

Agenda Item	10.
Report No	ECS/54/09

Changes in Educational Provision – Consultative Procedures

Report by Director of Education, Culture and Sport

SUMMARY

This report seeks Member approval to introduce revised school consultative procedures based on the provisions contained within the Schools (Consultation) (Scotland) Bill currently being enacted in the Scottish Parliament and due to become law in Spring 2010.

1. INTRODUCTION

- 1.1 The current Changes in Educational Provision - Consultative Procedures were approved by the Highland Council in November 1996. They reflect the statutory requirements outlined in The Education (Publication and Consultation etc) (Scotland) Regulations 1981. The ECS Committee on the 25th September 2003 agreed a report by the Director that outlined the principles, practices and criteria to be adopted when reviewing educational provision in Highland
- 1.2 This report seeks member approval to implement revised consultative procedures based on the content of the Schools (Consultation) (Scotland) Bill that is currently being enacted in the Scottish Parliament and is likely to become legislation during spring 2010.
- 1.3 Members approved the Highland Council response to the formal consultation relating to the above Bill at the ECS Committee in September 2008.

2. BACKGROUND

- 2.1 The above Bill has recently progressed beyond Stage 2 of enactment in the Scottish Parliament. The Act when formally approved will make provision for the following:
 - The consultation process that is to apply as respects various proposals made by education authorities (hereafter referred to as the Authority) for schools
 - To make special provision for rural schools
 - To provide for Ministerial call-in of closure proposals
- 2.2 **Annex 1** defines under what circumstances the Act would apply and also with whom the consultation process would take place.

3. THE CONSULTATIVE PROCESS OUTLINED IN PROPOSED ACT

- 3.1 **Educational benefits statement** - the Authority must prepare an educational benefits statement that includes:
- The likely effects of the proposal
 - An explanation of how the Authority intends to minimise or avoid adverse effects
 - A description of the benefits that may arise from the proposal
- 3.2 **Proposal paper** – the Authority must prepare a proposal paper that sets out the details of the relevant proposal, the implementation date, contains the educational benefit statement and refers to evidence in support of the proposal. The proposal paper must be advertised as appropriate and be made available as extensively as possible, including on the Authority’s web-site.
- 3.3 **Correction of the paper** – the Authority is obliged, where appropriate, to issue a corrected proposal paper where an inaccuracy in the original document has been identified.
- 3.4 **Notice and consultation period** – all relevant consultees (as defined in **Annex 1**) must be given notice of the proposal, how to make representations in relation to the proposal, the consultation period and if known at the time, the date, time and place of the public meeting on the proposal. The consultation period is at least 6 weeks, starting on the date that formal notice is given, running continuously for a period that must include 30 school days.
- 3.5 **Public meeting** – during the consultation period the Authority must hold a public meeting on the relevant proposal. Advance notice of the date, time and place of the public meeting must be given to the Authority to the relevant consultees and Her Majesty’s Inspectorate of Education (HMIE)
- 3.6 **Involvement of HMIE** – the HMIE has to produce a report on the educational aspects of the relevant proposal having regard to the educational benefits statement produced by the Authority and any written or oral submissions received by the Authority during the consultation period. The HMIE report must submit this report to the Authority within 3 weeks of the end of the consultation period.
- 3.7 **Consultation report** – the Authority must produce a consultation report taking into account all feedback received during the consultation period, including the HMIE report. The Authority must advertise the publication of this report by such means that it considers appropriate, including its own web-site.
- 3.8 **Content of the consultation report** – details of the representations made during the consultation period and the Authority’s responses, including the HMIE report.
- 3.9 **Time for further consideration** – an Authority may proceed with a relevant proposal only after the expiry of 3 weeks from the date of publishing the consultation report.

3.10 **Factors for rural closure proposals** – in relation to closure proposals relating to rural schools, as defined by Scottish Ministers, authorities must have regard to the following:-

- Any viable alternative to the closure proposal
- The likely effect on the local community, for example the sustainability of the community and the availability of the school's premises and its other facilities for use by the community
- Different travelling arrangements that may impact on pupils and staff, also including any environmental impact

3.11 **Explanation of approach** – the proposal paper must explain how the Authority complied with the additional requirements relating to rural schools when formulating the proposal.

3.12 **Designation of rural schools** – a list of rural schools will be maintained by Scottish Ministers, taking into account the following:-

- The population of the community (or settlement) in which the school is located
- The geographical circumstances of that community (or settlement) including its relative remoteness or inaccessibility

3.13 **Call-in by the Scottish Ministers** – the Authority must notify Scottish Ministers within 6 working days of a decision to implement a closure proposal providing copies of the proposal papers and the consultation report. Within 6 weeks of the date on which the decision is made the Scottish Ministers may issue a call-in notice.

3.14 **Grounds for a call-in notice** – Scottish Ministers may issue a call-in notice where it appears that the Authority may have failed:-

- In a significant regard to comply with the requirements with the requirements imposed on it by the School(Consultation) (Scotland) Act
- To take proper account of a material consideration relevant to its decision to implement the proposal

4. INTERIM CONSULTATIVE PROCEDURES

4.1 Schedule 3 to the Bill (Transitional Arrangements) indicates that an authority that has initiated a consultation in advance of commencement of the new provisions will be expected to take into account the requirements of the Bill when conducting that consultation. For this reason it is proposed that the approach outlined in section 3 above is adopted with effect from January 2010. It is understood that the Bill will receive Royal Assent in January 2010 and will become enacted in early Spring 2010.

