

**PE1417/B**

**Buidheann-Stiùiridh an Ionnsachaidh**  
**Learning Directorate**

F/T: 0131-244 0950 F: 0131-244 0957

E: [ian.mitchell@scotland.gsi.gov.uk](mailto:ian.mitchell@scotland.gsi.gov.uk)

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

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17 April 2012

Dear Stuart

**Scottish Government response to Petition PE1417**

Thank you for your letter of 22 March 2012 in which you seek the views of the Scottish Government on the Petition by Mr Andrew Ellis Morrison, calling on the Scottish Parliament “to urge the Scottish Government to amend the Schools (Consultation) (Scotland) Act 2010 to allow the right of appeal to Scottish Ministers where local authorities do not abide by the majority decision of “relevant consultees”, as specified in Schedule 2 of the Schools (Consultation) (Scotland) Act 2010, where a local authority is consulting on issues stipulated in Paragraphs 4&5 of Schedule 1 of the same Act.”

Although not explicitly set out in the wording of this petition we understand from information contained in SPICe briefing that the petitioner would like the introduction of a right to appeal to Ministers in relation to education 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.

In summary, the Schools (Consultation) (Scotland) Act 2010 prescribes the consultation process that is to apply as respects various proposals made by education authorities for schools – these are described in the Act as “relevant proposals”. Schedule 1 of the Act sets out what is considered to be a “relevant proposal”; this includes, among others, proposals to close a school, to establish a new school and to make changes to catchment areas. In addition, the Act makes special provision in respect of proposals to close rural schools and provides powers for Ministerial call-in and determination of all of the kinds of closure proposals

specified. However, this power of Ministerial call-in and determination does not apply to the other “relevant proposals” described by schedule 1 of the Act. The Bill for the Act was passed unanimously by the Scottish Parliament on 19 November 2009 and received Royal Assent on 5 January 2010.

Schedule 2 of the 2010 Act prescribes who is to be consulted when an education authority makes a “relevant proposal”. The list of consultees will vary, depending upon the nature of the proposal, but could include, amongst others, the Parent Council of the affected school; parents of pupils at the affected school; pupils; staff; trade unions; the community council; and other users of any affected school.

The Act also replaced the previous automatic referral system for certain education authority decisions for Scottish Ministers’ consent (previously under the Education (Publication and Consultation Etc.)(Scotland) Regulations 1981) with a new system of call-in, based on school closure cases only. This was because during the public consultation process views on the amount of Ministerial involvement in the decision making on schools was polarised between those who wanted no involvement and those who wished Ministers to be involved in every decision. The current arrangement was unanimously supported by the Scottish Parliament.

The decision by the Scottish Government to limit call-in’s solely to closure proposals was taken because these decisions were seen as having the most far reaching of all the prescribed proposals in terms of the breadth, depth and scale of potential impact on both the users of the school and the local community. The Scottish Government considered that it was important to introduce a significant safeguard for school closures, while avoiding a level of involvement at the other end of the scale which could rightly have drawn accusations of running counter to all the principles of the Concordat with local authorities. The Scottish Government is therefore of the opinion that the current provisions under the Act strikes the right balance.

At the heart of any proposal to make any significant change to schools, including a change to a school’s catchment area, is a requirement for the education authority to produce an Educational Benefits Statement (EBS) and publish this within its proposal paper. The EBS should set out the education authority’s consideration of how any proposal will affect current and future pupils of the school along with community users of the school facility and explain how it intends to minimise or avoid any adverse effects of the proposal. The EBS should be supported by evidence to assist consultees in their understanding of the envisaged educational benefits and the reasoning behind the education authority reaching its views.

As part of this process, Education Scotland must produce an independent report to the education authority setting out the educational aspects of the proposal being consulted on. The Act requires that the education authority then review its proposal following consultation in light of any written and oral representations received and with regard to the Education Scotland report. Having completed this review, the education authority is then required to publish a consultation report which is to include the authority’s response to the representations received and the Education Scotland report.

The grounds for Ministerial call-in are based purely on whether or not there has been a significant flaw in the consultation process prescribed in the 2010 Act, and whether the education authority has failed to take proper account of a material consideration in making its decision. In this respect, the fact that the majority of consultees may not be in favour of the proposal does not provide grounds for Ministerial call-in. Also, the current legislation does not provide an appeals process as perhaps envisaged by the petitioner.

The provision of school education in Scotland is the statutory responsibility of the appropriate education authority and the Scottish Government does not have a remit to intervene in the day to day running of individual schools. The Scottish Government is therefore of the view that it is right that decisions on meeting local education needs which best serve their local communities should be taken at local authority level. In any event, I would contend that it would be difficult for Scottish Ministers to make a considered determination on whether a proposed change in a schools admission process (including catchment areas) for around 2,600 schools across Scotland without the detailed local knowledge which is held at local authority level.

However, we are aware that there is a feeling in some quarters that the 2010 Act may not be operating as had been originally envisaged. That is why the Commission on the Delivery of Rural Education in Scotland has been tasked with considering and making recommendations on the Schools (Consultation) (Scotland) Act 2010. The Commission is expected to report its findings by autumn 2012 and Ministers will consider the Commission's recommendations and if there is a need for any amendments to the 2010 Act. In any event, pending the outcome of the Commission's findings, there are no current plans to change the 2010 Act in order to introduce a right of appeal to Scottish Ministers on school admission arrangements.

I hope this information is helpful. If you require any further clarification on the issue raised I would be happy to assist.

Yours sincerely

Ian Mitchell  
Deputy Director Learning Directorate