdoor. Finally, the council must also consult such other councils as it considers relevant.

### Public Meeting

The council must 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 so 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.

[The Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022](#) allows for education authorities to make application to Scottish Ministers to hold public meetings using remote facilities instead of holding an in-person meeting. (With effect from 1 October 2022). A direction to hold public meetings remotely may be given 'only if the Scottish Ministers are satisfied that giving the direction is a necessary and proportionate action for or in connection with the protection of public health.' This bill also enables education authorities to disregard the duty under the 2010 Act to publish documentation in printed form. They must, however, make documentation available 'in such a manner as the education authority considers appropriate instead.'

## Involvement of Education Scotland

The Act requires that reports are prepared by HM Inspectors of Education (HMI) working for Education Scotland. HM Inspectors have three weeks from the date of submission by the council of certain documents specified in the Act to consider the educational aspects of a council's proposal and submit a report to the council. The three-week period may be extended by agreement between the council and HM Inspectors. Although not specified in the legislation, week one of the three-week period should be during term time. This approach enables HM Inspectors to visit schools as part of their consideration of the proposal and to meet with children, young people, staff and parents who may be affected by the proposal.

The three week period commences on the day Education Scotland receives the relevant papers from the council, **not** from the last day of the initial consultation period. The relevant papers the council should provide to Education Scotland include:

- a copy of the proposal paper;
- copies of the written representations, or, if HM Inspectors agree, a summary of them;
- a summary of oral representations made at the public meeting; and
- any other related documentation.

Councils should make it explicit that they have a duty to share written responses with Education Scotland, and ensure that relevant Privacy Notices reflect that.

Upon receipt of the proposal paper and other relevant documentation, HM Inspectors will consider the educational aspects of the proposal. HM Inspectors will ensure that their report has regard to:

- the educational benefits statement;
- the representations received by the council; and
- any further written representations made directly to Education Scotland on any educational aspect of the proposal which is considered relevant.

The Act provides a specific power for HM Inspectors to enter schools for the purposes of their functions under the Act and make such enquiries as are considered appropriate. The Act requires the council to consider the report from HM Inspectors and then prepare its final consultation report. The consultation report must include the report from HM Inspectors in full.

## Consultation report

The Act requires the council to consider the report from HM Inspectors and then prepare its final consultation report. The council must publish its final consultation report after the end of the consultation period and receipt of the report from HM Inspectors. It is important that a council gives itself sufficient time to consider the report from HM Inspectors and other responses to the

consultation before preparing its final consultation report. 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 response to them;
- the substance of any alleged inaccuracies and details of the council’s response and any action taken; and
- any omitted information.

For rural school closure proposals, the council is required to give its assessment, following consultation, of the proposal in terms of the three factors it is required to take into account. This is required both for the proposal and any reasonable alternatives, including those proposed through the consultation. The council must then confirm whether, and if so, why, it considers the proposal (wholly or partly) as the most appropriate response to the reasons it identified for bringing forward the proposal.

### Additional time for consideration

The council cannot take a decision on a proposal until three weeks have elapsed from the date it publishes its final consultation report.

## 2. Rural School Closures

The Act establishes a presumption that no rural school will be proposed for closure unless, and until, a number of factors have been taken into account as part of a preliminary consideration. However, this does not mean that rural schools cannot be proposed for closure as there will be circumstances in which that is the right or only course of action.

Before proposing to close any rural school, the council must identify its reasons for formulating the proposal. It must also consider if there are any reasonable alternatives to closure of the school. Reasonable alternatives include steps that would result in the school or stage of education remaining open. In formulating a closure proposal on a rural school, the council must assess for the proposal, and each of the alternatives to the proposal. It must assess:

- the likely educational benefits of the proposal and the alternatives;
- the effect on the local community; and
- the effect of any different travelling arrangements.

The council may only publish a proposal paper to discontinue the school or stage of education if it considers that implementation of the proposal is the most appropriate course of action.

In its proposal paper, the council must:

- explain the reasons for the closure;
- describe what steps, if any, it took to address those reasons before formulating the proposal and, if it did not take such steps, explain why it did not do so;
- set out any alternatives to the proposal identified by the council; and
- explain the council’s assessment of these alternatives and the reason why the council considers implementation of the proposal is the most appropriate course of action.

In reviewing the proposal and preparing its final consultation report, the council needs to carry out a further assessment of the proposal and each of the alternatives set out within it. If, during the consultation period, the council receives written representations on other reasonable alternatives, it must, for each of them, assess the likely educational benefits of the proposal and

the alternatives, the effect on the local community, and the effect of any different travelling arrangements.

