

## EAST AYRSHIRE COUNCIL

CABINET – 19 MARCH 2008

### BETTER SCHOOLS : BETTER LEARNING – GENERAL ISSUES

#### Report by Executive Director of Educational and Social Services

#### 1. PURPOSE

- 1.1 To inform Cabinet members of some of the general issues that have emerged in the Better Schools : Better Learning consultation together with comments arising from these points.

#### 2. BACKGROUND

- 2.1 When the strategy Better Schools : Better Learning was launched on 7 November 2007, together with individual proposals to be subject to public consultation, a number of specific issues were raised in the initial papers:

- The existence of the Cabinet Secretary, Fiona Hyslop's, guidance published in October 2007.
- A vision for an improved school environment in East Ayrshire.
- The educational issues associated with the proposals.
- Past progress.
- A statement regarding the school estates management plan approved by Cabinet on 22 August 2007.
- The surplus places in primary schools in East Ayrshire.
- The under occupancy of certain schools.
- The fabric condition of schools
- A list of the various projects that were being consulted upon

In addition

- Attention was drawn to the existence of some notes that had been prepared by Council Officers to assist parents in the consultation process.
- A briefing session on the Cabinet Secretary's guidance was organised for Cabinet members, supported by a briefing note.
- The existence of the Cabinet secretary's guidance has been widely publicised throughout the process.
- Attention was drawn to community planning implications.
- Risk management implications were also identified in terms of the implications of the reduction in the school estate.

- 2.2 The "Vision for the School Estate" set out in the individual consultative documents stated:

*“East Ayrshire Council has an established vision for its school estate which will ensure the delivery of a modern curriculum in school buildings that are suitable for purpose. This vision further states: ‘East Ayrshire Council’s department of educational and Social Services: committed to providing choice, maximising opportunity for all, developing the potential of individuals and meeting needs through inclusion.’ “*

And that:

*“This statement covers every aspect of the Department’s work including the management and development of educational establishments. The Council’s 2004 Estates management Plan states that development and improvement in the fabric of school buildings is the key component in facilitating the learning and teaching process.”*

- 2.3** It was highlighted in paragraph of 8.2 of that covering report that financial implications will emerge once the preferred options have been agreed. It was emphasised that there was no presumption of savings and that indeed it could be the case that additional expenditure would be required. Further, that all capital receipts would be available for reinvestment in the rationalised school estate in line with the Council’s financial reserves strategy.
- 2.4** The Cabinet Secretary’s guidance issued in October 2007 is appended to this report for ease of reference. A seminar for Cabinet Members on the Ministerial guidance was held on Monday 17 March 2008.

### **3. GENERAL RESPONSES TO ISSUES RAISED IN THE CONSULTATION**

- 3.1** Some respondents, commented on the consultation exercise itself. A view was expressed, that there was a feeling that the Council had come forward with a number of “predetermined options” and that there might have been more direct engagement with Parents Councils and communities. It was argued also that meetings had had to be demanded and the Council should have offered a series of meetings.

This consultation exercise has been one of the most significant mounted by the Council. From the outset the strategy was always to go well beyond the minimal requirements of the regulations. This is apparent, for example, in:

- The period of the consultation being 54 days, nearly double the statutory requirement of 28 days.
- The original consultation documents all contained a range of options, including the status quo, and not just one possibility.
- Parents of all children affected being provided with a copy of the actual consultation document.
- Organisation and attendance of public meetings in partnership with parents and community councils.
- Regular contact during the consultation between officers and Parents Councils during the formal consultation period.

- Continued contact after the end of the consultation between officers and parents councils.
- Discussions with staff in schools directly affected by the proposals, and other schools
- Obtaining the views of children and young people.
- Visits by elected members to the schools affected.
- Discussions with the hierarchy of the Roman Catholic Church
- Responses to numerous requests for information.
- Discussions between chief officers and parents representatives on specific issues.
- Attendance by officers at events organised by the schools and parents councils affected.
- Wide involvement of all Council departments in contributing to the process.

