EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

AGENDA

13th Meeting, 2009 (Session 3)

Wednesday 6 May 2009

The Committee will meet at 10.00 am in Committee Room 5.

1. **Schools (Consultation) (Scotland) Bill**: The Committee will take evidence on the Bill at Stage 1 from—

   Colin Reeves, Deputy Director, Schools Division, Lynn Henni, Schools (Consultation) (Scotland) Bill and Educational Options Team Leader, Schools Division, and Johanna Irvine, Principal Legal Officer, Scottish Government Legal Directorate, Scottish Government;

   and then from—

   Professor Neil Kay;

   Mervyn Benford, Information Officer, National Association for Small Schools.

2. **Schools (Consultation) (Scotland) Bill (in private)**: The Committee will consider written evidence received from local authorities and decide which to invite to give oral evidence.

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Edinburgh
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The papers for this meeting are as follows—

**Agenda item 1**

Schools (Consultation) (Scotland) Bill

Paper by the Clerk

SPICe Bill Briefing: Schools (Consultation) (Scotland) Bill

SPICe Briefing: Summary of written evidence

**Agenda item 2**

Paper by the Clerk

(P)
Introduction

1. This paper sets out the background of the Scottish Parliament’s consideration, to date, of the *Schools (Consultation) (Scotland) Bill*. It also sets out the schedule for the Committee’s forthcoming Stage 1 oral evidence sessions.

Background

2. The *Schools (Consultation) (Scotland) Bill* was introduced in the Scottish Parliament on 2 March 2009 by Fiona Hyslop MSP, Cabinet Secretary for Education and Lifelong Learning.

3. The Bill was referred to the Education, Lifelong Learning and Culture Committee for Stage 1 consideration by the Parliamentary Bureau at its meeting on 3 March 2009. The Parliament agreed on 22 April 2009 that Stage 1 consideration should be completed by 4 September 2009.

4. The Committee agreed its approach to Stage 1 consideration of the Bill on 4 March 2009.

The Bill

5. The Bill has three core themes:

*Consultation process for all schools (sections 1-11)*
The Bill seeks to replace current regulations\(^1\) to update and strengthen the consultation practices and procedures that local authorities apply to a number of school-related proposals, including closures.

*Rural schools closures (sections 12-14)*
The Bill seeks to place a statutory duty on local authorities to ‘have special regard’ to three factors (viable alternative to closure; likely impact of closure on local community; and likely impact of closure in terms of travel arrangements) before consulting on a rural school closure.

*Scottish Ministers’ involvement in school closures (sections 15-17)*
The Bill seeks to replace the current requirement for certain local authority decisions in relation to schools, including closure, to be referred to Ministers with a broader power to call in school closure decisions where there have been alleged failures in the consultation or decision making processes.

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6. SPICe has prepared a briefing on the Bill. This is attached in hard copy for members and can be viewed on the Parliament’s bill web pages\(^2\).

**Written evidence**

7. The Committee agreed to put out a call for written evidence and to invite written evidence from a number of organisations. 57 responses were received and a list of respondents is attached at [Annexe A].

8. These, and a summary of the written evidence produced by SPICe, are attached in hard copy for members and can also be viewed on the Committee’s, and Bill, web pages\(^3\).

**Oral evidence**

9. The Committee agreed the following timetable for oral evidence:

   **6 May**  
   Panel 1 - Scottish Government officials  
   Panel 2 - Professor Neil Kay and Mervyn Benford, National Association for Small Schools

   **13 May**  
   Single panel – Scottish Parent Councils Association (SPCA); Scottish Rural Schools Network (SRSN); Association of Scottish Community Councils (ASCC); and Scottish Parent Teacher Council (SPTC)

   **20 May**  
   Panel 1 – Representatives from three local authorities and a representative from the Association of Directors of Education in Scotland (ADES)

   **27 May**  
   Panel 1 – Her Majesty’s Inspectorate of Education (HMIE)  
   Panel 2 – Educational Institute of Scotland (EIS)

   **3 June**  
   Single panel – Fiona Hyslop MSP, Cabinet Secretary for Education and Lifelong Learning.

10. Short biographies for Professor Kay and Mervyn Benford are attached at [Annexe B]. Members may wish to note that Professor Kay is the author of ‘The Accounts Commission and School Closures’, November 2005\(^4\). Mervyn Benford has provided a written submission which is attached at [Annexe C].

