

# **SCHOOLS (CONSULTATION) (SCOTLAND) BILL**

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## **EXPLANATORY NOTES**

### **(AND OTHER ACCOMPANYING DOCUMENTS)**

#### **CONTENTS**

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Schools (Consultation) (Scotland) Bill introduced in the Scottish Parliament on 2 March 2009:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 23–PM.

## **EXPLANATORY NOTES**

### **INTRODUCTION**

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **SUMMARY AND BACKGROUND**

4. Under section 22A of the Education (Scotland) Act 1980 (“the 1980 Act”) local authorities, who are responsible for school provision in their areas, are currently required to consult on a prescribed list of proposed changes to schools. The Education (Publication and Consultation Etc.) (Scotland) Regulations 1981 (S.I. No. 1558), as amended, (“the 1981 Regulations”) prescribe who should be consulted by local authorities, aspects of the consultation procedures, and how these are publicised and made available to consultees. They also prescribe certain categories of proposal that cannot be implemented without the consent of the Scottish Ministers.

5. The Bill’s provisions cover three main areas: the consultation procedures for school closures, and other proposals affecting schools, which local authorities must follow; a new local authority duty to take into account certain prescribed factors before deciding to consult on a proposal to close a rural school; and replacement of the current system of referring certain local authority decisions to the Scottish Ministers for consent with a power to call in decisions, but only in decisions relating to closures.

6. The Bill substantially implements the proposals set out in the Scottish Government’s consultation paper, *Safeguarding our rural schools and improving school consultation procedures – proposals for changes to legislation*,<sup>1</sup> which was published on 1 May 2008 and formed part of a wider and extensive consultation process.

### **OVERVIEW**

7. The Bill has three core themes and the sections are therefore grouped accordingly. Sections 1 to 11 relate to the process whereby local authorities consult on proposals for closures or other changes to schools that require consultation. Sections 12 to 14 make specific provision for closure proposals for rural schools. Sections 15 to 17 establish a system of Ministerial call-in, in relation to school closure decisions.

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<sup>1</sup> <http://www.scotland.gov.uk/Publications/2008/04/25131457/0>

## **COMMENTARY ON SECTIONS**

### *Process for all schools*

#### **Section 1 – Overview of key requirements**

8. Section 1 provides an overview of the requirements that a local authority will have to comply with before proceeding with a proposed change to a school that requires consultation. The list of relevant proposals that require the consultation process to be undertaken are detailed in schedule 1. The procedural requirements are set out in detail in the subsequent sections.

9. For the purposes of a proposal described in paragraph 10 of schedule 1 to the Bill (discontinuance of a further education centre), a further education centre that is managed by a local authority is also deemed to be a “school”. The consultation requirements that this Bill places on a local authority would apply in circumstances where an authority is proposing to close such a centre.

#### **Section 2 – Relevant proposals and consultees**

10. This section defines the terms “relevant proposal” and “relevant consultee” and introduces schedules 1 and 2. A relevant proposal is defined by reference to the proposals listed in schedule 1 and a relevant consultee is a person or organisation to be consulted in relation to a given relevant proposal, as listed in schedule 2.

#### **Section 3 – Educational benefits statement**

11. Section 3 provides that when a local authority decides to consult on a relevant proposal they must prepare and publish, as part of their proposal paper, a statement to be known as an “educational benefits statement”. This duty may be read in the context of section 3(2) of the Standards in Scotland’s Schools etc. Act 2000 which sets out local authorities’ responsibilities to endeavour to secure improvement in the quality of education in their schools, and exercise their functions with a view to raising standards of education. In making a relevant proposal an authority would have to be certain that it is fulfilling its duties in relation to that Act.

12. The educational benefits statement must set out the authority’s assessment of the likely effects of the proposal, if it were implemented, on certain groups of people as specified in section 3(1)(a)(i) to (iv), namely the pupils and other users of the facilities at any affected school, children who would be likely to attend the school, and other pupils in the authority area. The authority must also explain the benefits that it believes will accrue from the proposal and why, and any ways in which it would minimise or avoid any adverse consequences which it has identified.

13. Where a local authority decides to consult on more than one proposal at the same time they would be able to package them together into one proposal paper (section 4(3)). However they would have to produce a separate educational benefits statement for each proposal.

#### **Section 4 – Proposal paper**

14. Section 4 provides that when an authority decides to consult on a relevant proposal, or proposals, and after they have prepared the associated educational benefits statement(s) (in accordance with section 3), they will be required to prepare and publish a proposal paper which will contain certain specified information. Under the 1981 Regulations an authority is not currently required to publish a consultation/proposal paper but simply to notify parents of a proposal and publish a statement outlining the proposal or the part that (in the authority's opinion) affects that parent.

15. The requirements set out in section 4(1)(a), (b) and (c), and (2) require that all proposal papers should contain the same core content – details of the relevant proposal, a proposed date for implementation of the proposal, the educational benefits statement and a summary of the consultation process to be undertaken. Subsection (1)(d) requires an authority to include in the paper such supporting evidence and information as is appropriate in connection with the views, conclusions, arguments and proposals set out in the paper.

16. Section 4(2) provides that the proposal paper must also include a summary of the processes set out in sections 1 to 17 of this Bill – being the sequence of events, opportunities for participating in the consultation, and the role of the authority and potentially of the Scottish Ministers. Sections 12 to 14 set out the special provisions relating to proposals for the closure of a rural school (as defined in section 14). Only proposal papers relating to such closures would need to provide a summary of those sections. Likewise, the provisions in sections 15 to 17 (called by the Scottish Ministers) only apply to proposals for any school closure (whether or not rural). Only papers that propose a school closure would be required to include a summary of the process provided for in those sections.

17. Section 4(4)(b) and (c) requires the authority to make the consultation report available for inspection (at all reasonable times and without charge) at its head office and on its website and at any affected school or at a nearby library or other suitable place near the school. The information contained in the report must also be made available, again without charge, to those who may reasonably require the information in another form – for instance in other languages or in a form appropriate to those with visual impairment etc.

#### **Section 5 – Correction of the paper**

18. Section 5 provides for inaccuracies and alleged inaccuracies in the proposal paper to be dealt with during the consultation period. It places a duty on an authority to look into any allegation of inaccuracy in a proposal paper, which would be a new requirement.

19. Section 5(2)(a) obliges the authority to ascertain whether in fact the proposal paper does indeed contain an inaccuracy after which the authority must decide what action it will take in accordance with section 5(3). It may:

- (a) publish a corrected proposal paper (in accordance with section 6, which would require a new consultation period of at least 6 weeks to be set) and give notice of that fact to all the same relevant consultees who were notified of the publication of the original proposal paper;

- (b) issue a notice, again to all the relevant consultees, correcting the inaccuracy in the paper (for example, by way of a formal “erratum” or other explanation) and in addition may extend the original consultation period which had been set; or
- (c) take no further action.

20. Section 5(2)(b) also requires the authority to inform the person(s) who made the original allegation of inaccuracy as to exactly what action, if any, it is deciding to take in line with subsection (3).

21. In every case, if the procedures in section 5 have been triggered and gone through, the authority must set out details of the inaccuracy in the consultation report. This is the case even where the authority takes no action in relation to the inaccuracy or concludes that the allegation of inaccuracy is unfounded.

