Briefing for the Public Petitions Committee

Petition Number: PE 1417

Main Petitioner: Mr Andrew Ellis Morrison

Subject: Schools Consultation (Scotland) Act 2010

Calls on the Parliament to urge the Scottish Government to amend the above Act to allow a right of appeal against local authority decisions.

Background

The petitioners would like a right of appeal to Ministers in relation to local authority proposals to change school admission arrangements (including catchment areas) and in relation to proposals to change the relationship between secondary schools and their ‘feeder’ primary schools.

The Schools Consultation (Scotland) Act 2010 sets out the requirements for consultation on various changes to schools including closure, changes to catchment areas and changes to which primary schools are feeder schools for which secondary schools.

If a proposal relates to closing a school, the Act provides for Ministers to ‘call in’ a proposal. This is not an appeal, but does provide for Ministerial scrutiny of closure decisions in some circumstances. The grounds for ‘call in’ are that the statutory consultation process was not followed or the local authority failed to take account of a ‘material consideration’.

The 2010 Act replaced legislation which had allowed a wider range of decisions to be referred to Ministers (although this was not an appeal process). In some circumstances (relating to distance from the new school and occupancy levels of the existing school), closure proposals, changes of site and changes of catchment areas required Ministerial consent. The 2010 Act replaced this with a system of ‘call in’ for closure proposals only.

Scottish Government Action

In developing the 2010 legislation, the Scottish Government gave consideration to what should replace the automatic referral to Ministers of certain proposals – including changes of catchment area. In the stage 1 debate the then Minister, Fiona Hyslop said:
“...the bill removes the automatic referral of certain council decisions to ministers—I refer to referrals that can be made on the rather arbitrary grounds of occupancy or distance. The responses to the Government consultation showed clear consensus on the need for change, but views were polarised on what should replace referrals. Further consultation with all those with an interest helped us to identify an acceptable way forward: replacing ministerial referrals with a new power for ministers to call in certain decisions.

The bill restricts call-in to closure decisions and only when there appear to be serious flaws in the consultation or decision-making processes. The intention is to enable local decisions to be made by those who are locally accountable and locally elected while providing a balanced and consistent check on the most contentious decisions, which are—as we all know—closures”. (Official Report, 2nd September 2009)

Scottish Government action in this area has focused on the issue of rural school closures, rather than the other types of proposal that the Act covers. The SNP manifesto stated that it would "amend the Schools Consultation Act to strengthen the rights of communities and to ensure that consultation is genuine and based on accurate information. There will be a strong presumption against closure and revised means of supporting rural delivery"

In July 2011, the Scottish Government and COSLA established a commission on the delivery rural education which is expected to report in August. Its remit includes reviewing the Schools (Consultation) (Scotland) Act 2010 and its application. The Commission has a programme of meetings around Scotland which runs until March 2012. These are focused on rural areas. The questions asked in the call for evidence do not raise the specific point made by the petitioners, but do ask in general terms about satisfaction with current consultation procedures.

Scottish Parliament Action

In its stage 1 report on the new legislation, the then Education, Lifelong Learning and Culture Committee did not comment on the fact that only closure decisions would come within Ministerial scrutiny. They did however state that:

   It is recognised by the Committee that the proposed power of ministerial call-in represents a compromise between a wide range of opinions on this issue and is an improvement on the current automatic referral system. (Stage 1 report, 2009)
Camilla Kidner
Senior Researcher
21st February 2012

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