Emma Berry  
Assistant Clerk  
Education, Lifelong Learning and Culture Committee

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\(^4\) [http://brocher.com/Schools/accounts%20commission%20and%20indicators.doc](http://brocher.com/Schools/accounts%20commission%20and%20indicators.doc)
List of written evidence received

1. Aberdeen City Council
2. Aberdeenshire Council
3. Association of Directors of Education in Scotland (ADES)
4. Association of Headteachers and Deputes in Scotland (AHDS)
5. Association of Teachers and Lecturers (ATL) Scotland
6. Beaton, Murdo N
7. Bord na Gaidhlig
8. Boyd Robertson, A G
9. Campbell, Allan
10. Catholic Education Commission
11. Children in Scotland
12. Church of Scotland – Church and Society Council
13. City of Edinburgh Council
14. Clackmannanshire Council
15. Comann nam Parant
16. Comhairle nan Eilean Siar
17. Consumer Focus Scotland
18. COSLA
19. Deiseal Ltd
20. Drysdale, Sheila
21. Dumfries and Galloway Council
22. East Dunbartonshire Council
23. East Renfrewshire Council
24. Educational Institute of Scotland (EIS)
25. Feisean nan Gaidheal
26. Fife Council
27. Glasgow City Council
28. Govan Law Centre
29. Her Majesty’s Inspectorate of Education (HMIE)
30. Inverclyde Council
31. Iwase, Hisami
32. Langan, Joyce
33. Macdonald, Angus John
34. Macdonald, Kenna
35. Macdonald, Norman
36. Macdonald, Stuart
37. McDonald, Susan
38. Mhoireach, Ceitidh
39. Moray Council
40. Moray Forum
41. Morrison, Alasdair
42. Nicholson, Julie
43. Nicholson, Sandy
44. Scotland’s Commissioner for Children and Young People (SCCYP)
45. Scottish Countryside Alliance (SCA)
46. Scottish Natural Heritage (SNH)
47. Scottish Parent Councils Association (SPCA)
48. Scottish Parent Teacher Council (SPTC)
49. Scottish Rural Schools Network (SRSN)
50. Scottish Youth Parliament
51. Sime, Dr Julie-Ann
52. Skills Development Scotland
53. South Lanarkshire Council
54. Stewart, Donald William
55. Turner, Dr Allan R
56. Turner, William J
57. West Dunbartonshire Council
Professor Neil Kay

Neil Kay has Bachelors and Doctoral degrees in Economics from Stirling University and is currently (April 2009) Emeritus Professor University of Strathclyde, Glasgow, Scotland; Special Professor University of Nottingham, England; and Visiting Professor University of Queensland, Australia. He has also previously held two Visiting Associate Professorships in the University of California; and a Professorship (part-time) in the EC’s official university, the European University in Florence, Italy. He is the author of six books published worldwide and numerous articles on industrial economics and the economics of business strategy.

He has been a member of UK government working parties including for ACOST, Cabinet Office to consider implications of the completion of the EC’s internal market for UK science and technology and has advised private, government and inter-governmental organisations, including five missions to the Balkans for UNDP to advise on post–communist institutional reconstruction. He also conducted a Review of Environmental Governance for the Scottish Minister for the Environment during this current parliament. He was the author of PE175 and PE342 on school closures to this parliament and has given invited evidence to this parliament’s current or predecessor Education Committee; Transport Committee (three occasions); Public Petition Committee; and Finance Committee (two occasions).

Since 1997 he has given invited lectures on various areas relating to his academic expertise, visits sponsored and funded by the host organisations in: Albania, Australia (four visits) Denmark (three visits), Ireland (three visits), Japan, New Zealand, Sweden, UK (numerous) and United States.

Mervyn Benford

Mervyn Benford is the Information Officer for the National Association for Small Schools.

NASS was formed in 1978 as a result of the first whole-authority slates of small school closures. We are a community organisation, not a professional association, working entirely on volunteer effort and membership subscriptions with the occasional donation. Our membership is across the social spectrum. We are constituted to defend and promote the worth of small schools and now have a wide-ranging abundance of hard data showing that small schools represent high academic, social and community worth and wise long-term investment when proper sophisticated economic analysis is applied.

We advise members defending small schools, providing advice and support. We lobby political parties and other decision-making organisations and
interest groups. We produce pamphlets and other literature and run a simple web-site www.smallschgools.org.uk. Since devolution our earlier status as the only national organisation doing this work is necessarily extended through groups in Wales and Scotland doing similar work within those countries. Accordingly we work more as partners sharing the overall effort but with less of a direct involvement by NASS in on-the ground activities.
SUBMISSION FROM MERVYN BENFORD

Schools (Consultation) (Scotland) Bill

The small school as a wholesome, effective model of education

1. We are pleased to be asked not only to submit written evidence but also to attend on May 6th to respond to questions. As a national association across the UK, we respect the devolved nature of provision in Scotland and this submission is confined more to general overview of involved and relevant principles. We believe the detail of the Bill a proper matter for Scottish people to determine. We are happy to respond to questions on this paper at the oral hearing.

2. We welcome a Bill designed to ensure a fair and balanced assessment of all issues relevant to proposals to close small schools or otherwise rationalise/re-organise provision affecting the life and work of small schools. We welcome a Bill shaped by hard evidence particularly well exposed in Scotland affirming small school worth.

3. The fact that Scottish evidence is almost entirely confirmed in one way or another by data and research findings from across the UK and in international findings lends strength to the underlying premises we see in the Bill, namely the need to protect the model of wholesome, effective education that small schools represent from unjustified destruction.

4. Scottish evidence shows that children in its smallest schools have a significantly higher chance of entering higher education and that children in such schools from disadvantaged and impoverished backgrounds make progress. This latter evidence is rare in our experience. Since first identified in "All our Futures" in the 1970s, a significant cadre of disaffected, under-achieving pupils from such backgrounds has remained a blight upon a school system heavily committed to provision in large and urban schools.