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.

### 3. Ministerial Call-In

If the proposal relates to the closure of a school or stage of education, the council must notify Scottish Ministers within the period of six working days beginning with the day of its final decision. The council must also publish on its website the fact that it has notified Scottish Ministers of its decision, the opportunity to make representations to Ministers, and the date on which the three week period for such representations ends. For rural school closures, a council must also give notice of the reasons why the council is satisfied that closure is the most appropriate response to the reasons for bringing forward the proposal. Once notified, Ministers will be involved in the following way.

- Ministers have a power to call in a closure decision, but only where it appears to Ministers that the council may have failed in a significant regard to comply with the Act's requirements or, in coming to its decision, may have failed to take proper account of a material consideration relevant to the proposal. Ministers have up to eight weeks from the date of the council's decision to decide whether or not to issue a call-in notice.
- During the first three weeks of this period, anyone is able to make representations to Ministers on whether the decision should be called-in.
- During the call-in period, the council may not proceed further, in whole or part, with the proposed closure. Ministers may come to a decision sooner than eight weeks (but not before the three weeks for representations to be made to them has elapsed).
- The Act, as amended, has established [Schools Closure Review Panels](#) (SCRPs) whose duties came into effect on 30 March 2015. SCRPs are an independent public body whose Convener has responsibility for establishing and supporting Panels to consider school closure decisions which are called in by the Scottish Ministers.
- If Ministers decide to issue a call-in notice, they must refer the closure proposal to the Convener of SCRPs. The Convener is required to constitute a Panel to review the proposal within seven days of receiving it.
- The Panel is required to review the totality of the authority's decision and to reach a determination within eight weeks of the Panel being constituted whether the education authority has failed in a significant regard to comply with the requirement imposed on it by (or under) the Act so far as they are relevant to the proposal, or has failed to take proper account of a material consideration relevant to its decision to implement the proposal. The Panel has three possible decisions open to it. It may grant consent either with or without conditions, refuse consent or refuse consent and remit the proposal back to the education authority for a fresh decision.
- The Act, as amended, gives Ministers and SCRPs the right to call on advice from Education Scotland in relation to a proposal at the call-in or determination stage.

### Denominational schools

As a safeguard for the continued provision of denominational education, local 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.
- 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, amalgamation; and the church disagree with the proposal and after consultation with the authority and the church 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 other public schools.

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 1980 Act.

# Annex 1

## Consultations Timeline

The Act requires a report from Education Scotland in the case of **every** proposal requiring consultation. The council and HMI Lead Officer from Education Scotland will need to work together closely in agreeing the three-week period for the completion of the report by HM Inspectors. Such an approach enables Education Scotland to plan the efficient, effective and proportionate deployment of its resources to meet its duties as set out in the Act. This is particularly important with regard to the three-week period within which HM Inspectors must complete their report. The following table sets out a timeline for the various phases of the consultation process.

<b>Phase One: For rural school closure proposals only, the education authority must meet the preliminary requirements before publishing such a proposal paper</b>
<p>The authority has to:</p> <ul style="list-style-type: none"><li>• identify its reasons for formulating the proposal.</li><li>• consider whether there are any reasonable alternatives to the proposal as a response to those reasons.</li><li>• assess, for the proposal and each of the alternatives, the likely educational benefit; the likely effect on the local community; and the likely effect of any different travelling arrangements.</li><li>• decide, in light of this assessment, whether or not implementation of the closure proposal would be the most appropriate response to the reasons for the proposal. If the authority concludes that closure is the most appropriate response it should proceed to Phase Two.</li></ul>
<b>Phase Two: An education authority consults on a proposal – for a minimum of six weeks, including at least 30 school days</b>
<p>The authority has to:</p> <ul style="list-style-type: none"><li>• prepare a proposal paper, which must include an educational benefits statement and all other required information, including:<ul style="list-style-type: none"><li>• for closure proposals, financial information.</li><li>• for rural school closure proposals only, an explanation of the reasons for the proposal, the steps (if any) the authority took to address those reasons before formulating the proposal or why it did not take such steps, any alternative(s) to the proposal and the authority’s assessment of these alternatives, and the reasons why the authority considers implementation of the proposal the most appropriate response to the reasons for the proposal.</li></ul></li><li>• publish the proposal paper, advertise the fact and notify Education Scotland and relevant consultees as prescribed by schedule 2 of the 2010 Act.</li><li>• give the relevant consultees notice of the proposal which would include:<ul style="list-style-type: none"><li>○ a summary of the proposal, where to obtain a copy of the proposal paper and how to make written representations;</li><li>○ the closing date of the consultation, which will be a minimum of six weeks to include at least 30 days of term time;</li><li>○ give advance notice of the date, time and venue of the public meeting(s) about the proposal to the relevant consultees and Education Scotland;</li></ul></li></ul>