As a result, the Council has received over 2200 responses. Some of these have been extremely thorough and detailed. In addition numerous responses have been made by officers and elected members to requests for information, and other communications.

- 3.2** It was clear, particularly at public meetings that a number of respondents believed that the consultation exercise was flawed in the sense of their belief that it would have a pre-determined outcome. Officers, throughout, have tried to provide reassurance on this point. It has been pointed out that all of the proposals contain a number of possible outcomes, rather than as in previous exercises where there was only one option. The Council has gone to considerable efforts to involve as many stakeholders as possible. At all stages, those with an interest have been encouraged to record their views. The high level of responses, and the detail of some, would indicate that the view at large is that the consultation exercise is recognised as worthwhile and valuable. Some respondents have acknowledged, despite disagreeing with the proposals, that they see the need for the exercise to be conducted. At all stages it has also been stressed that the Cabinet Secretary's guidance would be applied to each project within the consultation, whether or not the Council believed the decision was referable to the Scottish Ministers.
- 3.3** Similarly, some respondents have sought to cast doubt on the validity of the consultation exercise by questioning some of the numerical and factual accuracy of the information that has either been issued by the Council, or supplied in response to requests for information. Officers have responded to all requests for information and have endeavoured to answer questions as fully and as timeously as possible. However, officers believe that the information supplied has been as current and accurate as possible and based on best available information. It is accepted without reservation that different people will have, and are fully entitled to, a view that is different from officers on any given piece of information. Or, they may believe, for example, that a figure should have been calculated in a different way. It is also accepted on a complex issue such as educational provision that it is possible to find evidence, or research, that calls into question a particular viewpoint. This is why it is important to follow the Cabinet Secretary's guidance and look at

issues “in the round” and to recognise that there are unlikely to be any arguments of “absolutes”.

**3.4** During the consultation, some of the respondents have presented their case in terms of raising issues on the information that was supplied on financial savings and costs in the initial papers. It has however been emphasised throughout public meetings and the consultation process including the covering report that initially launched the projects (see reference above to paragraph 8.2) of the Cabinet report of 7 November 2007, that there were to be “no presumptions of savings, indeed it could be the case that additional expenditure will be required.” Rather the argument has been much more about the condition, accommodation and fabric of the buildings of the schools that are subject to the consultation and particularly the costs that would be required to maintain them into the foreseeable future. It is emphasised that the importance of this particular point is repeated on a number of occasions throughout the Cabinet secretary’s guidance that was issued to local authorities on 11 October 2007. As the consultation has proceeded, professional quantity surveyors employed by the Council have been able to review some of the costs and update these. Each individual consultation response therefore includes updated costings.

**3.5** Associated with the concept of savings, some parents’ groups have drawn attention to a specific aspect of grant funding. They have argued that a diminution a number of children educated in small (pupil roll less than 70) schools may result in a loss of revenue to the Council. While there is some basis for this argument, as presented, it does not take sufficient account of the following factors:

1. The Grant Aided Expenditure (GAE) indicator referred to is based on pupil rolls in 2004 and is valid for 2006/07 and 2007/08. The calculation for 2008/09 to 2010/11 has not yet been made available by the Scottish Government but will be based on the rolls in 2007. Even if the argument was sustained therefore there would be no change in grant level until 2011/12 at the earliest. Such a timescale makes it likely that further unpredictable changes would be included.
2. That all local authorities are presently reviewing their school estate and the proportion of small schools across Scotland will change in a manner that cannot be predicted for budgetary purposes.
3. Similarly, school rolls are changing throughout Scotland. The proportion of young people educated in small rural schools and others will also change in a way that is not predictable.