5. This problem has proved enormously expensive not only to education budgets but also for other public services such as social services, NHS and police. NASS submits that the evidence from Scotland and elsewhere that small-scale provision, close to home and community, has not only educational and social but also financial benefit has never been properly recognised by those analysing small school costs.

6. Yet the 1983 research for the then Department of the Environment by Forsyth and Nisbet at Aberdeen University specifically recommended that economic cost benefit analysis and the impact on parents are relevant financial factors.

7. The US "Headstart" project designed to bridge a visible and tense gap in perceptions between home and school in big cities was ultimately shown ten years on to return to the Exchequer, for every dollar spent, between $4 and
$15 as long-term profit on the investment. “Headstart” cost billions. The profit came from two sources:

8. The costs of educational failure, disaffection, truancy, vandalism, drugs, criminality, etc. were reduced through higher attendance and more purpose for pupils arising from parents and teachers being more on the same wavelength.

9. Better performance brought improved staying-on rates, better results/qualifications and higher tax revenues.

10. The Scottish evidence cited above is the exact parallel, more success for disadvantaged children and families and more enduring achievement. We submit that the same economic investment benefits well extrapolate from the US evidence. The Nisbet study reported the findings of Johnstone, HMI, that the most successful pupils at “Highers” were from remote, sparsely-populated communities (where schools would have been very small.) Current Scottish evidence has thus endured over 30 years. To achieve such outcomes does not cost extra billions though Birmingham is currently proposing to spend £40m on just 50 schools with classroom discipline problems to reach parents directly. Small schools do it almost free. This wholesome, effective model of small-school provision underpins our promotion of the urban village concept in future urban provision through which to generate similar benefits and outcomes. It should not be erased.

11. Consistently the most successful local authority in Wales at ‘A’ level has been Ceredigion, which has the most small and very small primary schools. Within work done in 2006/7 for the Commission for Rural Communities by Cambridge Research Associates on Choice in Rural Education it was possible to show that in the schools studied there was also a higher rate of access at 18+ to higher education for children from the smallest schools.

12. In 2007 a Derbyshire primary school with 28 pupils was kept open by the Schools Adjudicator. It had included in its evidence the pass rates at 16+ for its pupils at the rural secondary school to which they had transferred. Their success was 82% achieving five GCSE’s A to C compared to the school’s 74% and the national 56% rate.

13. At the time the Scilly Isles schools, primary and secondary, were formed into one school the secondary school was in Special Measures from OFSTED inspection, the larger primary on St. Mary’s was “causing concern” but the two island schools with just four or five pupils were receiving their second successive glowing OFSTED reports.

14. The Scottish evidence represents a highly positive, national and international picture of effective schooling, utterly disproving almost all that has been argued, educationally and financially against them. The current Welsh Assembly consultation on future school organisation invites comments and ideas on all aspects but on small rural schools chooses to lead by listing as a supposed “problem” the conventional deficiency shibboleths: small peer
groups; old buildings; few teachers; remoteness; mixed age and ability teaching and of course high costs. None of these claims has been backed by hard evidence. They remain unsubstantiated and little more than opinion, though highly plausible to decision-makers unaware of the facts. No evidence exists that children in Canada and Australia educated for primary years at home because of distance become a kind of second-class citizen, socially disadvantaged and a problem.

15. We know no studies showing envisaged closure savings materialise. West Sussex' Deputy CEO told his small school heads that if all their schools closed the rest would receive a £50 once-only bonus. This was well before recent transport cost escalation. In July 2008 told us the percentage of primary teachers employed in schools of 100 pupils or less was 5.4%, confirming earlier NASSS data. Half those teachers would be needed wherever the children attend. This is hardly the drain on the rest of the system and the urban poor long claimed by those who would close small schools. The urban poor need the same small-scale provision such as we are promoting through our urban village concept. Whilst the percentages in Scotland and Wales may be higher as there is perhaps greater overall rurality and remoteness, we do not think the argument changes. Scottish evidence obtained by SRSN has shown that closing a school can and usually will cost more than keeping it open long-term and that when broader economic analysis is applied using overall costs of education, not solely devolved budget pupil unit costs, more tends to be spent on urban pupils.

16. A French academic study of 50 schools in a rural department where 22 had been closed and merged into the remaining 28 showed that ten years later, by 1999/2000 in effect, the costs of transport alone were approaching the cost had all 50 been left open while as 50 they had obtained better results than the 28. *We submit that the case for the worth of small schools to national standards and well-being is almost irrefutable and so we are very interested in measures designed to prevent its erasure as a desirable model of education.*

17. Professionally the model is underpinned by the very elements deemed deficiencies. Mixed age and ability is how learning works in families and in everyday life. In good professional hands it is not surprising it is so effective academically and socially. The close relationship between parents and teachers, effectively sharing standards values, ambitions and effort, affirms the consistent findings of research as to the role of parents and home background in educational outcomes. In ESTYN's 2006 news release for its report on inspection findings in Wales, that academic success of small schools was the first factor presented and the effective partnership with parents was the second.