### **Section 6 – Notice and consultation period**

22. Section 6 deals with the notice that the authority must give to the relevant consultees and the duration of the consultation period.

23. Section 6(1) requires the authority to give notice to the relevant consultees of the proposal that is being consulted on (or such part of the proposal as may affect a particular consultee).

24. Section 6(2) and (3) requires that the notice give a summary of the proposal, or the appropriate part of it, together with information as to where to obtain a copy of the proposal paper and how to make written representations, and to whom, about the proposal. The notice must also indicate the final day of the consultation period (the date by which representations must be received by the authority). In connection with the requirements set out in section 7, the notice should also give an indication – if it is known at the time – of the date, time and place of the public meeting that is to be held.

25. Section 6(4) specifies that the consultation period set by the authority shall last for at least six weeks, commencing on the day on which the authority gives notice of the proposal to the relevant consultees. The consultation period must include at least 30 “school days” (being a day on which the particular school is ordinarily open to pupils or, in the case of an FE centre, a day when the centre is ordinarily open to its students). The consultation period may fall within a single school term or straddle two terms. However, weekends, public holidays and other days on which the school is not open to pupils (including school holidays) will not count towards the 30 days minimum.

### **Section 7 – Public meeting**

26. Section 7 requires the authority to hold (and be represented at) a public meeting about the relevant proposal during the consultation period and to give advance notice of its date, time and place to the relevant consultees (if that has not already been done by way of the notice of the proposal given or issued at the outset of the consultations, under section 6(3)(c)) and to HMIE.

27. Section 7(4) provides that a public meeting may focus on more than one proposal so long as all the proposals covered at the meeting have been included in the same proposal paper.

### **Section 8 – Involvement of HMIE**

28. Section 8 spells out the involvement of HMIE – Her Majesty’s Inspectorate of Education – in the consultation processes.

29. Section 8(1) requires the authority to send to HMIE a copy of the proposal paper (as soon as it is published), a summary of the representations made at the public meeting required by section 7 (which will not be possible until such summary has been prepared, after the event), copies of relevant written representations received by the authority (either as and when they are received or en masse at the end of the consultation period), or, if HMIE agree, a summary of those representations, and a copy of any related documentation, so far as is practicable.

30. Section 8(2) and (4) requires HMIE to prepare a report on the educational aspects of the proposal, having particular regard to the educational benefits statement, the written representations (or a summary of them) and a summary of the oral representations forwarded by the authority, as well as to any relevant written representations on the proposal which are received directly by HMIE.

31. Section 8(5) obliges HMIE to submit their report to the authority within three weeks of their having been sent (by the authority) the copies, or a summary, of representations received during the consultation period. That three-week period may be extended by agreement with the authority.

32. In carrying out their duties under this section, section 8(3) provides HMIE with an appropriate power to enter schools and make such reasonable enquiries of any person as they consider appropriate.

### **Section 9 – Consultation report**

33. Section 9 covers the stage of the consultation process around preparation and publication of the consultation report.

34. Section 9(1) requires the authority, on receipt of the report from HMIE, to review the proposal consulted on, having particular regard to the written and oral representations received and to HMIE’s report.

35. Section 9(2) and (5) require the authority then to prepare a report on the consultation – the “consultation report” – and publish it in both electronic and printed form, and advertise its publication in an appropriate manner. It will be for the authority to determine what is appropriate in the circumstances.

36. Section 9(4) obliges the authority to inform those who made timeous written representations of the publication of the consultation report.

37. Section 9(3)(b) and (c) requires the authority to make the consultation report available for inspection (at all reasonable times and without charge) at its head office and on its website and at any affected school or at a nearby library or other suitable place near the school. The information contained in the report must also be made available, again without charge, to those who may reasonably require the information in another form – for instance in other languages or in a form appropriate to those with visual impairment etc.

### **Section 10 – Content of the report**

38. Section 10 specifies what things in particular must be contained in the authority’s consultation report. Subsections (2) and (3) prescribe the content for all consultation reports, whilst subsection (4) makes special provision for closure proposals.

39. The requirements specified in subsections (2) and (3) are: the number of, and a summary of the written representations received during the consultation period; a summary of the representations made during the course of the public meeting; a statement of the authority’s response to those written and oral representations and to HMIE’s report; a copy of HMIE’s report; a statement setting out how the authority has reviewed the proposal (as required in terms of section 9 of the Bill); and details of any inaccuracy alleged or found within the proposal paper (under the provisions of section 5), together with a statement of what consequential action was taken and why.

40. Section 10(4) provides that in the case of a closure proposal (one falling within paragraph 1 of schedule 1) the consultation report must also set out the opportunities that there will be for the making of representations to Scottish Ministers (in terms of section 15(4)) within three weeks of the authority taking its decision on whether or not to implement the proposal. Those opportunities will not arise if the authority takes a decision not to implement the proposal.

### **Section 11 – Time for further consideration**

41. Section 11 specifies that the authority may not proceed, at this stage of the process, either to decide to implement the proposal or indeed to implement it, until a period of three weeks has elapsed since the day on which it published the consultation report.

#### *Special provision for rural schools*

### **Section 12 – Factors for rural closure proposals**

42. Sections 12 to 14 place an additional set of requirements on authorities when they are contemplating any closure proposal (specified in paragraph 1 of schedule 1) as respects a rural school. These are in addition to the requirements set out in the previous sections of the Bill as to how consultations regarding relevant proposals for all schools are to be conducted.

43. Section 12(3) specifies three factors to which an authority must “have special regard to” (under section 12(2)) when considering and proceeding with a closure proposal for a rural school.

44. The first factor is any viable alternative to the closure proposal. A decision to proceed to consult on a proposal to close a rural school should not be taken until any viable alternative to closure has been considered.

45. The second factor that an authority must consider is the likely effect on the local community if the closure proposal were to go ahead. Section 12(4)(a) specifies that that effect must be assessed by particular reference to the sustainability of the community. “Sustainability” is not defined in the Bill and therefore bears its ordinary, dictionary meaning. Its usage here therefore means sustainability in the widest sense, both now and looking ahead. Section 12(4)(b) also requires particular consideration to be given to the implications for community access to or use of (or not as the case may be) of the school’s premises (which includes the grounds) and facilities after closure.

46. The third factor in section 12(3) is the likely changes to transport and travel arrangements if the closure proposal were to go ahead. This requires particular consideration of the effect on pupils, staff and other users of the school that would be occasioned by the school’s closure, and any consequential environmental impact. This could include consideration of journeys to and from the alternative school, use of vehicles (both school buses and parents’ cars), and curtailed possibilities for pupils walking and cycling to school (because of the greater distances involved) etc.

### **Section 13 – Explanation of approach**

47. Section 13 provides that when conducting consultations in respect of a closure proposal for a rural school, the proposal paper which an authority publishes (in accordance with section 4) must additionally explain and set out how, in formulating the proposal, the authority had special regard to the three factors described in section 12.

48. After the consultation period has concluded, the authority must additionally include in the consultation report an explanation of how, in reviewing the proposal it applied the three factors described in section 12. The consultation report must also explain any change of attitude on the part of the authority regarding the application of the three factors in relation to the closure proposal.

