

FALKIRK COUNCIL

**Subject: RESPONSE TO SCOTTISH GOVERNMENT CONSULTATION –
'SAFEGUARDING OUR RURAL SCHOOLS AND IMPROVING SCHOOL
CONSULTATION PROCEDURES - PROPOSALS FOR CHANGES TO
LEGISLATION'**

Meeting: EDUCATION AND LEISURE COMMITTEE

Date: 26 August 2008

Author: DIRECTOR OF EDUCATION

1. INTRODUCTION

- 1.1 The current legislative framework governing how local authorities must handle school closure proposals is set out in both primary legislation (The Education (Scotland) Act 1980) and secondary legislation (the Education (Publication and Consultation Etc.) (Scotland) Regulations 1981). This is supported by Ministerial Guidance on school closure proposals which was last published in 2004.
- 1.2 The Scottish Government are currently consulting on proposals to update and consolidate this legislative framework, and the proposal document is attached as Appendix 1.
- 1.3 These proposals focus on school closures, particularly in rural areas, but it should be noted that the legislation to be updated also includes that relating to rezoning a school's catchment area, provision of a new school, changing the site of a school and all other kinds of proposal detailed in the 1981 Regulations.
- 1.4 The consultation period ends on 19 September 2008. Members are asked to consider the proposed detailed response from Falkirk Council which is attached as Appendix 2.

2. SUMMARY OF CONSULTATION RESPONSE

- 2.1 The consolidation and update of the legislative framework is welcomed and this is reflected in our proposed response. We do however present a number of suggestions and concerns, the main ones being:
 - that, whilst safeguarding of rural schools is very important, a revised approach to school closures should also encompass schools that are not classified as rural;
 - with regard to the proposal that there will be a requirement for local authorities to prepare an Educational Benefits Statement when proposing a school closure, we suggest that this should not be considered in isolation, but set within the context of a Strategic Business Case that also considers the community, financial and resourcing issues;
 - that HMIE should consider the Educational Benefits Statement as part of this Strategic Business Case;
 - that the proposed approach to consulting on school closures and other matters will lead to a consultation period that will become too lengthy;

- that if referral of school closures to Ministers on the basis of high occupancy (80% or above) is to continue, then clear guidance is required on the calculation of school capacity.

2.2 Details of how the Scottish Government's eight categories of urban/rural classification apply to Falkirk Council's primary school are attached at Appendix 3.

3. RECOMMENDATIONS

3.1 With regard to the consultation on Scottish Government proposals to update legislation relating to school consultation procedures, Education and Leisure Committee are asked to:

- (i) agree the response outlined in paragraph 2.1 and detailed in Appendix 2; and
- (ii) agree to refer to Policy and Resources Committee for approval prior to submission.

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Director of Education

Date:

Contact Officer: Gary Greenhorn, ext 6683.

LIST OF BACKGROUND PAPERS

NIL

SAFEGUARDING OUR RURAL SCHOOLS AND IMPROVING SCHOOL CONSULTATION PROCEDURES

PROPOSALS FOR CHANGES TO LEGISLATION

A Consultation Response From Falkirk Council

Falkirk Council welcome the Scottish Government's proposal to update and consolidate the primary and secondary legislation and supporting guidance framework relating to proposed school closures, rezonings and other major changes affecting schools.

Whilst we agree that it is important to highlight the importance of rural schools as a community asset, we do feel that the consultation document over-emphasises this and the broader framework proposed for preparing the case for and consulting on school closures should also apply to schools in the non-rural setting. We also feel that separately dealing with Educational Benefits and Community Impact would miss the opportunity to legislate in a way that ensures local authorities prepare an overall Strategic Business Case for any proposed closure that also encompasses financial and resourcing implications.

We also have some concerns that the proposed framework unnecessarily extends the timescales required for a consultation on school closures and other matters. Such consultations create anxiety amongst parents in particular, and it is important that they are resolved as quickly as possible, ensuring that all stakeholders can be fully consulted.

The outcome required from new legislation is an effective process for consultation that does not take too long, balanced against the need for a full and open consultation.

Our response to the specific questions asked in this consultation are as follows:

RURAL SCHOOL CLOSURES (SECTION 3)

Q1: Do you support the proposal to require local authorities to have regard to certain matters before they can respond to consultation on the closure of a rural school?