- where an inaccuracy or an omission in the proposal paper is alleged or discovered, investigate and determine whether there is an inaccuracy or omission and whether it is material, complying with section 5 of the 2010 Act; and
- following the end of the consultation, provide Education Scotland with copies of the written representations, a summary of oral representations made at the public meeting(s) and any other relevant documentation.

### **Phase Three: Preparation of Education Scotland’s report on the educational aspects of the proposal - to be completed within a maximum of three weeks**

The three week period begins **once** Education Scotland receives the proposal paper and other relevant documentation. The timing of this involvement should normally be agreed between Education Scotland and the education authority **well in advance**.

HM Inspectors will consider the educational aspects of the proposal, including:

- the educational benefits statement;
- the representations received by the education authority, and as a result of any enquiries they make;
- any further written representations made directly to Education Scotland on any educational aspect of the proposal which is considered relevant; and
- HM Inspectors will submit a report to the council within a maximum of three weeks, although this can be extended by agreement between the authority and Education Scotland.

### **Phase Four: Consultation report - within no specified timescale, the education authority prepares and publishes a consultation report**

The authority publishes a consultation report. It must contain:

- an explanation of how it has reviewed the proposal;
- the Education Scotland report;
- a summary of points raised during the consultation – both written and oral – and the authority’s response to them;
- where applicable, the substance of any alleged inaccuracies or omissions and details of the authority’s response and action taken;
- where the proposal is a closure proposal, an explanation of the Ministerial call in process and the opportunity for individuals to make representations to the Scottish Ministers in relation to call in; and
- For rural school closure proposals, the authority is also required to explain the authority’s further assessment (carried out as part of the review of the proposal under section 9(1)) of the likely educational benefits; the likely effect on the local community; and the likely effect of any different travelling arrangements for the proposal and each of the alternatives identified by the authority; as well as its assessment of these factors for any other reasonable alternative suggested in representations. It must also explain if this assessment differs in from its earlier assessment under section 12A(2)(c), and whether and, if so, why the education authority considers implementation of the proposal to be the most appropriate response to the reasons for the proposal.

### **Phase Five: Education authority decision - a minimum of three weeks after the publication of the consultation report the authority publishes its final decision**

The authority takes its final decision on the proposal and implements the decision. However, **where the authority makes a closure decision:**

- it must notify Scottish Ministers within six working days of making the decision, starting with the day on which the decision is made, and send a copy of the proposal paper and its consultation report;
- it must also at the same time publish a notice on its website that the Scottish Ministers have been notified. The notice must also make clear the opportunity to make representations to Ministers, where these representations are to be sent and the deadline for submitting them; and
- in the case of a rural school closure proposal, the authority must also publish a notice on its website of its decision to implement the proposal and why it is satisfied that implementation is the most appropriate response to the reasons for formulating the proposal (section 11A(3) of the 2010 Act), and send this notice to the Scottish Ministers with its notification of the decision.

If the authority decides not to proceed with a closure -proposal, Phase Eight applies.

### **Phase Six: Ministerial call in, only where the education authority makes a closure decision - a maximum of eight weeks**

Ministers have the power to call in an authority's decision, but only in relation to school closure decisions and **only** where it appears to Ministers that the authority may have failed (a) in a significant regard to comply with the Act's requirements imposed on it by (or under) the 2010 Act so far as they are relevant to the closure proposal, or, (b) to take proper account of a material consideration relevant to its decision to implement the proposal.

This phase consists of.

- An initial three weeks from the date of the authority's decision, during which anyone can make representations to Ministers on whether the decision should be called-in.
- Up to a further five weeks for Ministers to decide whether or not to issue a call-in notice. Ministers may require information from the authority and advice on educational aspects from HM Inspectors during this period.
- Where Ministers decide to call in a proposal, they do so by issuing a call-in notice to the council within the eight-week period.

During the eight week period, the education authority may not proceed to implement the proposed closure, unless Ministers have informed the authority that they do not intend to call in the proposal. However, such a decision will not be made before the three week period for representations to be made to them has elapsed.

