



# Children and Young People (Scotland) Act 2014

2014 asp 8

## PART 15

### SCHOOL CLOSURE PROPOSALS, ETC.

#### 81 Call-in of closure proposals

- (1) In section 15 of the 2010 Act (call-in of closure proposals)—
- (a) in subsection (2), after paragraph (b)(ii) insert—
    - “(iii) where the decision relates to a rural school, the notice published under section 11A(3).”
  - (b) after that subsection insert—
    - “(2A) At the same time as it notifies the Scottish Ministers of the decision under subsection (2)(a), the education authority must publish on its website notice of—
      - (a) the fact that the Scottish Ministers have been so notified, and
      - (b) the opportunity for making representations to the Scottish Ministers in connection with subsection (4), including the date on which the 3 week period referred to in that subsection ends.”
  - (c) in each of subsections (3), (4) and (6) for “6” substitute “ 8 ”,
  - (d) subsection (5) is repealed.
- (2) Section 16 of the 2010 Act is repealed.
- (3) In section 17 of the 2010 Act (grounds for call-in etc.)—
- (a) in subsection (3)—
    - (i) the word “or” immediately following paragraph (a) is repealed,
    - (ii) paragraph (b) is repealed,
  - (b) after that subsection insert—
    - “(3A) HMIE must provide the Scottish Ministers with such advice as to the educational aspects of a closure proposal as the Scottish Ministers

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may reasonably require of HMIE for the purpose of the Scottish Ministers' consideration of whether to issue a call-in notice.”.

(4) After section 17 of the 2010 Act insert—

**“17A Referral to the Convener of the School Closure Review Panels**

- (1) This section applies where a call-in notice is issued as respects a closure proposal.
- (2) The Scottish Ministers must refer the proposal to the Convener of the School Closure Review Panels.
- (3) 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 to review the proposal under section 17B(1).
- (4) The education authority may not implement the proposal (wholly or partly)—
  - (a) unless the Panel grants its consent to it under section 17C(1), and
  - (b) until—
    - (i) the period mentioned in section 17D(2)(c) has expired without any appeal to the sheriff being made, or
    - (ii) where such an appeal is made, it is abandoned or the sheriff confirms the Panel's decision.
- (5) Schedule 2A makes further provision about the Convener and School Closure Review Panels.
- (6) In this Act—
  - (a) “the Convener” is the Convener of the School Closure Review Panels,
  - (b) a “School Closure Review Panel” is a School Closure Review Panel constituted under subsection (3).

**17B Review by Panel**

- (1) A School Closure Review Panel must consider both of the following in relation to a closure proposal—
  - (a) whether the education authority has failed in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the proposal,
  - (b) whether the education authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.
- (2) The education authority must provide the Panel with such information in connection with the proposal as the Panel may reasonably require of it for the purpose of subsection (1).
- (3) HMIE must provide the Panel with such advice as to the educational aspects of the proposal as the Panel may reasonably require of them for the purpose of subsection (1).
- (4) The Panel may request such other information and advice from any other person as it may reasonably require for the purpose of subsection (1).

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- (5) The Scottish Ministers may by regulations make further provision as to the procedures to be followed by the Panel when carrying out a review under subsection (1).

### **17C Decision following review**

- (1) Following a review of a closure proposal under section 17B(1), the School Closure Review Panel may—
- (a) refuse to consent to the proposal,
  - (b) refuse to consent to the proposal and remit it to the education authority for a fresh decision as to implementation,
  - (c) grant consent to the proposal—
    - (i) subject to conditions, or
    - (ii) unconditionally.
- (2) The Panel must give reasons for its decision.
- (3) Where the Panel remits the proposal to the education authority under subsection (1)(b), the Panel may specify any steps in the process provided for in sections 1 to 11 and (in relation to a closure proposal as respects a rural school) 12A that the authority must take again in relation to the proposal before making a fresh decision.
- (4) The Panel may refuse to consent to the proposal under subsection (1)(a) or (b) only if the Panel finds either or both of the following—
- (a) that the education authority has failed in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the proposal,
  - (b) that the authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.
- (5) The Panel must notify the education authority of its decision within the period of 8 weeks beginning with the day on which the Panel is constituted unless (before the end of that period) the Panel issues a notice to the education authority—
- (a) stating that the Panel does not intend to notify the decision within that period,
  - (b) specifying the reason why that is so, and
  - (c) indicating the likely date for notifying the decision.
- (6) Where the Panel issues a notice under subsection (5), it must notify the education authority of its decision within the period of 16 weeks beginning with the day on which the Panel is constituted.
- (7) After the Panel notifies the education authority of its decision, the Panel must—
- (a) notify the Scottish Ministers of the decision, and
  - (b) publish notice of the decision in such manner as it considers appropriate.
- (8) Where the Panel grants consent to the proposal subject to conditions, the education authority must comply with the conditions.