### **Section 14 – Designation of rural schools**

49. In the Consultation Paper on the Bill, Ministers indicated their intention to define which schools are rural schools by reference to the 3 rural area categories contained (out of the 8 area categories) in the Scottish Government’s well-established “Urban/Rural Classification”; these are “Accessible Rural”, “Remote Rural;” and “Very Remote Rural”. This classification is regularly updated and used for a variety of purposes including analysis of data and particularly the presentation of statistics and other information. Section 14 includes provisions which enable Ministers to proceed as they set out in the Consultation Paper (see paragraph 6).

50. Section 14(1) requires Ministers to maintain a list of rural schools. That list must also be accompanied by an explanation of how it was devised (section 14(3)). Section 14(2) specifies that in considering the question of “rurality” and which schools are to be included in, or excluded

from, the list, Ministers must have particular regard to the population and geographical circumstances (remoteness etc.) of the community or settlement in which the school is located. These are essentially the factors which determine the categories of area within the existing “Urban/Rural Classification”.

51. Section 14(4) also requires Ministers to monitor the list, updating it as they consider necessary, and to publish it.

52. Section 14(5) requires an authority to provide Ministers with such information as they may reasonably require, in connection with maintaining the list. An example might be where there had been a significant increase or decrease in the population of the community in which a school is located – that being one of the determining factors set out in section 14(2) – such as might warrant a school being added to or removed from the list.

#### *Call-in by the Scottish Ministers*

#### **Section 15 – Call-in of closure proposals**

53. Section 15 provides for the possibility of Ministers “calling in” a decision taken by an authority after the consultation procedures set out in sections 1 to 11 (or 1 to 14 in relation to rural closure proposals) of the Bill have been completed. Sections 15 to 17 of the Bill only apply if the decision taken by an authority is to proceed to implement a closure proposal. The possibility of Ministerial call-in of a decision to implement a closure proposal applies whether or not the closure proposal is for a rural school.

54. Section 15(2) provides that the authority must notify the Scottish Ministers of a closure decision by the end of the next working day after making the decision and supply Ministers with a copy of the proposal paper and of the consultation report.

55. Section 15(3) prescribes a period of 6 weeks from the date of the authority’s decision, by the end of which Ministers must decide whether to call-in the authority’s decision. In considering whether to do so, section 15(4) requires Ministers to take account of representations made to them within the first 3 weeks of that 6 week period. Therefore persons wishing to make representations to Ministers that the decision should (or should not) be called in have 3 weeks from the date of the authority’s decision to convey their representations to Ministers. During the second half of the 6 week period Ministers are to take account of any representations received – although their considerations are not restricted to the content of those representations – and decide whether or not to call the authority’s decision in. In this connection section 17(3)(a) requires an authority to provide Ministers with such information in connection with the proposal as they may reasonably require for the purposes of considering whether to issue a call-in notice.

56. Calling in an authority decision is effected by Ministers issuing a call-in notice (under section 15(3)), which has the effect of remitting the closure proposal to Ministers, as provided for in section 15(5). Section 15(6) and (7) provide that the education authority may not proceed further with implementation of the closure decision wholly or partly before the 6 week period has expired, unless Ministers have given notice before the end of the period that they will not call the decision in.

## **Section 16 – Determination of case**

57. Section 16(2) provides Ministers with 3 options in relation to the proposal once they have called in the decision. After due consideration and investigation of the called-in closure proposal they may refuse to consent to the proposal, or give their consent, either subject to condition or unconditionally.

58. Section 16(3) prevents an authority from proceeding further with the proposal i.e. with the implementation of their decision until and unless Ministers grant their consent. If conditions are attached, the authority may only proceed with implementation subject to the specified conditions (for example conditions might be imposed to ensure rectification of any failure discovered in the process).

59. When Ministers have issued a call-in notice, section 17(3)(b) requires the authority again to provide such information as Ministers may reasonably require for purposes of Ministers deciding whether to consent to the proposal (i.e. to the authority's decision to implement the proposal).

## **Section 17 – Grounds for call-in etc.**

60. Section 17(2) prescribes the grounds on which Ministers may call-in an authority's decision to implement a closure proposal.

61. Section 17(2)(a) and (b) set out the grounds for Ministerial call-in. These are where it appears to Ministers that the authority may have failed: in a significant regard to comply with the requirements set out in the Bill insofar as they are relevant to the closure proposal; or to take proper account of a material consideration relevant to its decision to implement the proposal. The focus is on deficiencies, flaws or failures in the consultation and/or decision-making process and procedures.

### *General*

## **Section 18 – Ancillary provision**

62. This section introduces schedule 3 to the Bill, which modifies and repeals legislation and makes transitional, transitory and saving provision.

## **Section 19 – Guidance**

63. This section enables the Scottish Ministers to issue guidance, to which an education authority, in exercising its functions under the Bill, must have regard.

## **Section 20 – Regulations**

64. Section 20(1) enables the Scottish Ministers to make, by way of regulations, such supplemental, incidental, consequential, transitional, transitory or saving provision in connection with the Bill, as they consider necessary or expedient. Such regulations may elaborate on any aspect of the process set out in sections 1 to 17 of the Bill, and may also confer functions on

authorities or Ministers. If such provision involves textually amending an Act it will be subject to affirmative procedure in the Scottish Parliament, otherwise to negative procedure (as set out in section 20(6)(b) and (c)).

65. Under section 20(2) regulations may modify schedule 1 or 2 by adding or removing an entry, or altering the terms of any entry in those schedules. Any such modification of schedule 1 or 2 will be subject to affirmative procedure in Parliament (as set out in section 20(6)(a)). The regulation powers in both section 20(1) and (2) include power to make different provision for different purposes.

## **Section 21 – Definitions**

66. This section provides definitions of terms used in the Bill (or, in some cases, where terms are defined). The term “education authority” has the same meaning as in section 135(1) of the 1980 Act and therefore means the 32 councils in Scotland. “School” means any school managed by an education authority (i.e. what is often called a local authority school) and also, in relation to a proposal of the type mentioned paragraph 10 of schedule 1, includes a local authority managed further education centre. The terms “educational benefits statement”, “proposal paper”, “public meeting” and “consultation report” are to be construed by reference to section 1(3) and (4) of the Bill. Section 21(3) provides that expressions undefined in the Bill are construed by reference to section 135(1) of the 1980 Act (but only if they are defined in that section and unless the context of this Bill requires otherwise).

## **Section 22 – Commencement and short title**

67. Section 22(1) provides that sections 19 to 21 (Guidance, Regulations and Definitions) come into force on the day after Royal Assent.

68. Section 22(2), (3) and (4) provide for the rest of the Bill to be commenced by order (made by statutory instrument) on such day or days that the Scottish Ministers appoint. Such commencement orders may appoint different days for different provisions and may include such transitional, transitory or saving provision as Ministers consider necessary or expedient in connection with commencement.

## **Schedule 1 – Relevant proposals**

69. This schedule is introduced by section 2. It sets out the categories of proposal in respect of which authorities must conduct consultations according to the Bill’s provisions.

70. In the 1981 Regulations, (which will be revoked as a result of the repeal of sections 22A and 22B of the 1980 Act), there are 23 “kinds of proposal” in respect of which authorities must conduct consultations in the manner set out in those Regulations. In schedule 1 those 23 categories have been consolidated and grouped into 10 broad categories, but without loss of any of the 23 current categories.