18. So far we have said nothing of the community worth of local schools, something we also apply to our urban village concept. We do not ignore it but it is usually a “given” even in closure proposals and often some gesture is made as compensation for the closure once effected. OFSTED’s 1999 comparative study of small schools against larger ones not only affirmed the better academic outcomes and teaching in small schools, along with pupil
personal development qualities cited above but also highlighted the mutual worth of the contribution between schools and their communities as a reason for **recommending a place in national provision as a whole for small schools.**

19. NASS argues that often the few relevant factors underpinning closure proposals are invariably short-term where the school as a community facility is longer-term. Birth-rate is rising. DEFRA predicts migration from town to country which we already detect and ESTYN has observed in Wales. There is inevitable ebb and flow but closure decisions are for-ever. Lee’s studies on rural depopulation showed closure either the catalyst for rural decline or the last straw. Loss of other provision vital for sustainability inevitably followed especially in smaller communities. We have endorsed ideas in Wales that revise rural service provision in ways integrating the sustainability concept, including schooling.

**The Bill:**

20. The Bill offers a fair and responsible process for consideration of school closures, especially smaller schools. Insistence on adequate and sufficient information for those consulted on such matters is essential. In our long experience this rarely happens. The local authority makes its case, often a set of unsubstantiated assumptions but dressed in plausible claims which influence decision-makers. They have little access to hard evidence that argues the proposal may be wrong and should even be resisted in the interest of the wider community. In England decisions very often reflect the views of a few cabinet members and officers committed to the policy from the start. We believe the de facto by-passing of full council debate as opposed to mere rubber-stamping of cabinet decisions creates a democratic deficit by minimising the roles of individual members for whose own wards even a single decision may have implications along with a collective impact on the wider community. We believe cabinets were established to streamline non-contentious council business but school closures are contentious and merit the full engagement of all elected members.

21. Those consulted are at serious disadvantage in defending their instinctive sense that the school(s) should not close. The Scottish Consumer Council is right to argue that such persons should be supported financially through local authority funds in their efforts to obtain the information they need unless they can be guaranteed its provision by the local authority process. The opposing arguments are often difficult to research at short notice and though we are the only organisation across UK actively available to support such persons we obtain no funding and work entirely through volunteer effort. Closure processes have hitherto been exploited to distinct and unfair local authority advantage.

22. **Freedom of Information** is uncovering significant examples where an authority’s case rests on dubious evidence. Hitherto false claims have been difficult for parents and others to unpick even if they are able to disprove claims specific to their context and location. Possible sources of more measured analysis, for example in the English cases, the churches, often find
self-interested reasons to support the local authority and do not exercise the levels of scrutiny and challenge necessary to unravel arguments and data constructed to maximise the strength of the authority’s case. Often closure proposals offer advantages to such bodies through potential sales of land and buildings. We have seen diocesan endorsement of a closure proposal in England where in almost 18 months of prior argument and campaigning a decision was taken to close a 100-pupil school, and so requiring twice-daily bus journeys to the alternative, without a single estimate of the initial transport costs involved let alone longer-term price escalation.

23. We submit that the consultation stage is critically important in the closure process and that injustice can well occur causing individual or other harm from flawed consultation. We believe this significant in that recent efforts in England to engage the Local Government Ombudsman have been hindered by the LGO convention that injustice cannot occur until a final decision has been made. Not only does the 2008 statutory guidance impose duties on authorities which, if neglected, do and can cause injustice at the earlier consultation stage but, leaving the scope for protest until later stages often militates against fair process. High Court recognition of injustice can still bring judgements in an authority’s favour where the authority has gone far enough down the road towards implementation.

24. An example of harm done at the consultation stage by flawed proposals is that the very plausibility of the case made, despite being unfounded in fact, reduces parental and community confidence as well as mis-leading decision-makers and the media. Just the emergence of talks or other hints that school(s) may close very much works to the advantage of those wanting closures. School roll often plummets as parents, despite faith in their school, come to see closure as inevitable. In almost every case where a school stays open roll not only recovers but rises, proving that the emergence of the positive evidence through effective if difficult campaigning has not only better informed decision-makers but also improved general public awareness of small school worth.

25. The 2008 new Statutory Guidance in England for closing maintained schools emphasises this factor by insisting in the provision of “adequate and sufficient” information to enable “considered response”. In so doing, and in its many provisions on how decisions are to be made, and the need for transparency of procedure and outcome, including reflecting what has been contributed from consultation, these regulations reflect the precedent ruling in the High Court by Mr Justice Mann as to adequacy of consultation procedures in public consultation exercises.

26. Mr Justice Mann did not distinguish between supposedly formal and informal stages of consultation as we now find local authorities trying to do. A statutory closure notice requires “formal” consultation though authorities attempt to circumvent it by confining this to drop-in and other small group sessions that deny the benefits of a full public meeting. They then insist that any other prior consultation is “informal” and not bound by statutory guidance. We submit that adequate and sufficient provision of information and full public
debate are as vital at every stage of public consultation. Else authorities return to their historical practice of presenting only the information that supports their case.

