

EAST AYRSHIRE COUNCIL

CABINET – 17 SEPTEMBER 2008

EAST AYRSHIRE COUNCIL'S RESPONSE TO THE CONSULTATION ON SAFEGUARDING OUR RURAL SCHOOLS AND IMPROVING SCHOOL CONSULTATION PROCEDURES

Report by Executive Director of Educational and Social Services

1. PURPOSE OF REPORT

- 1.1 To seek agreement from Cabinet for East Ayrshire Council's response to 'Safeguarding our rural schools and improving school consultation procedures'.

2. BACKGROUND

- 2.1 The framework for the consultation on school closure proposals is set out in the Education (Publication and Consultation etc) (Scotland) Regulations 1981. The procedures and requirements have been amended many times since then, most recently in 2007, to account for the introduction of Parent Councils. Procedures covered by this legislation set out a detailed list of circumstances in which parents and other interested parties are required to be consulted in connection with any proposals to change school provision.
- 2.2 The Scottish Government in May 2008 agreed to consult on whether to introduce new guidance to update the above procedures and consequently launched a consultation exercise entitled 'Safeguarding Our Rural Schools and Improving School Consultation Procedures'. This document was launched at Sorn Primary School, by the Cabinet Secretary, Fiona Hyslop. The aim of this consultation is to provide a framework to generally improve the way in which all school closure proposals are handled and in addition to specifically ensure that closure of a rural school is taken only as a last resort, once all other alternatives have been considered.
- 2.3 The consultation document explains the role of schools in rural communities and as a result proposes that legislation be enacted to introduce a presumption against the closure of rural schools. It is important to note that the proposed guidance, if enacted, does not prevent closure of a rural school, but closure is only to be approved after all other alternatives have been explored and the impact on the community fully considered.
- 2.4 The consultation paper set out thirteen questions to which the Scottish Government are seeing responses. The questions and identified responses are attached as Appendix 1 to this paper.

- 2.5 The consultation paper clarifies the meaning of 'school' in relation to the procedures for consultation with parents when a closure is being considered. In this context, a school is defined as:
- All local authority primary, secondary and special schools
 - Standalone local authority nursery schools
 - Nursery, primary or secondary departments or special units within schools
 - Individual year groups within school
- 2.6 The consultation document also aims to set out an agreed definition of a rural school. Two approaches are considered. The first is to construct a list of schools based on some specific rural feature or criteria. This approach is not favoured within the document as there could be dispute over the criteria and over the interpretation in each local case. The approach recommended defines rural schools based on the government's own urban/rural classification scheme. This is described in detail on page 18 of the document.
- 2.7 The responses to the consultation questions were compiled by a team of officers from the departments of educational and social services, legal and finance. The draft response was then circulated to a range of interested senior officers in other services and to elected members with a responsibility for education and lifelong learning. Comments from these parties were incorporated into the responses.

3. FINANCIAL IMPLICATIONS

- 3.1 It is not possible at this point to definitively calculate the financial implications of any proposed new guidance on a presumption against the closure of rural schools. Further analysis would have to take place to calculate the capital and revenue costs of maintaining the entire stock of rural schools in an environment of falling rolls and increasingly aged buildings.

4. POLICY/LEGAL IMPLICATIONS

- 4.1 The new statutory guidance will require EAC policy to be updated once agreed.

5. COMMUNITY PLANNING IMPLICATIONS

- 5.1 The proposed statutory guidance will link to the community planning theme of promoting community learning and improving opportunities.

6. RISK IMPLICATIONS

- 6.1 Nil.

7. RECOMMENDATIONS

- 7.1 It is recommended that Cabinet note and approve the content of the responses made to the consultation questions.

Graham Short
Executive Director of Educational and Social Services

AS/EO'N
10/9/08

LIST OF BACKGROUND PAPERS

'Safeguarding Our Rural Schools and Improving School Consultation Procedures'.
Scottish Government, May 2008-09-10

Members wishing further information should contact Andrew Sutherland, Head of
Service: Schools. Tel: 01563 576126.

IMPLEMENTATION OFFICER: ANDREW SUTHERLAND

**SAFEGUARDING OUR RURAL SCHOOLS AND IMPROVING SCHOOL
CONSULTATION PROCEDURES –
PROPOSALS FOR CHANGES TO LEGISLATION**

**EAST AYRSHIRE COUNCIL'S RESPONSE TO THE CONSULTATION
PROCEDURES**

- 1. *Do you support the proposal to require local authorities to have regard to certain matters before they can proceed to consultation on the closure of a rural school?***

East Ayrshire Council support the proposal that local authorities should have regard to 'certain matters' before they can proceed to consultation on the closure of a rural school. The identified good practice under the banner of 'certain matters' is already adhered to by this Council and would not necessitate a fundamental change in our policy.

- 2. *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 the 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 and arrangements would have on pupils and other school users and the environment.*

East Ayrshire Council would support the above recommendation. Our procedures at present take into account these four matters. Giving regard to such matters also reinforces the good practice of recognising that schools are identified community assets which have an impact in a community beyond formal education.

- 3. *Do you agree that it is not appropriate to set up a rural schools fund?***

East Ayrshire Council understands and appreciates the reasons, given in the consultation document, for not setting up a rural schools fund. However, it is felt that the implications of maintaining a school estate which contains a higher than average number of facilities within rural as opposed to urban locations still requires to be specifically reflected within the overall funding provided to Councils especially where occupancy levels may be less than 80% as a result of specific local demographic conditions. It is suggested therefore that the existing GAE methodology should be revisited in order that the current base line of rural school provision for each authority is fairly reflected within the relevant GAE sub service.