71. Paragraphs 1 to 10 of the schedule set out the “grouped” categories of relevant proposals.

#### Closure (paragraph 1)

72. These are proposals for the permanent discontinuation of: a school; all the nursery classes in a school; or a stage of education in a school. Section 21(1)(a) of the Bill defines school as meaning any school under the management of an education authority, which means a public school as defined in section 135(1) of the 1980 Act. Under section 135(1) this therefore means that, in addition to primary and secondary schools, the following are also included within the meaning of “school”: a stand-alone special school; a special class within a mainstream school<sup>2</sup>; and a nursery school. Nursery classes in a school and stage of education in a school are as defined in paragraph 12 of schedule 1 to the Bill. Also caught within paragraph 1(2) and (3) are proposals to make arrangements, howsoever described, which would result or be likely to result in the permanent discontinuation of a school or stage of education. Permanent discontinuation excludes temporary discontinuance, for instance, in an emergency, by way of planned decant for a period, or because the school roll has meantime fallen to zero.

73. If a relevant proposal falls within more than one of the categories set out in paragraphs 1 to 9 (ie proposals affecting schools not FE centres) of this schedule, it is to be regarded as falling solely within paragraph 1. In other words it is to be treated as a closure proposal.

#### Establishment (paragraph 2)

74. These are proposals to establish a new school or a new stage of education in a school. Given the meaning of “school” (as in paragraph 72 above) paragraph 2 of schedule 1 therefore also covers a proposal to establish a special class within a mainstream school.

#### Relocation (paragraph 3)

75. These are proposals to relocate a school or a nursery class in whole or in part. In the 1981 Regulations such proposals were described as “change of site”.

#### Admission arrangements (paragraph 4)

76. These are proposals to vary any of the admission arrangements for a school, including its catchment area (replacing the term “delineated area” used in the 1981 Regulations) or placing request guidelines formulated under section 28B(1)(c) of the 1980 Act. Other types of proposal included here would be a change in selection procedures for schools or converting a school which is a single sex school to a “mixed” school or *vice versa*.

#### Transfer from primary to secondary school (paragraph 5)

77. Included here are proposals to vary, for instance, the relationship between a secondary school and its “feeder” primary schools, or to change the age and time at which primary pupils transfer to secondary school.

#### Primary school commencement date (paragraph 6)

78. These are proposals to vary the number or other details of commencement dates (for starting primary school) fixed under section 32 of the 1980 Act.

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<sup>2</sup> A special class is a class for pupils with additional support needs within a mainstream school. Paragraph 12 of the schedule defines “special school” and “special class”.

Special class outwith a special school (paragraph 7)

79. These are proposals for varying the arrangements for special classes in a mainstream school.

Transport to a denominational school (paragraph 8)

80. These are proposals specifically to discontinue arrangements for the provision of school transport (provided under section 51 of the 1980 Act) to and from a denominational school.

Changing from denominational to non-denominational school (paragraph 9)

81. These are proposals for a denominational school to become a non-denominational school in terms of section 22(4) of the 1980 Act.

Discontinuance of a further education centre (paragraph 10)

82. These are proposals to discontinue a local authority managed further education centre. Such centres now exist only in Orkney and Shetland. Further education colleges and centres elsewhere in Scotland are no longer run by local authorities. Paragraph 10 sets out what sort of a facility is included within the term “further education centre” and what is not.

Meaning of expressions used in this schedule (paragraphs 11 & 12)

83. Paragraph 11(1) defines what is meant by a school “affected” by a proposal and sub-paragraph (2) offers examples such as the school proposed for closure and the schools to which its pupils would transfer; or the schools whose pupils would transfer to a newly established school. Sub-paragraph (3) excludes from the definition of an “affected” school one where the only impact would be the likelihood of its being subject to placing requests as a result of the implementation of the proposal.

84. Paragraph 12 defines the terms “catchment area”, “nursery class”, “primary school”, “primary education”, “secondary school”, “secondary education”, “further education” and “school commencement date” by reference to section 135(1) and (2) of the 1980 Act. “Denominational school” is defined by reference to section 21 of the 1980 Act, which in turn makes reference to sections 16(1) and 17(2) of the 1980 Act.<sup>3</sup> “Special school” and “special class” are defined by reference to the Education (Additional Support for Learning) (Scotland) Act 2004. “Stage of education” is defined within paragraph 12 itself.

**Schedule 2 – Relevant consultees**

85. This schedule is also introduced by section 2. Paragraphs 1 to 10 list the relevant consultees – the people and bodies whom the authority must consult – for each of the categories of proposal set out in paragraphs 1 to 10 of schedule 1. The list of relevant consultees are set out in this schedule in parallel to the schedule 1 list of proposals (adopting the same numbering) and each paragraph therein reads across to the corresponding paragraph in schedule 1 – for example, a

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<sup>3</sup> Denominational schools are either as: transferred to education authorities under section 16(1); or provided by education authorities under section 17(2).

local authority must consider those listed in paragraph 1 of schedule 2 as relevant consultees when they are consulting on a proposal set out in paragraph 1 of schedule 1.

86. The lists of consultees set out in respect of the 23 categories of proposal in the 1981 Regulations have been extended in this Bill. The Scottish Schools (Parental Involvement) Act 2006 amended the 1981 Regulations by adding the requirement to consult Parent Councils (or Combined Parent Council) in appropriate places. Several entirely new categories of consultee are included in this schedule – namely the staff and pupils at affected schools, community bodies (the community council and community planning partnership), the Bòrd na Gàidhlig, other users of any affected schools, and other education authorities, as the authority considers appropriate.

Those to be consulted on proposals relating to schools (paragraphs 1 to 9)

87. For the first 9 out of the 10 proposals (which cover all the proposals relating to schools) the first five categories of consultee are identical in every case. The authority must consult – in respect of affected schools – the Parent Council (or Combined Parent Council), the parents of pupils, the pupils (who are mature enough to be consulted) and the staff. In addition the parents of children (the term “children” is used here instead of pupils because some may be of pre-school age) expected to be in attendance at any affected school within two years of the date of publication of the proposal paper are to be consulted. In addition, the lists specify that the authority must consult any community council, or community planning partnership (established under the Local Government in Scotland Act 2003) in respect of those proposals listed in paragraphs 1 to 5 of schedule 1, which are those proposals where there may be a “community interest”. The authority must also consult such other users of any affected school as the authority considers relevant, but only in cases of closure, establishment and relocation proposals (paragraphs 1, 2 and 3 of schedule 1). Such persons may be 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 authority must also consult such other education authorities as it considers relevant.

Those to be consulted on a proposal to discontinue a further education centre (paragraph 10)

88. Paragraph 10 of the schedule sets out a list of those who must be consulted on a proposal to discontinue a further education centre. As well as many of the categories already mentioned above – the pupils, parents, Parent Council, staff of any school whose pupils attend the centre, the community council and community planning partnership – the authority in this case must also consult the centre’s staff and students, any employers of the students and finally also any other users of the centre which the authority considers relevant.

Gaelic and denominational consultees (paragraphs 11 & 12)

89. Where a proposal affects the provision of Gaelic medium education the Bòrd na Gàidhlig must be consulted.

90. Where a proposal affects a denominational school, the person duly authorised for the purpose by the relevant church or denominational body must be consulted.