27. There are time-scale factors too. English guidance now requires adequate time for consultation and excluding periods when schools are closed and parents and others affected likely to be away. Cumbria launched its 15-year reorganisation plan in 2008 the day before the Easter holidays began, setting a response deadline for soon after schools re-opened. Many saw the proposals for the first time two or three weeks before the deadline and before responses were possible there were three regional meetings “to explain” the proposals, which were clearly not self-explanatory.

28. NASS led a campaign through the local media during the Easter period that drew angry responses to local editors for publishing the broader perspectives and concerns we aired but which in due course brought withdrawal of the original plans and replacement with a far more positive set of statements about the future of small schools in Cumbria. Officers admitted they had themselves not known of much of the evidence we have gathered. They were more influenced by the conventional claims of deficiency and excessive cost bringing massive savings from rationalisation.

29. In our recent discussions with the Local Government Ombudsman, we were dismayed to find that his senior staff were deliberating the issues raised without knowledge or copies of the 2008 Guidance. This hardly enables proper judgements of maladministration especially when the consultation stage is denied relevance. Defenders of small schools have historically faced considerable bureaucratic hazards and impediments which have contributed to the steady reduction of numbers despite the model itself flourishing against all predictions and expectations.

30. A key factor is ultimate right to independent appeal. We cited the Adjudicator’s decision earlier in an English case. Access to adjudication has been limited ever since the Government changed the system to an allegedly more locally responsive one than the long-practised appeal to the Secretary of State. The Blair Government in its exercise of that role before it introduced changes kept open 11 of 12 small schools referred on appeal to it precisely because the LEA overlooked key criteria such as high standards, popularity with parents and community worth. The 110/98 pledge of an end to wholesale closures through a “presumption against closure” has rarely been taken seriously at local authority level and no evidence emerges that debate has occurred of what ministers still describe as but a “last resort.” Ministers have twice told us in writing that surplus places are not a reason to close village schools but successive closure proposals still argue this motive. A “presumption against closure” needs enforcement power if it is to be taken seriously. Those ministerial criteria for retention of small schools have been weakened by subsequent developments limiting the right of appeal to independent arbitration.
31. That we now find English councils riding roughshod over statutory guidance may well reflect the lack of process for adequately monitoring their actions and holding them to account. Thus the statutory duty ‘to provide diversity, choice and a system shaped by parents’ meets reorganisation proposals designed to insist on a standard size and character for every school, the antithesis of diversity and choice and usually opposed by parents. LGO disinterest means little recourse for communities unable to fund access to the High Court and having first to pass legal potential criteria anyway.

32. Whilst we welcome the involvement of HMIE in the assessment of a school’s virtue we would be concerned if short-term failings brought the long-term loss of a school to a community. It has been shown in England and Wales that once the occasional failing small school attracts proper local authority advice it rapidly improves. Research consistently shows quality in education derives from leadership vision and energy. These are possible in any school but we submit that they become more difficult as the numbers involved rise and in that vital partnership with parents almost impossible to do what small schools do so well. A rapidly changing future faces our youngest children and the as yet unborn. Few can tell NASS what provision will look like even ten years ahead. Four major studies have shown that beyond basic working comfort the quality of buildings little impacts on pupil performance. We submit the two resources children will always need are good parents and good teachers and those are the proper targets for investment and well-served by small schools.

Mervyn Benford
Information Officer

Bill Goodhand Chair Barbara Taylor Secretary
Schools (Consultation) (Scotland) Bill – Summary of written evidence

Introduction

This paper summarises key points from the written evidence received by the Education, Lifelong Learning and Culture Committee on the Schools (Consultation) (Scotland) Bill (‘the Bill’). A total of 57 responses was received, which includes 14 local authorities, two unions, COSLA, HMIE, ADES and the Scottish Rural Schools Network. The committee received 21 responses exclusively regarding the provision of Gaelic medium education.

The Bill aims to revise and strengthen the statutory consultation process required when education authorities are considering changes to the school estate, particularly school closures. Additionally, the Bill provides for education authorities to have special regard in relation to rural school closures and replaces the current system for referring certain local authority decisions for ministerial consent with a power for Scottish Ministers to ‘call-in’ decisions.

General principles

The Bill has been broadly welcomed, with a number of local authorities commenting that the proposals reflect existing good practice (for example, Fife Council, Comhairle nan Eilean Siar, East Dunbartonshire Council, City of Edinburgh Council, Dumfries and Galloway Council).

The Scottish Rural Schools Network (SRSN), which has sought legislative change regarding school closures for many years, welcomes the Bill. Consumer Focus Scotland¹ which conducted its own research into rural school closures and found many examples of poor practice, states, ‘there is no doubt that changes to the current legislative framework, and improvement in the practice of local authorities, would contribute to a more positive experience for consultees and help to build a stronger relationship between local authorities and the communities that they serve’.