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### **17D Appeal against decision of the Panel**

- (1) An appeal may be made to the sheriff against a decision of a School Closure Review Panel under section 17C(1) by—
  - (a) the education authority,
  - (b) a relevant consultee in relation to the closure proposal.
- (2) An appeal under subsection (1)—
  - (a) may be made only on a point of law,
  - (b) must be made by way of summary application,
  - (c) must be made within the period of 14 days beginning with the day on which the Panel publishes notice of the decision under section 17C(7) (b).
- (3) In the appeal, the sheriff may—
  - (a) confirm the decision, or
  - (b) quash the decision and refer the matter back to the Panel.
- (4) The sheriff's determination of the appeal is final.”.
- (5) After schedule 2 to the 2010 Act, insert—

#### “SCHEDULE 2A

*(introduced by section 17A)*

#### SCHOOL CLOSURE REVIEW PANELS

##### *Convener of the School Closure Review Panels*

- 1 (1) There is established the office of the Convener of the School Closure Review Panels.
- (2) The Scottish Ministers must appoint a person to hold that office.
- (3) A person so appointed—
  - (a) is not to be regarded as a servant or agent of the Crown and does not have any status, immunity or privilege of the Crown,
  - (b) subject to any provision made in regulations under sub-paragraph (9), holds and vacates office on such terms and conditions as the Scottish Ministers may determine.
- (4) The Convener—
  - (a) may delegate a function conferred on the Convener by this Act,
  - (b) must delegate such a function if required to do so by directions issued under paragraph 4.
- (5) Nothing in sub-paragraph (4)(a) prevents the Convener from carrying out any function delegated under that sub-paragraph.
- (6) Sub-paragraph (7) applies during any period when—
  - (a) the office of the Convener is vacant, or

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- (b) the person holding that office is unable to perform the functions conferred on the office because the person is incapacitated.
- (7) The Scottish Ministers may appoint a person to act as Convener during that period.
- (8) A person appointed to act as Convener under sub-paragraph (7)—
- (a) is to be appointed on such terms and conditions as the Scottish Ministers may determine,
  - (b) while acting as such, is to be treated for all purposes, except those of any regulations made under sub-paragraph (9), as the Convener.
- (9) The Scottish Ministers may by regulations make provision for or about—
- (a) eligibility for, and disqualification from, appointment under sub-paragraph (2),
  - (b) tenure and removal from office of a person appointed under sub-paragraph (2),
  - (c) payment of—
    - (i) salary, fees, expenses and allowances to such a person,
    - (ii) pensions, allowances or gratuities (including by way of compensation for loss of office) to, or in respect of, such a person,
  - (d) such other matters in relation to the appointment of the Convener as the Scottish Ministers consider appropriate.

#### *Panel members*

- 2 (1) The Convener is to appoint such number of persons as the Convener considers appropriate to be eligible to serve as members of a School Closure Review Panel.
- (2) Each Panel is to consist of 3 of the persons appointed under sub-paragraph (1).
- (3) It is for the Convener to select—
- (a) the members of the Panel,
  - (b) one of those members to chair the Panel.
- (4) The Convener is to make appropriate arrangements for the training of persons appointed under sub-paragraph (1).
- (5) The Scottish Ministers may by regulations make provision for or about—
- (a) eligibility for, and disqualification from, appointment under sub-paragraph (1),
  - (b) tenure and removal from office of persons so appointed,
  - (c) the process for the selection of Panel members under sub-paragraph (3),
  - (d) payment of expenses, fees and allowances to persons selected under that sub-paragraph,
  - (e) such other matters as the Scottish Ministers consider appropriate in relation to—
    - (i) the appointment of persons under sub-paragraph (1),
    - (ii) the selection of Panel members under sub-paragraph (3).