It is of course also the case that GAE only exists as a statistical formula used to distribute grant or Aggregate External Finance (AEF) which equates to around 80% of the GAE figure. This is a method of calculating and apportioning the overall grant for Local Authorities rather than an actual allocation of revenue as such. It is understood that at the time of this report a

review of grant distribution arrangements is being undertaken by the Scottish Government and it is not clear whether indicators such as this one will continue to be used beyond 2011.

- 3.6** A number of respondents made reference to the Authority's calculation of school capacity and raised doubts about whether this was accurate. This is an important point since where a school is earmarked for closure and it is over 80% occupied, the decision would have to be referred to the Scottish Ministers for ratification. The relevant method of calculation for capacity is defined in Revised Standard Circular Number 60 "The Capacity of Primary Schools" which was issued in July 2002. This document draws heavily on the legal rulings on this matter.

In summary there are a number of different measures of capacity which can be applied to schools. For the purposes of consultation on future educational provision the key measure is planning capacity which is calculated taking account of:

- The number of rooms
- The number of pupils who can be accommodated in those rooms
- Maximum class size set in national conditions of service for teachers.

In contrast the working capacity of a school is obtained by adjusting the planning capacity to take account of maximum class sizes, the organisational needs of the school and can therefore vary from session to session. Working capacity is used to determine placing requests and other matters where specific information related to a particular session is required. Since the working capacity is always lower than the planning capacity; it is however the planning capacity in law that has been accepted as the basis for the application of the 80% rule.

- 3.7** Some respondents related their arguments to the pupil roll projections. In the preparation of these, officers from the Planning Service have been consulted throughout. To ensure absolute clarity, it is to be noted that the figures included in the consultative documents included:

- (a) the projection of house building in the relevant area to 2015 based on the current East Ayrshire Local Plan; and (b) an estimate of placing requests based on past history
- (b) on estimate of placing requests based on past history.

To ensure that Cabinet, in considering the outcomes of the consultation had the information available, the figures contained in the documents responding to the consultation have been updated to take account of the new projections for house building as contained in the Finalised Draft Alteration to the Local Plan with the estimate of placing requests remaining unchanged.

The figures included in the consultative documents and in the reports now submitted to Cabinet can clearly only take account of projected, and not actual, house building. In other words, they are a best estimate. It is accepted that there may be localised issues and in the new individual reports there is commentary on these.

#### **4. FINANCIAL IMPLICATIONS**

4.1 Nil.

#### **5. POLICY/LEGAL IMPLICATIONS**

5.1 Nil.

#### **6. RISK IMPLICATIONS**

6.1 Nil.

#### **7. COMMUNITY PLANNING IMPLICATIONS**

7.1 Throughout this process, the aims and objectives of the Community Plan have been taken into account, and the views of Community Planning partners have been sought, where appropriate.

#### **8. RECOMMENDATIONS**

8.1 It is recommended that Members:

- (i) take account of the issues raised in this report when evaluating the results of the consultation of individual projects; and
- (ii) otherwise, note the contents of this report.

Graham Short  
Executive Director of Educational and Social Services

GS/JP  
19 March 2008

Members wishing further information should contact Graham Short, Executive Director of Educational and Social Services, Tel: (01563) 576017.

#### **LIST OF BACKGROUND PAPERS**

1. Better Schools : Better Learning – Cabinet paper of 7 November 2007
2. School Estates Management Plan – Cabinet paper of 22 August 2007
3. Cabinet Secretary's letter of October 2007 (appended)

#### **IMPLEMENTATION OFFICER**

Graham Short, Executive Director of Educational and Social Services

# The Scottish Government

## Schools

You are here: [Topics](#) > [Education and Training](#) > [Schools](#) > [School Buildings](#) > [School Closures Letter October 2007](#)

## School Closures Letter October 2007

### Letter issued regarding school closures guidance

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Full text issued 11 October, 2007 to Education Convenors

Copy to:- COSLA Education Convener

Directors of Education

Dear Convener

I am writing to you on a matter which each of you may have to confront from time to time, namely consideration of the need to adjust the configuration of the school estate and the prospect of having to consult on school closure proposals. This letter sets out the Scottish Government's position on the handling meantime of school closure proposals - whether or not they require Ministerial consent - in advance of our consulting on proposals for a legislative presumption against the closure of rural schools. It should be read in conjunction with the [Additional Guidance on Local Authority Proposals for the School Estate, including School Closures](#) which was issued in September 2004 and which is reissued and attached for ease of reference.