- Yes, it makes sense to legislate for a consistent and transparent approach to school closures. However, why focus this approach at rural schools only when there are lots of closures and mergers within the non-rural setting affecting many stakeholders?

Q2: Do you agree with the four matters we propose requiring that authorities should have regard to before proposing a rural school closure? These are:

- ***Alternatives to a closure of the school***
 - ***Likely overall impact of the school's closure on the communities which it serves***
 - ***Likely impact of closure specifically on the community's subsequent use of the school's building and grounds***
 - ***Likely impact that new travel to school patterns would have on pupils and other school users and the environment***
- We agree that the 4 criteria suggested are relevant, however, we feel that they would also be important considerations in the proposed closure of a non-rural school.

- The assessment of impact on the community would be very difficult to gauge, and even with the results of the consultation this could be very subjective. As it would be impossible for any Authority to fully answer this question at this early stage it should not be incumbent on them to do so.

Q3: Do you agree that it is not appropriate to set up a rural schools fund?

- Yes we agree that it would not be appropriate.

Q4: Do you agree with the proposed definition of “rural schools”?

- Yes. This definition successfully classifies the Falkirk Council schools currently considered “rural”.

AN EDUCATIONAL BENEFIT STATEMENT (SECTION 4)

Q5: Do you support requiring local authorities to publish a statement setting out the educational benefit of the school closure proposal?

- Yes. However, this is one element of the overall business case for any proposed closure rather than a completely separate matter.
- We feel that the prescribed elements for a school closure proposal should include an Educational Benefit Statement and the four criteria specified in Section 3, together with the financial and resourcing reasons for proposing closure.
- Together, these six elements would form a Strategic Business Case that encompasses and considers all important issues.

Q6: Do you agree that it should be left to the authority as to how it sets out an educational benefit statement?

- We feel that there should be an agreed template for an overall Strategic Business Case for any school closure. The educational benefits element should be one of the 6 integral parts of this.
- It should be up to each local authority to complete each of these 6 elements, but, given the radical changes being proposed, an example or guidance on what local authorities should include or exclude in such a business case would be welcomed to ensure a consistent approach across Scotland based on best practice.
- HMIE are in an ideal position to provide advice on addressing the educational benefits of a school closure.

TIGHTENING THE REGULATIONS FOR ALL SCHOOL CONSULTATIONS (SECTION 4)

Q7: Do you agree that HMIE’s views should be sought in all cases?

- No. It makes sense that HMIE scrutinise the educational benefits of any proposed school closure during the consultation process and they should be asked to comment within the context of the overall Strategic Business Case.
- However, HMIE would add little value to other statutory consultations on issues such as rezoning, so their involvement across the board would be unnecessary.
- The suggestion in paragraph 63 implies that local authorities should provide HMIE with an interim report showing the feedback from the consultation, to enable HMIE to respond. We feel that this is completely unnecessary as HMIE should be consulted on the Strategic Business Case. We also feel that this would add unnecessary time delays to the whole process (see also response to Question 8 below).

***Q8: Do you support the proposed changes to the way consultations should be conducted?
These are:***

- ***Introducing a requirement that a consultation paper should be published containing certain information;***
 - At Falkirk Council we already do this and report this fully to Council.
 - Any new regulations should align “certain information” with the considerations specified in Section 3 and Section 4, which we have earlier suggested is encompassed within an overall Strategic Business Case.
- ***Establishing a mechanism for addressing allegations of factual inaccuracies in a consultation paper;***
 - This would ensure transparency, but legislation should be carefully worded to exclude matters of subjective, financial or statistical interpretation.
 - It should only be the material facts that fall into this mechanism.
- ***Extending the list of people who must be consulted;***
 - Other local authorities should only be consulted where a cross-border agreement exists to accommodate pupils from their area at an affected school.
 - There should be no statutory obligation to consult staff on the reasons for a proposed closure. It should only be the parties affected by Education delivery. Staff would be consulted by management as part of the normal internal processes for these matters.
- ***Updating the way consultations are publicised;***
 - There should be no obligation to publicise the consultation in areas other than the school catchment. Some school rolls include pupils from a range of areas on placing requests and they should not define the area for publicising a consultation.
 - For example, if an school proposed for closure or rezoning had a pupil who lived in Fife, we should not be obliged to publicise the consultation in the Fife press.
- ***Updating how people respond to a consultation;***
 - The proposed approach is consistent with our current consultation process.
- ***Extending the minimum consultation period to 6 weeks of term time;***
 - We feel that 4 weeks is sufficient but agree that no consultation should take place during the summer holidays.
 - Consultations on school closures create anxiety amongst parents and it is important that they are resolved as quickly as possible.
 - We feel that extending the consultation period to 6 weeks, particularly excluding all school breaks, would result in a process that takes too long.