### **Phase Seven: School Closure Review Panel Determination, a maximum of nine or 17 weeks**

If Ministers call in a closure proposal, it is referred to the Convener of the School Closure Review Panels. The Convener must within the period of 7 days beginning with the day on which the call in notice is issued constitute a School Closure Review Panel.

The Panel considers whether the education authority has failed in a significant regard to comply with the requirement imposed on it by (or under) the Act so far as they are relevant to the proposal, or has failed to take proper account of a material consideration relevant to its decision to implement the proposal

In determining a closure proposal, the Panel may:

- refuse consent to the proposal;
- refuse consent and remit it to the education authority for a fresh decision; and

- grant consent to the proposal, either subject to conditions, or unconditionally.

The education authority may not implement its proposed closure in whole or in part until the Panel has made its determination. The Panel must notify the education authority of its decision within eight weeks from when the Panel was constituted or within 16 weeks if the Panel has issued a notice to the education authority that a decision has been delayed. A decision by the Panel may be appealed by the authority or a relevant consultee to the sheriff on a point of law.

#### **Phase Eight: Restriction on school closure consultation for five years**

If the School Closure Review Panel refuses consent to the closure proposal, or, following publication of its consultation report, the authority decides not to implement the closure proposal, the authority cannot publish a further closure proposal in relation to the school for five years, unless there is a significant change in the school's circumstances. This period starts on the day on which the decision was made.



## Annex 2

### Self-evaluation toolkit

This self-evaluation toolkit has been prepared by Education Scotland to assist councils in the preparation of educational benefits statements<sup>9</sup> within proposals taken forward by councils under the terms of the Schools (Consultation) (Scotland) Act 2010. It sets out the key features of best practice and poses a series of reflective questions. It should not be seen as a prescriptive list. An education benefits statement need not contain references to all areas covered by this toolkit. However, neither should the toolkit limit the range of factors that a council may deem to be relevant in the case of a particular proposal. It is intended to provide support to council officers when developing, preparing and reviewing educational benefits statements. Statements of educational benefits prepared under the terms of the Act need to be comprehensive and detailed. They also need to be specific to a particular proposal and not rely on generalised assertions.

Key features of best practice	Reflective question
Statements of educational benefits prepared under the terms of the Act are comprehensive and detailed.	To what extent is the educational benefits statement comprehensive and detailed?
The benefits accruing from a proposal are specific to a particular proposal and do not rely on generalised assertions.	How well does the proposal set out the specific benefits that will accrue from implementation of the proposal?
The proposal sets out how it will help improve outcomes for children and young people and enable them to do their best <sup>10</sup> .	How well does the proposal set out how it will improve outcomes for children and young people?
The proposal sets out how it will help broaden the range of opportunities for young people to achieve and develop their skills for life, work and learning.	In what ways will the proposal help improve young people's achievements? How well does the proposal make a case for broadening the range of opportunities for children and young people?
The proposal indicates the ways in which the curriculum will be improved and gives due attention to the principles of challenge, enjoyment, breadth, continuity, progression, depth, personalisation and choice, coherence and relevance.	What specific improvements to the curriculum will result from the proposal? For example, to what extent does the proposal make a case for improving the curriculum with regard to the breadth, range and depth of children and young people's learning, including continuity and progression in their learning?
The proposal indicates the ways in which learners' experiences, including involving learners more actively in their own learning and development will be enhanced.	How will the proposal improve the overall quality of children and young people's learning experiences, including enabling them to be active in their own learning and development?

<sup>9</sup> The toolkit applies to Educational Benefits Statements as they apply to all schools and pre-school settings that are covered by the Act.

<sup>10</sup> Section 3 of the Standards in *Scotland's Schools etc Act 2000* requires councils to endeavour to raise standards and secure improvement in the quality of school education provided in their schools for all learners.