Meaning of expressions used in this schedule (paragraph 13)

91. The term “community council” is defined by reference to the Local Government (Scotland) Act 1973 whilst “Parent Council” and “Combined Parent Council” are defined by reference to the Scottish Schools (Parental Involvement) Act 2006.

**Schedule 3 – Ancillary provision**

Modification of enactments (paragraphs 1 and 2)

92. Paragraph 1(2) repeals sections 22A (Consultation on certain changes in educational matters) and 22B (Consent for certain changes in educational matters) of the 1980 Act. Section 22A contains the power to prescribe proposals in respect of which education authorities are required to consult and the manner of those consultations. Section 22B requires authorities to submit to the Scottish Ministers, for their consent, certain types of proposals concerning educational provision and such proposals cannot be implemented without Ministers’ consent. Section 22A and 22B provided the enabling powers to make the 1981 Regulations, which are revoked on the repeal of sections 22A and 22B. Paragraph 1(1) makes amendments to section 22 (discontinuance and moves of educational establishments) of the 1980 Act in consequence of the repeal of sections 22A and 22B and replaces references to those sections with references to the Bill.

93. Paragraph 2 repeals section 143 of the Local Government etc. (Scotland) Act 1994 in consequence of the repeal of sections 22A and 22B of the 1980 Act.

Transitional and transitory provision (for consultations which “straddle” the date of commencement) (paragraph 3)

94. Paragraph 3 of schedule 3 provides for the transitional handling of consultations which are “ongoing” at the time of commencement of this Bill – i.e. consultations upon which authorities have embarked (under the 1981 Regulations and section 22A of the 1980 Act), but in respect of which no final decision (on whether or not to implement the proposal consulted on) has been taken by the authority by the time of the commencement date of this Bill.

95. Sub-paragraphs (2) and (3) specify that the authority may not proceed further with the proposal, upon commencement of this Bill, unless the consultation which has been undertaken prior to, and straddling, the commencement date has consisted of or included the matters set out in sections 1 to 11 of the Bill. Such a consultation can only proceed further, after the date of commencement of the Bill, if the authority has in effect conducted the consultations in accordance with the provisions in sections 1 to 11 of the Bill, as though they had been in force at the time. If those requirements have been met, the consultation may proceed; if not, the consultation process falls and the authority must recommence a new consultation in accordance with the procedures provided in this Bill.

96. If the consultation is one that may proceed, and also relates to a closure proposal in respect of a rural school, sub-paragraph (4) additionally specifies that whatever consultation documents remain to be published after the commencement date of the Bill – in some cases the proposal paper and the consultation report and in other cases, where the consultations have progressed further, only the consultation report – must contain an explanation of the extent to

which the authority has, up to that stage, taken account of the three “rural factors” which are set out in section 12(2) to (5) of the Bill. When the consultations are concluded and the authority comes to take a decision on whether to implement the closure proposal, as respect a rural school, (it being a proposal that may proceed under the terms set out in sub-paragraphs (2) and (3)), then, at the time of taking its decision, the authority must have special regard to the three “rural factors” set out in section 12(3) of the Bill. This is provided for by sub-paragraph (4)(b).

97. Sub-paragraph (5) finally provides that all closure proposals, which proceed according to the terms of paragraph 3 of the schedule, will be subject to the new call-in procedures set out in sections 15 to 17 of the Bill – rather than to the requirements in schedule 2 to the 1981 Regulations regarding referral to Ministers for consent.

Transitional and transitory provision (for consultations which are completed prior to the date of commencement) (paragraph 4)

98. Paragraph 4 of schedule 3 addresses the situation where consultations have been conducted and completed, under the 1981 Regulations and section 22A of the 1980 Act, and the authority has taken the final decision to implement the proposal prior to the date of commencement of this Bill. In these circumstances the authority may proceed or continue to proceed to implement their decision (as set out in sub-paragraph (2)) except in the circumstances set out in sub-paragraphs (3) and (4).

99. There are two such circumstances. Firstly where the authority modifies the proposal in a material way (sub-paragraph (3)). And secondly where (under section 22B of the Education (Scotland) Act 1980) the proposal requires the consent of the Scottish Ministers (being a closure proposal or a change of site or of catchment area which requires to be referred to Ministers according to the distance or occupancy criteria set out in schedule 2 to the 1981 regulations), and that consent has not yet been given or has been refused (sub-paragraph (4)). If either of these two circumstances pertain, the authority may not proceed to implement their decision.

Saving provision (paragraphs 5 & 6)

100. Notwithstanding paragraph 1(2) (which repeals sections 22A and 22B of the 1980 Act), paragraph 5 of schedule 3 “saves” both these sections, and the 1981 Regulations, to the extent that they are required for the purposes of the transitional and transitory provisions in paragraphs 3 and 4 of schedule 3. Sections 22A and 22B and the 1981 Regulations continue to operate, to the extent required, as they did immediately before the commencement of the Bill until all the transitional proposals and consultations have reached their conclusion. This conclusion is either authorities reaching their final decisions (for non-referable proposals under section 22A) or Ministers having reached their decision on whether or not to grant consent in respect of any outstanding referrals (under section 22B and schedule 2 to the 1981 Regulations).

101. Paragraph 6 of schedule 3 defines “proceeding with the proposal” for the purposes of schedule 3 and makes full reference to the 1981 Regulations.

## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

102. This Financial Memorandum has been prepared by Fiona Hyslop, the Cabinet Secretary for Education and Lifelong Learning and the member in charge of the Bill, to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament. The purpose of this Memorandum is to identify and explain, as far as is possible, the financial implications of the Bill's provisions, and for whom. It should be read in conjunction with the Bill itself and the Policy Memorandum.

### **OVERVIEW**

103. Local authorities (as education authorities) are responsible for the provision of schools in their areas. At the time of the September 2007 school census there were 2,720 local authority schools in Scotland. The running costs of these schools are provided for in the 3 year local government settlement. All costs associated with the current procedures for consulting on proposed closures or other changes to schools are the responsibility of authorities.

104. Under the Education (Publication and Consultation Etc.) (Scotland) Regulations 1981 (the 1981 Regulations), as amended, authorities are required to consult on a prescribed list of proposed changes to schools. The 1981 Regulations prescribe who should be consulted and how certain aspects of the consultation procedures should be conducted. They also prescribe certain categories of proposal (based on distance and school occupancy criteria) which cannot be implemented without referral to the Scottish Ministers for their consent.

105. We have estimated that there are currently 60 statutory consultations carried out in Scotland annually of which 44 are likely to be consultations on school closures. The basis for these estimates is explained in paragraphs 118 and 119. There are currently 16 cases referred to Scottish Ministers annually.

### **POLICY INTENTIONS**

106. The policy intentions of the Bill are set out in detail in the Policy Memorandum. Essentially they are threefold. The Bill firstly improves and strengthens local authority school consultation practices and procedures. It brings them up to date, replacing the 1981 Regulations, in line with what today's expectations of how an open and transparent consultation process should be conducted. Secondly the Bill requires an authority which is contemplating consulting on closing a rural school to have prior regard to certain matters – specifically alternatives to closure and the potential impact of the closure on the community and on travel patterns. Thirdly, the Bill replaces the current system whereby certain authority proposals cannot be implemented unless they have been referred to Ministers for their consent. This applies only to proposals relating to closures and changes of site and catchment area and which are “caught” by distance or occupancy criteria set out in the 1981 Regulations. The Bill establishes a new system of discretionary Ministerial call-in, but only of closure decisions where there may have been procedural failures.

