

PE1417/A

Stuart Todd
Assistant Clerk
Public Petitions Committee
Scottish Parliament
Edinburgh EH99 1SP

Ref: KW/HS
29 March 2012

Dear Mr Todd

Petition Number PE1417

I refer to your letter of 22 March 2012 regarding the petition by a Mr Andrew Ellis Morrison seeking an amendment to Schedule 2 of the Schools (Consultation) (Scotland) Act 2010 to introduce a right of appeal to Scottish Ministers in the event that a local authority does not abide by the "majority decision" of relevant consultees.

In its evidence to the Education, Culture and Lifelong Learning Committee while the Schools (Consultation) (Scotland) Bill was progressing through the parliament, the EIS was supportive of many of the provisions contained in the bill viz:

- The Education Benefits Statement.
- The extension to the consultation period.
- The requirement to hold a public meeting.
- The production of a formal consultation report.
- The expanded definition of relevant consultees.

The Institute was, however, more sceptical regarding the proposed "call in" system by Scottish Ministers. In short we regarded this proposal as a "political compromise" between the more deregulatory thrust of the original consultation exercise and the very strict criteria, which existed prior to the enactment of this legislation, which resulted in the automatic referral to ministers in certain circumstances.

There are, therefore, a number of practical considerations which the EIS believes would make "the right of appeal" suggested in this petition difficult, if not impossible, to achieve:

- 1) There is no formal right of appeal within the legislation at present but representations can be made with regard to a closure proposal to seek to persuade Scottish Ministers to "call in" a particular proposal (Section 15(4) of the Act).
- 2) It is assumed that the petitioner is seeking that all consultations relating to the discontinuation of (a school, a nursery class or classes, a stage of education or the provision of Gaelic or English medium education in nursery classes or a stage of education) would be subject to this new right of appeal.
- 3) It is difficult to understand from the wording of the petition how this new "right of appeal" would co-exist with the existing power of ministers to "call in" a particular proposal/decision.
- 4) As the petition confirms, there are a large number of groups of individuals (of varying size) which comprise the relevant consultees outlined in Schedule 2 of the Act. Is it intended that the definition of the word "majority decision" of relevant consultees refers to the total number of "groups" consulted or would some consideration be given to the number of individuals covered by that grouping in order to provide some kind of weighting?

In summary, therefore, although the EIS would not oppose outright a move to introduce a right of appeal within this legislation, it is difficult to imagine how this could co-exist with the "call in" procedures which are contained in the Act at present. It is also going to be problematic to define exactly what is meant by "the majority decision of relevant consultees".

I hope this information is helpful to the Committee.

Yours sincerely

Ken Wimbor
Assistant Secretary