	How well does the proposal make it clear that learners will benefit from improved learning experiences with, for example, increased opportunities to work together in pairs, groups and teams?
The proposal sets out clearly how approaches for meeting children and young people's personal, social, health and emotional needs will be improved.	In what ways will the proposal improve approaches for meeting children and young people's needs? For example, to what extent does the proposal set out clearly how it will improve approaches for meeting children and young people's personal, social, health and emotional needs and enhance their personal and social development?
The proposal sets out clearly how arrangements for meeting children and young people's learning needs, particularly for those who require additional support for learning will be improved <sup>11</sup> .	In what ways will the proposal improve arrangements for meeting children and young people's learning needs? How well does the proposal set out clearly how arrangements for meeting the needs of all learners and addressing potential barriers to learning will be improved, including for those who require additional support for learning?
The proposal sets out clearly the positive impact it will have on enhancing equality of opportunity for all within an inclusive educational experience.	To what extent does the proposal set out clearly how it will enhance equality of opportunity for all within an inclusive educational experience?
The proposal sets out the ways in which the environment for learning for children and young people will be improved, particularly through access to improved accommodation and facilities.	In what ways will the proposal improve the environment for learning? How well does the proposal set out clearly how improvements to accommodation and facilities will improve the environment for children and young people's learning?
The proposal sets out how it may have a possible positive impact on the overall morale and ethos of the school.	In what ways will implementation of the proposal improve the overall morale and ethos of the school? How well does the proposal set this out?
The proposal sets out the ways in which leadership, leadership capacity and arrangements for planning and taking forward improvements through effective self-evaluation will be enhanced and improved.	To what extent does the proposal set out clearly how the proposal will enhance leadership, build leadership capacity and/or improve arrangements for planning and taking forward

<sup>11</sup> Additional Support Needs may arise from a wide range of factors or circumstances, for example, the learning environment, family circumstances, disability or health needs, or social and emotional factors. 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.

	improvements through effective self-evaluation?
The proposal sets out the way in which partnership working and liaison between parents, other schools and possible partners will be improved.	In what ways will the proposal improve partnership working and liaison? To what extent does the proposal set out clearly how it will improve partnership working and liaison with parents, other schools and other possible partners?
The proposal sets out in an open and transparent way the case for securing best value <sup>12</sup> through the effective and efficient use of the council's resources <sup>13</sup> .	To what extent does the proposal set out the case for securing best value through the effective and efficient use of the council's resources in an open and transparent way?
Any financial information is accurate, clearly set out and rigorously evidenced.	Is financial information accurate, clearly set out and rigorously evidenced?
If appropriate, the proposal needs to set out clearly an assessment of the impact of the proposal on the General Revenue Grant that the council may receive in future.	How well does the proposal set out clearly an assessment of the impact of the proposal on the General Revenue Grant that the council may receive in future?
The proposal sets out clearly how the council will monitor the impact of its implementation?	How well does the proposal set out the council's arrangements for monitoring the impact of the proposal to ensure it leads to sustained educational benefits?

<sup>12</sup> *The Local Government in Scotland Act 2003* and the 2004 statutory guidance set out the duties councils have to secure best value in the delivery of services.

<sup>13</sup> Section 1 of the *Education (Scotland) Act 1980* requires councils to secure for their area adequate and efficient provision of school education. Section 17 of the Act requires councils to provide sufficient school accommodation.

## Rural school factors

<p>The proposal clearly demonstrates that the council has identified its reasons for formulating the proposal and has considered fully reasonable alternatives to the closure of the school before consulting on the closure of the school.</p>	<p>To what extent does the proposal demonstrate that the council has given due consideration to reasonable alternatives to the closure of the school? Is it clear that the council only published its proposal paper after establishing that implementation of the proposal was the most appropriate course of action?</p>
<p>The proposal demonstrates that the council has:</p> <ul style="list-style-type: none"> <li>explained the reasons for the closure;</li> <li>described what steps, if any, it has taken to address these reasons before formulating the proposal and, if it did not take such steps, explain why it did not do so;</li> <li>set out any alternatives to the proposal identified by the council, and explained the council's assessment of these alternatives and the reason why the council considered implementation of the proposal as the most appropriate course of action.</li> </ul>	<p>To what extent does the proposal explain the council's reasons for the closure? How well does the proposal describe the steps taken by the council to address the reasons for closure? Does the proposal set out alternatives to closure the school? How well does the council explain its assessment of these alternatives? How valid is the council's assessment that closure of the school is the most appropriate course of action?</p>
<p>The proposal carefully considers the likely impact on the local community of the school's closure. This may include a community impact assessment.</p>	<p>How well has the council assessed the impact of the closure of the school on the local community? For example, the impact on the sustainability of the community, the role the school plays in the community and on the community's access to and use of the buildings, grounds and facilities if the school were to close.</p>
<p>The proposal sets out clearly the council's consideration of the impact of the travelling arrangements for those children and young people directly affected by implementation of the proposal.</p>	<p>How well does the proposal explore and set out the impact of the revised travel arrangements on children and young people? For example, any increases in the length of time required to travel to school and the possible impact of adverse weather on the closure of routes to schools.</p>

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