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*Property, staff and services*

- 3 (1) The Scottish Ministers may—
- (a) provide, or ensure the provision of, such property, staff and services to the Convener as they consider necessary or expedient in connection with the exercise of the Convener's functions,
  - (b) pay grants to the Convener for the purposes of enabling the Convener to employ staff and obtain services in connection with the exercise of the Convener's functions.
- (2) The Convener is to provide a School Closure Review Panel with such staff and services as the Convener considers necessary or expedient in connection with the exercise of the Panel's functions.

*Directions*

- 4 (1) The Scottish Ministers may issue directions to the Convener as to the exercise of the Convener's functions (and the Convener must comply with them).
- (2) Directions under sub-paragraph (1) may vary or revoke earlier such directions.
- (3) The Scottish Ministers must publish any directions issued under sub-paragraph (1) in such manner as they consider appropriate.

*Reports*

- 5 (1) As soon as practicable after the end of each calendar year, the Convener must prepare a report on—
- (a) the exercise of the Convener's functions during that year, and
  - (b) the exercise of the functions of any School Closure Review Panel which has carried out a review under section 17B during that year.
- (2) A report prepared under sub-paragraph (1) must be—
- (a) submitted to the Scottish Ministers, and
  - (b) published in such manner as the Convener considers appropriate.”.
- (6) In section 4 of the 2010 Act (proposal paper), in subsection (2) for “17” substitute “ 17D ”.
- (7) In section 19 of the 2010 Act (guidance)—
- (a) the existing text becomes subsection (1),
  - (b) after that subsection insert—
    - “(2) The Convener, and a School Closure Review Panel, must have regard to any such guidance in exercising their functions under this Act.”.
- (8) In section 20 of the 2010 Act (regulations)—
- (a) in subsection (3) for “17” substitute “ 17D ”,
  - (b) after subsection (6) insert—
    - “(7) Regulations under section 17B(5) and paragraphs 1(9) and 2(5) of schedule 2A—
      - (a) may make different provision for different purposes,

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- (b) may make supplemental, incidental, consequential, transitional, transitory or saving provision,
- (c) are subject to the negative procedure.”.
- (9) In section 21(2) of the 2010 Act (definitions)—
- (a) after the definition of “consultation period” insert—
- ““the Convener” is defined in section 17A(6),”,
- (b) after the definition of “rural school” insert—
- ““School Closure Review Panel” is defined in section 17A(6).”.
- (10) In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities), before paragraph 21C insert—
- “21ZC The Convener of the School Closure Review Panels.”.
- (11) In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities)—
- (a) before paragraph 62C insert—
- “62ZC The Convener of the School Closure Review Panels.”,
- (b) after paragraph 76 insert—
- “76A A School Closure Review Panel constituted under section 17A(3) of the Schools (Consultation) (Scotland) Act 2010.”.
- (12) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (the specified authorities), before the cross-heading “Executive bodies” insert— “the Convener of the School Closure Review Panels”.

#### Commencement Information

- I1** S. 81(1)(a)-(c)(3)(b) in force at 1.8.2014 by S.S.I. 2014/165, art. 2, **Sch.**
- I2** S. 81(1)(d)(2)(3)(a)(6)(8)(a)(11)(b) in force at 30.3.2015 by S.S.I. 2015/104, **art. 2** (with art. 3)
- I3** S. 81(4)(5)(8)(b) in force at 1.8.2014 for specified purposes by S.S.I. 2014/165, art. 2, **Sch.** (with art. 6)
- I4** S. 81(4)(9) in force at 6.10.2014 for specified purposes by S.S.I. 2014/251, **art. 2(a)**
- I5** S. 81(4) in force at 9.1.2015 for specified purposes by S.S.I. 2014/365, **art. 2(a)**
- I6** S. 81(4)(5) in force at 9.1.2015 for specified purposes by S.S.I. 2014/353, **art. 2(1)(a)**
- I7** S. 81(4)(8)(b) in force at 30.3.2015 in so far as not already in force by S.S.I. 2015/104, **art. 2** (with art. 3)
- I8** S. 81(7)(10)(11)(a)(12) in force at 9.1.2015 by S.S.I. 2014/353, **art. 2(1)(b)**
- I9** S. 81(9) in force at 9.1.2015 in so far as not already in force by S.S.I. 2014/365, **art. 2(b)**

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