You will be aware of our manifesto commitment to introduce a legislative presumption against the closure of rural schools. We are in the process of considering how best to take this forward and intend to consult publicly on a package of measures in due course. Meantime though, I have looked again at the 2004 guidance and come to the decision that now is not the time to make changes to it. Given the prospect of consulting on legislative changes it might be confusing to make a series of interim adjustments at this stage. I also have little issue with the actual substance of the current guidance. My concerns focus more on how some Councils are applying it, particularly where a closure proposal is not referable to Ministers. Let me therefore highlight those aspects where my concerns are most acute.

At the end of paragraph 2 of the guidance there is a recognition of Councils' need to look ahead and have regard to projections of future demand for places. I would ask you to exercise care when doing so, given that this can never be an exact science. Firstly, population projections for a given community or area can fluctuate quite significantly from year to year and secondly, your Council can sometimes take positive action, or encourage or support the taking of action by others, to influence directly the projections and trends - for instance to seek to slow, halt or even reverse the decline in a community's population. Although there may not always be agreement as to the figures, it is very important for a community to understand clearly the basis for the population projections relevant to consideration of any school closure proposal.

The final sentence of paragraph 23 cannot be over-emphasised. In cases referred for Ministerial consent we shall pay the closest attention to the material and information in the case presented by the Council and the way it has demonstrated adherence to the legislation and guidance, taking account also of the issues I have highlighted in this letter. I would re-emphasise that the statutory framework, the guidance and this letter should underpin and be applied to all closure cases, not just those requiring consent. I would be most concerned if there were evidence of any distinction in the way Councils handle proposals which require Ministerial consent and those which do not. My expectation is that the same principles and approach will be applied across the board.

In the opening part of paragraph 27 and in part (a) thereof, there is reference to the need for your Council to set out the educational advantages of the proposed closure. This is critically important not only for those directly or indirectly affected, but also in the context for instance of your authority's duty to secure improvement in the quality of education provided in schools. For that reason, in future cases which are referred for Ministerial consent I shall be asking for HMIE's independent and professional advice on the case presented by the Council and on the envisaged educational advantages which the Council indicates that the

proposal is intended to secure.

That said, there are other considerations which Councils may also need to take into account, as illustrated in the subsequent sections of paragraph 27. A balance may have to be struck at times between increased travelling times and distances and the envisaged benefits that would accrue from a closure proposal. The way in which the financial considerations are calculated and set out needs to be made absolutely clear to all parties. There may also be real and contentious implications for the local community served by the school, which can be the focus of many of the consultation responses. It is important that Councils do give proper consideration to all such relevant matters prior to reaching their final decisions, although as the guidance indicates, the educational case - and the best interests of the pupils - at the end of the day has to be the key consideration.

It is crucial that the guidance is read and acted upon, as a whole rather than selectively, and in the spirit of the whole document. An example would be in paragraphs 29 and 30. They have to be read together and in the context of the rest of the guidance. Although this section acknowledges that authorities may well have to take into account wider considerations than the purely local, there is an important emphasis in such circumstances on any proposal delivering advantages locally, for those pupils directly affected, as well as on the wider scale.