Both COSLA and ADES state they worked with officials and many of the points they raised are reflected in the Bill. COSLA was originally sceptical of the need for legislation, concerned that it would be caught up in ‘this emotive and divisive debate’ and lead to bad legislation. However, COSLA states: ‘it is to the credit of everyone involved in drafting this Bill that, to date, we have avoided this pitfall’ and indicates its full support. While accepting most of the

¹ Consumer Focus Scotland was formed through the merger of the Scottish Consumer Council, energywatch Scotland, and Postwatch Scotland.
proposals, ADES has some reservations and states ‘it is unfortunate that the launch of the Bill gave the impression that its main focus was the protection of rural schools.’

While the Govan Law Centre and Children in Scotland both indicate support for the Bill, there is disappointment at the lack of a legislative presumption against the closure of rural schools.

**Revised consultation procedure**

The Bill revises the procedure for consulting on school closures, and other changes to the school estate. Overall, the specific proposals for the new consultation process were welcomed. COSLA’s states: ‘COSLA and ADES have worked hard to ensure the procedures are practical and do not introduce burdens on councils. There has been a balance struck between increasing transparency and delaying unnecessarily the eventual decision’.

However, some of the written evidence indicates concern regarding aspects of the proposed consultation procedure.

**Timescales**

The Bill extends the timescale for consultation at least six weeks, including 30 days term time.

Scotland’s Commissioner for Children and Young People (SYCCP), the Moray Forum and Children in Scotland each argue for a longer consultation period. Consumer Focus Scotland recommends that the consultation period should last 12 weeks, as there is ‘widespread acceptance’ that this represents good practice, and is the convention used by the Scottish Government.

On the other hand, SRSN view the 6 week consultation period as beneficial to the process, despite some of its members considering it to be too short for consultees with no experience of consultation practices.

The Bill sets other timescales, such as the requirement for education authorities to make a decision on a proposed closure, no sooner than three weeks after publication of the consultation report, and allowing Ministers six weeks to decide whether to call-in a proposed closure.

Aberdeenshire Council argues that the timescale for the whole process could lead to ‘significant educational concerns for the pupils involved’. In reference to the extended period between the initial proposal and decision implementation, ADES states it would be helpful if call-ins were decided promptly.

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2 The Moray Forum is a regional primary school campaign group within the Scottish Rural Schools Network.
Extended list of consultees
Where there is a proposal to close a school, the Bill extends the current list of consultees to include, pupils, staff, community councils and Bord na Gaidhlig (where Gaelic medium education is affected).

While the inclusion of pupils as consultees is welcomed, Children in Scotland, SCCYP and the Scottish Youth Parliament raise concerns with the condition in the Bill that states ‘in so far as the education authority considers them to be of suitable age and maturity’ (Schedule 2 (1)(c). Children in Scotland argues that very young children can contribute effectively if consultation is carried out using appropriate methods and materials. The SCCYP argues that ‘unduly restrictive interpretations’ may undermine key provisions of the Bill, and recommends reference to a range of consultation methods on the face of the Bill and in guidance to education authorities.

Notice
The Bill will require education authorities to issue a notice to relevant consultees of a proposal to make changes to the school estate. This will include details of where to obtain a copy of the proposal paper and how to make representations.

Consumer Focus Scotland and the SCCYP express concern at the current use of ‘pupil post’ to deliver such notices to parents. Based on its research, Consumer Focus Scotland argue that it delays notification, diminishes importance of the proposal, and pupils can read it and become distressed. Both submissions seek further information on the delivery method of notices.

Educational benefits statement
The Bill will require education authorities to publish an educational benefits statement when proposing changes to the school estate, including school closures.

This provision has been broadly welcomed. A number of submissions suggest additional requirements to be included in the educational benefits statement or within the education authority’s proposal paper itself. For example, the SRSN, Fife Council, the Moray Forum and the Scottish Parent Teachers Council (SPTC) suggest that a financial cost/benefit analysis should be included. The Moray Forum and SPTC also recommend the inclusion of a building condition assessment. SCCYP argues that the Bill should make explicit reference to UNCRC\(^3\) to ensure that the starting point of education authority deliberations is the ‘best interest of children’.

The Church of Scotland Church and Society Council and Children in Scotland argue that the definition of an educational benefits statement is unclear and the former calls for further guidance.

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\(^3\) UN Convention on the Rights of the Child
Fife Council is concerned that the educational benefits statement ‘does not take account of the responsibility of the local authority to manage the evolution of its school estate’, and that the Bill is not compatible with the local authority duty to secure best value as expressed in the Local Government in Scotland Act 2003.

The Govan Law Centre and the ATL union both suggest that the statement should include an equality impact assessment, in line with public sector duties to promote equality. For example, closure proposals may disproportionately affect disabled pupils.

**Public meetings**

The Bill proposes that education authorities must hold a public meeting on the proposal. The current regulations do not require education authorities to hold public meetings, although it is common practice to do so.

Consumer Focus Scotland recommends the need for best practice guidance on public meetings as its research indicated that these are perceived by consultees as a very useful opportunity for parents to present their case and make officials aware of their strength of feeling.