4. Do you agree with the proposed definition of 'rural schools'?

East Ayrshire Council is not comfortable with the eight categories of the urban/rural classification being used as a tool to decide the definition of a rural school. In accordance with CoSLA's position on this issue, the Council would suggest that this requires urgent consideration by the Scottish Government. It should also be noted that placing requests and cross boundary zones with a neighbouring authority may also impact on a settlement profile and size and this should also be taken into account in the definition. The Council would welcome clarification as to whether the core purpose of the definition is to promote rural schools or rural communities, or indeed rural education.

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

East Ayrshire Council welcomes this formal requirement. It would be part of the good practice already in place within the Council.

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

East Ayrshire Council would agree that it should be left to the authority to make a decision on the style and emphasis of the statement on educational benefit. The Concordat recognises the importance of a local authority managing its own educational and estate provision, and giving an authority control over the content of the educational statement reinforces that principle.

7. Do you agree that HMle's views should be sought in all cases?

East Ayrshire Council supports the view that all stakeholders and interested parties should be consulted during the process of discussing a school closure. HMle are an interested party and should therefore be consulted. However the suggestion that HMle report their views 'shortly after the consultation process is closed' requires further clarification. The paper comments that: 'educational matters are what is within HMle competence'. The paper then recommends that HMle should use this competence to report on the issues and concerns that emerged during the consultation process at the end of the process when it is formally closed rather than using their expertise, at the beginning of the process, to express views and have a potential impact on the quality and validity of the educational statement.

If the consultation process is properly and transparently managed with a consultation report issued, as recommended, at the end of the process, all of this steps and information/dialogue will be available for those involved to view and comment upon. It is not clear how helpful a HMle report on this process would be at the concluding stage. In addition, the role of HMle is to act as an independent audit organisation within a tightly defined remit. It is not clear what locus a HMle report would have in the context described in the consultation. Furthermore, as described throughout the document the responsibility for a robust and transparent system lies with the local authority.

HMIe involved in the way described may lead to confusion in accountability. East Ayrshire Council's recommendation is therefore that HMIe are involved at the beginning of the process and their role is to comment on the quality and validity of the educational statement.

8. 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**
- **establishing a mechanism for addressing allegations of factual inaccuracies in a consultation paper**
- **extending the list of people who must be consulted**
- **updating the way consultations are publicised**
- **updating how people can respond to a consultation**
- **extending the minimum consultation period to 6 weeks of term time**
- **introducing a requirement that the authority publish a Consultation Report, 28 days before the final decision is taken**

East Ayrshire Council would support all of these proposed changes to the way consultations should be conducted. They will help to ensure that all decisions are robust, comprehensive and transparent and they formalise best practice which already takes place within East Ayrshire Council.

9. Do you agree that Ministers should take a power to issue 'statutory guidance' to which authorities would have to have regard?

East Ayrshire Council would support the Scottish Government issuing statutory guidance to which authorities would have to have regard. The view of the authority however is that the statutory guidance prepared should be used purely as a means of clarifying the legislation and not used as a replacement or addition to legislation.

10. Are you content with the present system of referrals of closure cases to Ministers?

East Ayrshire Council would support a review of the present role of Scottish Ministers in referrals. Detail supplied below.

11. If not, what changes would you wish to see made, and why?

East Ayrshire Council's view is that referrals should not in the final instance be made to the Scottish Ministers. As documented in the paper, it is the statutory duty and responsibility of local authorities to manage education locally. Local elected members are best placed to understand all of the local circumstances and know the views of local people and communities. This knowledge puts them in the best place to weigh up the considerations which must be considered on a proposal to close a school. The proposals which will underpin the statutory guidance are robust, transparent and will drive a model of full consultation which will then be reported upon formally with all of the views of the involved parties expressed. Under such circumstances any

appeal against a local authority decision to close a school should be through the judicial procedure rather than a central political arena, even if the former is potentially lengthy and expensive. Referral to judicial procedure will remove the concept of 'appeal' to the Scottish government and link well with the principles and ethos of the Concordat.

- 12. Do you agree with the proposal to place the responsibility on authorities to satisfy themselves regarding the provision of denominational education? If so, do you agree with the proposal to continue to allow referral to Ministers if the Church or denominational body has an objection?**

East Ayrshire Council supports the principle that authorities satisfy themselves on their responsibility to provide sufficiently for denominational education. Given the potentially ambiguous wording of section 22C and 22D of the Education (Scotland) Act 1980 and, assuming this will not be updated at present, the Council would support the recommendation that cases in this instance may still be referred to the Scottish government, if the church or denominational body concerned objects to the local authority proposal.

- 13. Do you agree with our proposal that in future only school closure cases should be referable to Ministers?**

East Ayrshire Council support the view that all matters, such as changes of site and catchment, which are within the 23 potentially referable areas to Scottish Ministers, should all be for the local authority to finally determine.

- 14. If you have any other comments or suggestions to make on, or any addition to, the proposals set out in this consultation paper, please include these in your response.**

East Ayrshire Council welcomes the consultation and recognises that many of the proposed changes will improve the consultation process across the country. It is also important to stress however that all proposed school closures, be they rural or urban have a right to the same level of robust and transparent consultation during any proposed closure programme. The report does specify this in the text, but the title of the document, which refers specifically to rural schools, does not, *prima facie*, make such a point. The title should perhaps be amended or developed to emphasise that the recommendations are in effect for all schools in Scotland – the only difference in action being the four principles which need to be applied directly to rural schools.

Andrew Sutherland
Head of Service: Schools