## **COSTS ON THE SCOTTISH ADMINISTRATION**

### Process for all schools – consultations

107. The Bill establishes a new consultation regime governing how authorities will engage in public consultations on proposed school closures and other changes to schools. Apart from its agency – Her Majesty’s Inspectorate of Schools (the cost implications for which are addressed at paragraph 112 below) – the Scottish Government will have no direct involvement in these processes so there will be no additional costs arising from the new and improved consultation procedures set out in the Bill.

### Special provision for rural schools

108. Ministers are required to prepare and maintain a list of rural schools for the purposes of certain provisions in the Bill. The intention is to base the list on certain categories within the Scottish Government’s current “Urban/Rural Classification”. This is well-established, already regularly updated, and used for a variety of statistical and other purposes so there is no new cost attached to administering the existing classification. Ministers are also required to publish the list of rural schools which will be a relatively simple administrative process. The administrative or cost burden of so doing will be minimal.

### Call-in by the Scottish Ministers

109. Under the present consultation arrangements, once consultations are complete, an authority’s final decision to close a school, or to change its site or catchment area must be referred to the Scottish Ministers for their consent in certain circumstances set out in the 1981 Regulations. This results in Ministers having to deal with about 16 “referral” cases each year. Some are relatively simple and entirely uncontroversial changes of site; while at the other extreme there can be some very controversial and unpopular closure decisions. The average time required of a policy officer per case would be around 5 days (say a total of 80 days per annum), albeit scattered across several weeks or even months.

110. The Bill replaces the automatic referral system with a Ministerial power to call in authority decisions (but only in relation to closure proposals) where it appears to Ministers that there may have been failures in the consultation or decision making processes. Over the last 3 school years the statistics indicate that technically the number of “school closures” has averaged 36 per annum. This is less than the number of closure consultations each year because a number of those result in decisions to keep the schools open. Also the annual net reduction in the number of local authority schools is actually just under 20 per annum rather than 36 – the number of local authority schools in Scotland was 2,868 in 1999 compared with 2,720 in 2007, a reduction of 148 or an average of 18.5 per annum. This is because the figures for closures include various “technical” changes such as to a school’s name.

111. If one assumed that future representations would be made to Ministers about calling in closure decisions in around 20 cases and approximately a couple of days of a policy officer’s time was required to handle initial consideration of the representations and advice to Ministers on whether to call in the decision, that would amount to 40 days of staff time (20 x 2). It is anticipated that there will be relatively few actual call-ins. If the time requirement to conduct thorough enquiries in order to establish whether in fact there had been procedural failings was

around 10 days (double the time needed to handle referrals), then 4 call-ins per year at 10 days apiece would take the overall Government staff burden of handling Ministers' involvement in the new call-in system up to the same annual total of 80 days time as is required under the present system. Although impossible to predict with accuracy it is not unreasonable to assume that the cost to Government, in terms of staff time, of involvement in the new call-in system would be similar to what is required under the present system of referrals.

*Involvement of HMIE in consultations*

112. We have consulted with Her Majesty's Inspectorate of Education (HMIE) who have estimated that their involvement in the new consultation procedures will require approximately 5 days of an Inspector's time for each of the 60 annual consultations. HMIE has estimated that the cost of the Inspector's time per consultation would be of the order of £1660. Offsetting the costs of HMIE already providing Ministers with advice in the current 16 referral cases each year (each of which requires a similar amount of an Inspector's time), the additional cost of HMIE handling the extra 44 cases (bringing the total number of annual cases handled from 16 up to 60) each year would be of the order of £73,000.

113. The additional costs to HMIE will be met from within existing Scottish Government resources.

**Total estimated additional annual costs on the Scottish Administration**

	Increase in Cost	Saving
Process for all schools – consultation	0	0
Special provision for rural schools	0	0
Call-in by the Scottish Ministers	0	0
HMIE involvement in all consultations	£73,000	0
<b>Total</b>	<b>£73,000</b>	<b>0</b>

**COSTS ON LOCAL AUTHORITIES**

114. In assessing the costs to local authorities, the Scottish Government has benefited from the assistance of the Convention of Scottish Local Authorities (COSLA) and the Association of Directors of Education in Scotland (ADES). ADES has carried out a survey of all authorities, seeking information on consultations held under the current processes and associated costs. The survey also sought information on the potential financial impact of the Bill on authorities.

*Local authority responses to the Government's Consultation Paper*

115. Some initial indications as to authorities' expectations of additional costs which would fall to them as a consequence of the proposals set out in the Government's Consultation Paper<sup>4</sup> were gleaned from their individual responses to the Paper, as well as from the COSLA and ADES responses. Many authorities either indicated that they already practice much of what is proposed, or recognise it as best practice to which all should aspire. There was no overall

<sup>4</sup> <http://www.scotland.gov.uk/Publications/2008/04/25131457/0>

consensus that the new procedures in themselves would place a significant additional financial burden on authorities.

The ADES survey

116. The survey carried out by ADES between December 2008 and January 2009 sought information from authorities on the number and type of statutory consultations carried out in each of the 3 school years 2006-07 to 2008-09, on details of the identifiable cost of components of the current consultation process and on views as to the financial implications of the longer timescales for future consultation set out in the Consultation Paper.

117. Responses were received from 14 authorities, on paper and by telephone, although authorities interpreted the survey questions sometimes in different ways, responding variously with descriptions and figures. The 14 authorities together manage a third of local authority schools in Scotland. The following information has been drawn from careful analysis of their responses.

118. **Number of statutory consultations carried out per annum by local authorities.** The number of consultations carried out by each authority each year ranges from none to 12 with an average of 1.4. So the average number of consultations conducted per annum by the group of 14 authorities is 20 (1.4 x 14). Since they account for one third of Scotland's schools we have taken the figure of 60 (20 x 3) as our working assumption for the annual number of statutory consultations carried out Scotland-wide.

119. **Number of closure consultations carried out per annum.** The number of closure consultations carried out by each authority each year ranges from none to 9 with an average of 1.05. So the average number conducted per annum by the group of 14 authorities is 14.7 (1.05 x 14). Again, since those authorities account for one third of schools, we have taken a figure of 44 (14.7 x 3) as our working assumption for the annual number of closure consultations carried out Scotland-wide.

120. **Costs of aspects of the current consultation procedures:**

- **Document printing and circulation** – a total of 54 figures were offered ranging from £18 to £1,214. The average cost was £200.
- **Publicity and advertising** – a total of 49 figures were offered, ranging from £225 to £3,400. The average cost was £800.
- **Cost of public meetings** – a total of 49 figures were offered, ranging from zero to £964. The average was £130. One authority though gave a much higher cost of meetings of between £2,500 and £3,000 (figures have been discounted from the calculation of the average due to the significant variation from the others).
- **Staffing costs** – most authorities indicated that this was impossible to quantify or was “part of normal duties”. Of 21 figures offered, ranging from £240 to £2,500, the average was £2,400. One authority identified staff costs of £58,500 (a figure which was discounted from the calculation of the average due to the significant variation from the others), admittedly for a complex consultation process spread over 8 months.