**Rural schools**

The Bill makes special provision for rural school closure proposals by requiring education authorities to have special regard to three factors – any viable alternatives, the effect on the community and the effect on travel arrangements to an alternative school – before proceeding to propose the closure of a rural school.

The special provision for rural schools is broadly supported (for example, Dumfries and Galloway Council, Aberdeen City Council, East Dunbartonshire Council, Inverclyde Council and Consumer Focus Scotland).

However, some of the submissions indicate concerns regarding this provision. For example, that the potential impact on the community is given priority over educational provision (SPTC). Comhairle nan Eilean Siar states, ‘In practice, this could mean that pupils could be retained in an educationally detrimental situation, because of factors not relevant to their education’.

EIS argues that while the three factors are crucial for the consideration of rural school closures, they are also relevant ‘to all of Scotland’s communities’ and should not be restricted to rural schools. EIS further states ‘it is invidious, to say the least, that from a statutory point of view the local authority may be required to treat the closure of two schools within its area in two different ways’. The Moray Forum, while supporting the special regard for rural schools, also notes ‘that small primary schools may enact important roles in supporting focus and cohesion within communities centred on schools within urban classified environments. Therefore, in addition to being required to have regard to community impact in rural environments, we suggest that authorities are encouraged to examine community impact in urban environments’.
COSLA states that it originally argued the special provision for rural schools is unnecessary, but now states ‘in the spirit of partnership we have agreed with the Scottish Government and ADES to support this part of the Bill, as it formalises good practice. It should be emphasised that we do not support extending this part of the Bill to non-rural schools, and we still favour supporting better decisions through guidance, rather than legislation’.

**HMIE**

The Bill proposes that HMIE submits a report on the educational aspects of any proposal to make changes to the school estate, including school closures. HMIE will have three weeks, from the end of the consultation process, to submit a report to the education authority. The education authority must publish a response to HMIE’s assessment in its consultation report. Current practice is for HMIE to provide an independent view on closure proposals that require Ministerial consent, although it is not required by statute.

A number of the submissions indicated some reservation about the proposed role for HMIE. The SPTC, ADES, ATL union and the Church of Scotland Church and Society Council seek further clarification on the role of HMIE, particularly in relation to what HMIE will take into consideration, and what will happen when there are differences of opinion between HMIE and the education authority. In particular the SPTC argues:

> ‘Recent decisions on school closure would suggest that HMIE will give greatest weighting to the quality of education provided by the teachers in the affected school and not give proper consideration to the greatest imperative on the authority, which is to provide a good education service for all its pupils’.

Three submissions were very critical of HMIE’s proposed role. The EIS argues that HMIE’s role could be described as ‘having responsibility for writing the first draft of the Consultation Report’ as it will have access to all the representations received by the education authority. EIS also notes that HMIE is an executive agency of Scottish Ministers and that this could lead to ‘a perceived conflict of interest’.

Glasgow City Council has major concerns with HMIE’s role and objects to it being ‘the equivalent of a consultee and their report being considered as part of the decision making process by elected members’. The council also refers to the fact that 8,000 responses were received during a recent consultation in Glasgow and argue this ‘goes beyond [HMIE’s] capacity, function and area of expertise’.

Clackmannanshire Council argues that HMIE involvement in every consultation ‘risks the generation of a significant number of adversarial situations’ and could lead to it having an ‘excessive influence’ on decisions. It is suggested that HMIE could have a role when a proposal is called-in.
However, a number of submissions support the role of HMIE (Aberdeen City Council, Aberdeenshire Council, SRSN,). In particular, Consumer Focus Scotland supports this proposal, as its research found:

‘that while parents often based their responses on a school’s educational attainment, council proposals often considered educational opportunities. The difference in approach appears to lead to tension with both parents and councils arguing that their view is in the best interests of the pupils’ education. We hope that the independent analysis from HMIE will overcome this tension.’

Comhairle nan Eilean Siar suggests a further obligation on HMIE to be involved at the time of compiling the proposal paper and to assist with the educational benefits statement.

In its written submission, HMIE states it was fully consulted on the new arrangements set out in the Bill. HMIE recognises that it will now be involved in every consultation on proposed changes to a school estate. The measures will involve HMIE at earlier stage of the process and will increase the number of proposals for consideration.

Ministerial power to ‘call-in’ decisions

The Bill also intends to replace the system for referring certain local authority decisions for ministerial consent with a power for Scottish Ministers to ‘call-in’ decisions. Currently, school closure decisions are referred for consent on grounds of distance to the alternative school, school capacity where pupil roll is greater than 80%, and where it affects denominational education. The latter ground for ministerial consent is being retained.

The Bill will require local authorities to notify Scottish Ministers if they decide to implement a school closure following a consultation. Ministers will have six weeks to decide whether to call-in a decision and during the first three weeks must take account of any relevant representations.

A number of authorities have indicated support for call-in, with some caveats. Some suggest that the grounds for call-in are vague and need more clarity (Aberdeenshire Council, Glasgow City Council). Aberdeen Council calls for an appeal mechanism in cases where the education authority disagrees with a ministerial decision, it argues:

‘The demographics of some rural communities are such that closure proposals are inevitable and the recent decision of a Scottish Minister to refuse the closure of a rural school with two pupils, both siblings, is very concerning.’