- ***Introducing a requirement that the authority publish a consultation report, 28 days before the final decision is taken.***

- We do not agree with this. We feel that it will introduce a further delay in the decision making process when combined with committee cycles, extending the period between the consultation starting and a decision being made to at least 10 weeks, and probably 4 to 6 months in practice when combined with a council's decision making structures.
- For school closures and major catchment reviews this can be planned for, but for smaller matters such a lengthy consultation process may lead to operational problems.

Q9: Do you agree that Ministers should take a power to issue “statutory guidance” to which authorities would have to have regard?

- Yes. Clear and binding guidance would be useful in establishing procedures and ensuring a consistent approach nationally.
- Non-statutory guidance is open to interpretation and omission. This will inevitably create doubt, confusion and inconsistency. (ie. guidance on calculation of school capacity)

A REFERRAL SYSTEM (SECTION 5)

Q10: Are you content with the present system of referral of closure cases to Ministers?

- No. Our main concern with the current system is that referral on the basis of occupancy levels relies on a definition of school capacity that is different for every authority. A more standardised approach would be preferable if occupancy levels continue to trigger referral to Ministers. As there is no national standard for calculating school capacity, this would need to be urgently addressed to reinforce this referral method.
- The distance criteria would not apply to Falkirk schools, so other, more rural authorities are in a better position to comment here.

Q11: If not, what changes would you wish to see made, and why?

- If the 80% rule is still to apply, then clear guidance on the calculation of a school's capacity and occupancy should be given to ensure a standard of approach by all authorities.

Q12: Do you agree with the proposal to place the responsibility on authorities to satisfy themselves regarding the provision of denominational education?

- Yes.

If so, do you agree with the proposal to continue to allow referral to Ministers if the church or denominational body has an objection?

- Yes, but we feel that such objections should only be made when the church/denominational body has an issue with the consultation process itself. (The consultation process itself should allow the view of churches/denominational bodies and other interested parties/organisations to be fully considered and appraised if it has been properly conducted.)

Q13: Do you agree with our proposal that in future only school closure cases should be referable to Ministers?

- Yes.

Falkirk Schools - Scottish Government Urban/Rural Classification

Large Urban Areas - Settlements of over 125,000 people.
None
Other Urban Areas - Settlements of 10,000 to 125,000 people.
Antonine, Bainsford, Bantaskin, Beancross, Bo'ness Public, Bonnybridge, Bowhouse, Carmuir, Carron, Carronshore, Comely Park, Deanburn, Denny, Dunipace, Easter Carmuir, Grange, Head of Muir, Kinnauld, Kinneil, Ladeside, Langlees, Larbert Village, Laurieston, Maddiston, Moray, Nethermains, Sacred Heart, St Andrew's, St Francis Xavier's, St Joseph's, St Margaret's, St Mary's, St Patrick's, Stenhousemuir, Victoria, Wallacestone, Westquarter
Accessible Small Towns - Settlements of between 3,000 and 10,000 people and within 30 minutes drive of a settlement of 10,000 or more.
Bankier, Hallglen
Remote Small Towns - Settlements of between 3,000 and 10,000 people and with a drive time of between 30 and 60 minutes to a settlement of 10,000 or more
None
Very Remote Small Towns - Settlements of between 3,000 and 10,000 people and with a drive time of over 60 minutes to a settlement of 10,000 or more.
None
Accessible Rural - Settlements of fewer than 3,000 people and within 30 minutes drive of a settlement of 10,000 or more.
Airth, Avonbridge, Blackness, Bothkennar, California, Drumbowie, Limerigg, Shieldhill, Slamannan, Whitecross
Remote Rural - Settlements of fewer than 3,000 people and with a drive time of between 30 and 60 minutes to a settlement of 10,000 or more.
None
Very Remote Rural - Settlements of fewer than 3,000 people and with a drive time of over 60 minutes to a settlement of 10,000 or more.
None