- **Translation** – one authority indicated translation costs of £500.
- **Consultants' fees** – one authority indicated a cost of £14,400 to engage consultants to write reports and analyse consultation responses – but that covered 6 consultations i.e. at an average cost of £2400 per individual consultation.

121. **Cost implications of extended consultation timescales.** Of the 12 authorities that responded to this question, half said that they would start the consultation process earlier and that there would therefore be no additional costs. The other 6 responses focused on additional costs either in terms of having to support the running costs of the school for a longer period of time i.e. until the longer consultation procedures had run their course, or in terms of additional administration costs consequent upon the longer timescale. No figures though were proffered. It is evident that a number of consultation processes at present do indeed span several months; in other words it will not always be the case that the extended timescales set out in the Bill will in fact result in longer consultation processes i.e. from launch to final decision.

#### Process for all schools – consultations

122. Although the Bill sets out new requirements for all school consultations carried out by authorities, the list of proposals on which an authority is obliged to consult is maintained but not extended in the Bill. Many authorities indicated either in their responses to the Consultation Paper or to the ADES survey that generally they envisaged that additional costs would be minimal or negligible – to the extent that extrapolating into the future from such figures as were obtained via the survey about the costs of current consultations, has not been straightforward. What follows, therefore, is an attempt, on the basis of certain assumptions (either drawn from paragraphs 118 to 120 or set out under the relevant sub-heading below), to arrive at reasonable estimates of potential additional costs consequent upon the new consultation procedures set out in the Bill.

##### *(a) Preparation of an educational benefits statement*

Although this is technically a new requirement, the responses to the Consultation Paper from authorities and their representative bodies suggested that they do not see this as an onerous addition to current practice. Most said say that they already provide such an assessment of the educational benefits of their proposals in their current consultation papers. We therefore conclude that the additional cost burden of this “new” element of the procedures will be minimal.

##### *(b) Publishing a proposal paper*

The 1981 Regulations require authorities to make full details of their proposals available to parents. This is invariably done by publishing a consultation paper. The new requirement to publish a proposal paper enshrines in law what is already universal practice. We therefore envisage no additional costs arising from this “new” requirement.

##### *(c) Correcting inaccuracies in a paper*

The Bill places a new obligation on authorities to address and rectify inaccuracies, either alleged or discovered, in any proposal paper. A minor inaccuracy may require an authority merely to issue a notice of correction to consultees, but a significant inaccuracy could involve republishing a corrected paper and/or starting the consultation period over again. Where authorities use accurate information in the proposal paper (and the proposals on correcting inaccuracies should provide a clear incentive to check and double

check what goes into the paper) there should be no additional cost beyond the need to respond to any allegation made and include reference to that in the consultation report (see below). It is difficult to predict what will happen in future. If allegations of material inaccuracy were to be alleged in say a third (20) of consultations, but that led to full reissue of proposal papers in only say 5 of those 20 cases, that could involve perhaps additional handling and investigation costs of say £250 for each of the 20 cases (£5000) plus cost of full republication at £200 apiece in the 5 cases (£1000); a combined “additional cost” of £6,000.

*(d) Extending the list of consultees*

The Bill does extend the list of persons whom the authority must consult, significantly beyond those specified in the 1981 regulations. Many authorities have indicated that they already notify a range of consultees well beyond the existing minimum requirements and do not see the extension of the list as an additional burden. The additional consultees set out in the Bill include (though not in all cases) bodies such as the community council and community planning partnership and Bòrd na Gàidhlig. All staff and pupils at affected schools will though in future require to be consulted in all cases. Although this would double the number of people to be notified and consulted, since these two main additional categories of consultee are all readily accessible “in-school”, the additional costs of notifying the new categories of consultee should be minimal.

*(e) Notification and advertising of the proposal paper*

The Bill requires authorities to give notice of proposals to the relevant consultees including a summary of the proposal, information about where to obtain the proposal paper, how to make written representations, the closing date of the consultation and, if known, the details of the public meeting. The proposals must also be advertised by the authority. Since authorities indicate that all of this is already normal practice, we have assumed no consequential additional costs.

*(f) Holding a public meeting*

The Bill requires authorities to hold a public meeting in respect of every consultation. In the 1981 Regulations this is not an absolute requirement although authorities usually do hold such a meeting (or sometimes meetings). As the Bill will only be setting out in statute what is already very common practice, a notional figure of £650 (say 5 cases x the average £130 cost of a meeting) has been assumed to cover the costs of holding a meeting in “every” rather than just in “most” cases.

*(g) Involving HMIE*

The Bill places a new requirement on authorities to involve HMIE concerning the educational aspects of a proposal. The main consequential additional cost will be copying across to HMIE all the written consultation responses received by the authority. Although in future this may increasingly be achieved electronically, from the scale of the cases and paperwork currently referred to Ministers, we estimate this would involve an average photocopying cost of up to £25 per case. With 60 consultations each year (offset by the 16 sets of consultations responses that will no longer need to be sent to Ministers in connection with referral cases) we consider that a figure of £1,100 should suffice to cover authorities’ additional photocopying costs.

*(h) Requirement to publish a consultation report and advertise the fact*

Although authorities will be required to publish a consultation report under the Bill's provisions, much of what it must contain will currently be prepared for inclusion in the form of the Director of Education's report to the Council on the outcome of the consultations, prior to councillors taking the final decision. The new consultation report will be a similar document although it will additionally require to include HMIE's report and the authority's response to it, details of any inaccuracies alleged or found in the proposal paper and, in the case of rural school closure proposals, an explanation also of the authority's consideration of the 3 special rural factors and any change of attitude towards them. There is also a new requirement placed on authorities to advertise a second time during the consultation process – the fact of the publication of the consultation report. Since the average cost of advertising is £800 per consultation at present this will represent by far the largest element of the additional costs which will fall on authorities as a consequence of the new consultation procedures. With 60 consultations a year, assuming a modest figure of £50 for producing a consultation report rather than the present "Director of Education's report to Council" and a second round of advertising at £800 per consultation gives an assumed "additional cost" for these two elements of £51,000.

*(i) Extending the timescales*

The Bill extends the required consultation period from the current minimum of 28 days, to 6 weeks. Additionally there is a further period of at least 6 weeks that will elapse (a minimum of 3 weeks for HMIE to submit their report and a further 3 week minimum period between publication of the consultation report and the council taking its decision) after the end of the consultation period. Only four of the authorities who responded to the ADES survey considered that the additional timescale would have a cost, although none specified an amount. None of the others anticipated additional costs as a result of lengthier consultation processes. In some cases the new timescales are comparable with the pace at which consultations are conducted at present. We do not believe that specifying certain minimum time periods within the new consultation process should necessarily cause authorities significant additional costs. Given the balance of view against there being additional costs and absence of any local authority figures about this, we have not included any notional figure for the "possible" cost of extended timescales.