Others authorities suggest that it could lead to an increase in closure referrals or encourage objectors (Clackmannanshire Council, West Dunbartonshire Council, Comhairle nan Eilean Siar). Some say they would still prefer decisions to be taken locally, but accept the power to call-in where necessary (ADES, Fife Council, Inverclyde Council, Moray Council, Comhairle nan
Eilean Siar). On the other hand, Dumfries and Galloway Council suggests that the power to call-in could reduce the number of referrals as it places an onus on authorities to meet the requirements of the Bill.

The City of Edinburgh Council welcomes the power to call-in decisions as it removes the ‘arbitrary cut off point’ for referring decisions to ministers and will only be required where authorities have not followed the statutory process. However, the council does comment that there is no time period for how long ministers may take to make a decision once they have called-in a school closure proposal.

The removal of automatic referrals on grounds of distance and capacity is described as a significant improvement by COSLA. While its original position was that local decisions should be taken by democratically elected members, it now considers that the proposals in the Bill and the power to call-in are ‘consistent with this principle’.

Other issues raised regarding the power to call-in proposals include: rural school closures should be automatically called-in (Children in Scotland); clarity on the decision making criteria to call-in a school closure proposal (ADES); the need for 'robust and accessible criteria' to base call-in decisions on (Consumer Focus Scotland); it could potentially lead to every school closure proposal to be called-in (SPTC, Clackmannanshire Council); concern that the ministerial role will be restricted to procedural failure rather than the overall merits of a proposal (Catholic Education Commission).

Consultation
Of those who commented on the Scottish Government's consultation on the Bill, most were favourable.

The SRSN commented that the consultation was ‘thorough and inclusive’. The SPCA describes the consultation meetings as open and transparent, ‘in which creative suggestions flowed, were evaluated in a balanced way, and carefully recorded and incorporated’. Fife Council expressed its appreciation for the quality of the consultation carried out, stating that it was ‘extensive and thorough’. Dumfries and Galloway Council and the Catholic Education Commission also made positive comments on the consultation.

While Moray Council felt the consultation was ‘acceptable and reasonably efficient’, it remarked that the Scottish Government public meetings were poorly attended. East Dunbartonshire Council states that the consultation was issued just prior to the schools’ summer holiday period with a response date of September. It was felt that this reduced the time available to consult headteachers and parent bodies.

Financial Memorandum
The Scottish Government worked with COSLA, ADES and HMIE on the Financial Memorandum, and it is estimated that the additional total cost of the Bill will be £134,000 per annum.
Of those who commented, it was felt the costs would be minimal given that the proposals in the Bill reflect current good practice (COSLA, Dumfries and Galloway Council, Moray Council, Fife Council).

On the other hand, Aberdeenshire Council argues that the assumptions in the Financial Memorandum regarding the number of decisions called-in cannot be guaranteed.

**Gaelic medium education**

The Committee received 23 submissions that focus on Gaelic medium education. The only proposal in the Bill that relates to Gaelic education is that Bòrd na Gàidhlig must be consulted where proposals may affect Gaelic medium education.

The inclusion of Bòrd na Gàidhlig as a statutory consultee is welcomed, however, both Bòrd na Gàidhlig and Fèisean nan Gàidheal recommend an amendment to confer a power on Scottish Ministers to initiate a consultation to alter the status of a school to that of a Gaelic school, where there is parental support. Bòrd na Gàidhlig cites the National Gaelic Education Strategy and emphasises the development of Gaelic in education and the role it plays in securing the future of the Gaelic language in Scotland.

The committee received 21 further submissions exclusively regarding the provision of Gaelic medium education. Evidence was received from 19 individuals and two from organisations – Deisal Ltd\(^4\) and Comann nam Pàrant\(^5\).

Broadly speaking, this group of written evidence is seeking to ensure the increase provision of Gaelic medium education in Scotland. Twelve of the submissions specifically call for the Bill to confer a power on Scottish Ministers to force local authorities to create Gaelic schools where a majority of parents have called for it through a formal consultation. Others raise general concerns regarding the provision of Gaelic education in Scotland.

The Bill’s provisions do not prevent local authorities from opening Gaelic schools.

Bòrd na Gàidhlig also calls for a number of other amendments which would generally involve a consideration of the impact on Gaelic medium education, where an authority has proposals to make changes to the school estate.

**Other issues raised**

- The City of Edinburgh Council raises concerns about the transitional arrangements in the Bill, which may require ‘ongoing consultations' to be

\(^4\) A company of language tutors and linguists.
\(^5\) ‘Parents’ Organisation’, consists of a network of around 30 local groups, representing the interests of parents whose children are educated through the medium of Gaelic, from pre-school to secondary.
suspended when the Act commences. This could mean that some authorities will need to begin the consultation process again.

- Glasgow City Council seeks clarification on the closure of early years’ provision.
- The Govan Law Centre calls for parents to be given effective means to challenge decisions, as legal aid may not be available in such cases.

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SPICe Research
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