4.2 **Annex 2** outlines the proposed steps in the revised consultation process including the points at which Members would consider proposals and make decisions on the basis of the recommendations contained within the consultation report.

5. RECOMMENDATION

5.1 Members are asked to approve:

- The schools consultative process as outlined in **Annex 2** with effect from January 2010.

Signature:

Designation: Director of Education, Culture and Sport

Author: Ron MacKenzie, Head of Support Services

Date: 30th October 2009

Ref: HF/RM

Background Papers:

Annex 1 Definitions

Annex 2 The revised school consultative process

The consultation process outlined in the Bill applies to proposed changes to the following:

- Closure
- Establishment
- Relocation
- Admission arrangements
- Transfer from Primary to Secondary
- Special class out-with a school
- Transport to a denominational school
- Changing from a denominational to a non-denominational school
- Discontinuance of a further education centre

For example in relation to any proposal to amalgamate schools the following stake-holders should be included within the consultative process:

- The Parent Council
- The parents of any pupils at the affected school (s)
- The parents of any children expected to attend the affected school (s) within 2 years of the publication date of the proposal
- The pupils at any affected school
- The staff at the affected school (s)
- Trade union representatives
- The Community Council
- Any other users of any affected school that the Authority considers relevant

THE SCHOOL CONSULTATION PROCESS

ANNEX 2

1. The creation of a proposal (as defined in Annex 1) in the prescribed format.
2. For example the prescribed format for school amalgamations would include the following for each school affected:
 - Educational impact
 - Are there viable alternatives to closure?
 - Community impact assessment
 - Travel implications – pupils and staff
 - Building condition score
 - Building suitability score
 - School roll working capacity
 - Current school roll
 - Percentage occupancy rate
 - Breakdown of devolved budgets
 - Physical distance between schools
 - Capital investment implications
3. The initial proposal would be presented to the appropriate Ward Business Meeting(s).
4. Thereafter the proposal paper would be presented to the ECS Committee seeking formal approval to progress with formal consultation process.
5. If approved initiate Notice and Consultation process. The Consultation period should last at least 6 weeks, starting on the date that formal notice is given, running continuously for a period that must include 30 school days. It should be made clear at the beginning of the Consultation process that all representations received will ultimately be circulated to ECS Committee Members and will be available as a public document.
6. At the same time an advertisement will be placed in the local press to advise of the publication of the proposal paper and to advise interested parties where they may obtain copies of the proposal paper and where and by when written representations should be lodged. All consultees will be provided with a pro-forma to complete in order that information is returned in a consistent format.
7. The proposal paper will be issued to the relevant Parent Council (s).
8. The proposal paper will be sent to those MPs and MSPs whose constituents are affected by the proposal with their views and representations being invited.
9. The proposal paper will be sent to those Community Councils affected by the proposal with their views/observations/representations being invited..
10. Teaching and non-teaching staff of any affected school will have the opportunity to make written representations
11. Parents of school age children affected by the proposal and of any children who could be affected within two years of the proposal will be notified of it by letter informing them:-

- Where they may obtain copies of the proposal paper
 - Where and when representations are to be made
 - The date,time and venue of the public meeting
12. In the case of denominational schools the appropriate person authorised by the relevant church or denominational body will be issued with a copy of the proposal paper and will be invited to make representations.
13. In relation to any proposal which affects the provision of Gaelic medium education, Bord na Gaidhlig is also a consultee.
14. During the consultation period where a material inaccuracy identified by any consultee (s) is accepted by the authority then notification of this amendment must be issued to all consultees.
15. A public meeting will be convened and a minimum of 14 days notice will be given. The authority will be represented at such meetings by:
- Chairman and/or Vice-Chairman of the ECS Committee or nominee (s)
 - Local Member (s) not otherwise covered by the above
 - Director of ECS or his/her representative
16. After receipt of the report from HMIE, which follows upon conclusion of the consultation period, the Authority will review the relevant proposal having regard to the representations received and the report from HMIE.
17. A consultation report will then be prepared by the Authority that reflects all feedback received, both oral and written, during the consultation period and the Authority's responses to this feedback. The consultation report must be published and notice of its publication advertised.
18. The proposal, the related consultation report, recommendations and all written representations received within the consultation period will be considered by ECS Committee. A period of 3 weeks must lapse between the publication of the consultation report and the ECS Committee meeting at which recommendations are considered prior to the ECS Committee making a recommendation to the Highland Council.
19. If the authority has agreed to a closure proposal there is a 6 week period from the date of approval during which Scottish Ministers may call-in the proposal.
20. Scottish Ministers may call-in an approved closure proposal where an Authority may have failed :
- In a significant regard to comply with the requirements with the requirements imposed on it by this Act
 - To take proper account of a material consideration relevant to its decision to implement the proposal
21. When this 6 week period has lapsed and there has been no issue of notice by Scottish Ministers to call-in a closure proposal then the proposal can be progressed.