*These documents relate to the Schools (Consultation) (Scotland) Bill (SP Bill 23) as introduced in the Scottish Parliament on 2 March 2009*

Summary of additional annual costs to authorities arising from new “procedural” provisions	As proposed in the Bill	Estimated additional costs Scotland-wide @60 consultations per annum
a) Educational Benefit Statement	New but current practice generally	£0
b) Proposal paper	New but current practice generally	£0
c) Correcting inaccuracies	New requirement	£6,000
d) Extending list of consultees	Additional requirements	£0
e) Notification and advertising	New but current practice generally	£0
f) Public meeting	New but current practice generally	£650
g) Involving HMIE	New requirement	£1,100
h) Consultation report & advertising (2nd round)	Consultation report current practice generally; advertising is a new requirement	£51,000
i) Extending timescales	New requirements	£0
<b>Total</b>		<b>£58,750</b>

*Special provision for rural schools*

123. Well over half the authorities who responded to the question in the Consultation Paper as to whether a “Rural Schools Fund” should be established in the Bill indicated that such a fund would be inappropriate, as did ADES and COSLA. A minority disagreed, some suggesting that additional costs arising from the Bill (or rather from an anticipated inability to close rural schools) should be met by Government, others highlighting the higher cost of providing services including schools in rural areas, although many went on to say that this last matter would be one for consideration in the context of discussions around the formula for allocating resources to local government. Specific rural indicators are incorporated into a number of the calculations which make up the current needs-based distribution formula; in particular the rural settlement pattern indicator is based on the size of the population living in settlements of fewer than 1,000 people. Another indicator provides additional funding in respect of each primary school of fewer than 70 pupils in rural areas.

124. Regarding the possible financial impact of the new requirements for authorities to consider 3 specific factors before consulting on the closure of a rural school, if an authority, after having been obliged to consider those factors, decides against closing a rural school, it may seek to argue that that decision has reduced its scope for making financial savings. The Bill though still leaves all such decisions in authorities’ hands. If the Bill achieves its objectives of making authorities’ consultation and decision-making processes more robust, open and transparent, the number of authority decisions warranting Ministerial call-in should certainly be few in number – very likely fewer than the 16 annual referral cases at present.

125. It is also the case that the potential saving (upon its closure) of the ongoing costs of running and maintaining a school should not be considered in isolation – i.e. from the perspective of the education budget alone. For example, on a rural school’s closure there are nearly always consequential additional costs of transporting pupils to the alternative school. In some cases any savings that might accrue to the education budget would be significantly offset because of a need, in consequence of removing the “investment” in a community that the school represented, to increase expenditure for the authority’s social support, regeneration or other

budgets in order to help sustain the now “school-less” community. The point is that the financial equation is often more complex than is suggested.

126. However, for the purposes of this Memorandum the requirement is to identify the “additional” costs which are consequential upon the Bill’s provisions. Strictly speaking if, following a closure consultation, the authority’s decision is to keep the school open, there is technically no “additional” cost, merely a continuation of the existing, ongoing costs of maintaining and running that school. Expenditure does not rise; it merely does not fall. An authority might still though seek to argue “additional costs” if it could demonstrate that it could or would have shut a school had it conducted consultations under the 1981 Regulations, which it decided – or was “obliged” – to keep open after consulting under the more open and transparent new arrangements. If in future a closure decision were called in by Ministers and consent refused, the authority might also seek to present the “additional costs” argument by contending that under the 1981 Regulations Ministers would not have been able to withhold consent because the case would not have been referable.

127. Where authorities may incur additional costs is in having regard to the 3 special factors before proposing closing a rural school. Although authorities have largely indicated that they already consider such factors and that the new requirement should not involve additional cost, the new style proposal paper will need to explain how this has been done. Approximately half of closure proposals relate to rural schools. So, with 44 closure consultations each year, we have attributed a possible additional administrative cost in the roughly 22 rural consultations of say half the cost (ie £100) of publishing a paper – giving an “additional cost” figure of 22 x £100 or £2,200.

128. The decisions on whether to implement proposals remain ones for the authorities to take; and most authorities would argue that the new procedures reflect modern standards and expectations which most authorities are already practising or should be. The overall conclusion must be that there will be no additional school running costs directly attributable to the new and more rigorous consultation procedures set out in the Bill but that the cost of setting out how the special factors relating to rural school closure proposals have been applied, could involve something of the order of an additional £2,200 of administrative costs per annum, Scotland-wide.

#### Call-in by the Scottish Ministers

129. Where authorities conduct future consultation and decision making processes entirely in accordance with the new requirements set out in the Bill, there will be no grounds for cases being called in by Ministers because of apparent procedural failures. Preparation of the quite detailed application for consent and copying of the papers in respect of the 16 annual consultation decisions which currently have to be referred to Ministers is likely to be more onerous than despatching to Ministers in future copies of the proposal and consultation papers following closure decisions and dealing with the telephone and e-mail exchanges which one might expect to pass between Government and local authority officials in connection with whatever proportion of the 20 or so school closure decisions each year about which Ministers may receive representations. There would though be somewhat more extensive engagement with authorities and therefore administrative costs in respect of the few cases which are actually called in. Overall though, the expectation is that burden falling on authorities in respect of

dealing with cases under the new system will be not dissimilar in magnitude to the current situation – in other words, broadly cost-neutral.

**130. In conclusion, we do not expect significant additional expenditure to fall on authorities as a result of the Bill’s provisions. Where small additional sums are required to be expended in order to improve consultation procedures in line with best practice, we judge it reasonable to expect authorities to meet these from within existing resources.**

**Total estimated additional annual costs on all local authorities**

	Increase in Cost	Saving
Process for all schools – consultation (rounded up)	£58,800	0
Special provision for rural schools	£2,200	0
Call-in by the Scottish Ministers	0	0
<b>Total</b>	<b>£61,000</b>	<b>0</b>

**COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

131. Certain additional bodies are identified as relevant consultees and must, in future, be notified of the consultations – such as the community council or the community planning partnership (in cases of proposals in which there will be a community as opposed to a purely educational interest) and Bòrd na Gàidhlig (where the proposal bears on the provision of Gaelic medium education). The purpose is essentially to update the lists of consultees since they were first set out in the 1981 Regulations. Since the bodies mentioned would likely wish to respond to consultations under the current arrangements (even if they are not listed “consultees”) we do not envisage the new arrangements placing any additional burden on them. Neither the existing arrangements nor the new provisions in the Bill oblige any party or consultee to respond if they do not wish to.

**132. We do not therefore anticipate any additional costs on other bodies, individuals and businesses.**

**MARGINS OF UNCERTAINTY**

133. In attributing costs, we have worked with HMIE, COSLA and ADES in providing the best possible estimates. In paragraph 110, we have made assumptions about the number of cases where representations would likely be made to Scottish Ministers as a result of the Bill and the resulting costs based on our experience of dealing with the current referral process. As set out in paragraphs 116 and 117, ADES carried out a survey of local authorities from which we were able to make a number of reasonable assumptions about numbers of all consultations likely to be undertaken by local authorities (paragraph 118) and the number of closure consultations (paragraph 119). We have also used the findings of that survey to estimate costs for each component of the consultation process in paragraph 120. Finally, we have used the survey to assist in estimating the number of rural consultations in paragraph 127.

## **SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

134. On 2 March 2009, the Cabinet Secretary for Education and Lifelong Learning (Fiona Hyslop MSP) made the following statement:

“In my view, the provisions of the Schools (Consultation) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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## **PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE**

135. On 26 February 2009, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Schools (Consultation) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Schools (Consultation) (Scotland) Bill (SP Bill 23) as introduced  
in the Scottish Parliament on 2 March 2009*

# **SCHOOLS (CONSULTATION) (SCOTLAND) BILL**

## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

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