Finally, whilst thoroughly endorsing the section of the guidance on the consultative process, I would very much wish to reinforce the message at the end of paragraph 33. The consultation process should always be a genuine one, one in which the points and issues raised at public meetings and by those responding in other ways are taken seriously, explored and also answered. In a process where transparency and accountability count for so much it strikes me as essential that those who have participated in the process get some sort of response or reply beyond just the announcement of the final decision. By that I mean that the Council endeavours somehow publicly to explain and set out how the consultation input and points raised were indeed considered and explored and then how and why the Council's final decision was reached. Drawing those links and setting out the post-consultation actions and of the decision making process are surely an integral part of genuine consultation and vital if people are to understand the rationale and reasoning behind your Council's decisions.

Before leaving the issue of consultations I would also wish to stress that pupils, every bit as much as parents, are also key stakeholders in any potential changes to school provision. Experience suggests that their input at an early stage can be very helpful. I would therefore expect you to use relevant strategies to engage with pupils when considering any alterations to the pattern of educational provision.

Let me conclude by asking you to reconsider the 2004 guidance and the way your Council applies it, in light of this letter, when you next have occasion to contemplate a school closure.

**FIONA HYSLOP**

**This letter corresponds with School Closures Guidance.**

# The Scottish Government

## Schools

You are here: [Topics](#) > [Education and Training](#) > [Schools](#) > [School Buildings](#) > [School Closure Guidance](#)

## School Closure Guidance

### Additional Guidance On Local Authority Proposals For The School Estate, Including School Closures

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#### Purpose

1. The primary purpose of this guidance is to set out the roles and responsibilities of those involved in the process of considering proposals that may lead to changes in the school estate, including closures of schools. It is intended to act as a framework, guide and clear reference point. It does not usurp the statutory rights and responsibilities of others, or supersede earlier detailed guidance on procedures. Reference is also made to publications in the series - Scotland's School Estate (see list of weblinks at the end). This guidance should therefore be read in conjunction with relevant legislation, earlier guidance and other materials, and the [covering letter of 11 October 2007](#) to Education Conveners from Fiona Hyslop, Cabinet Secretary for Education and Lifelong Learning.

#### Introduction

2. Councils have stewardship of education services at the local level. That carries with it many responsibilities, including responding to the changing landscape against which education must be provided. Among other statutory duties, authorities have to make adequate and efficient provision of school education for their area. That requires them often to look at issues from a somewhat different perspective from that of parents and local communities. An authority's responsibilities cover the whole of its area, whereas the focus of parents or the local community is, quite understandably, on their local school at a particular point in time. An authority's responsibilities also continue into the future, and that requires taking a long view, over generations, in other words looking far beyond just the current school population and pattern of demand.

3. An authority must keep its school provision under review. Buildings age and become unsatisfactory. Populations move and settlement patterns change. How education is delivered also evolves, which places different requirements on building, their spaces and facilities. Where once there may have been a young population in a particular community the age profile may have changed over time. In other areas, an authority may have to provide new school buildings in response to new housing developments and a growing and more youthful population. Thought must be given to questions such as what is the right 'shape' for a school? what facilities does a modern school need? to what extent must school buildings be increasingly flexible and adaptable to cope better with changing needs in the future? All those circumstances require authorities to continue to adjust the school estate and pattern of supply of education to match an ever changing pattern of demand.

#### The School Estate Strategy

4. In early 2003, the Scottish Executive and COSLA published a joint strategy for the school estate - Building Our Future: Scotland's School Estate. The purpose of the Strategy is to promote and ensure the creation of a learning and teaching environment fit for the future and buildings that will deliver better public services both to pupils and the wider community. It provides a national and coherent context for all the detailed strategic work at authority level.

5. The Strategy sets out a vision that every school should be an excellent school, raising aspirations, inspiring learners and teachers, enabling and supporting education, and making a positive contribution to local communities. It puts in place a framework within which to consider and plan the future investment in and improvement of the whole school estate, over the long term, to an extent which has never been done before.

6. The Strategy itself was only the start of a process; the bulk of the work still lies ahead. Progress and success will depend on working together in partnership. The process of making plans and taking decisions

needs to involve the widest possible consultation and discussion with pupils, parents, teachers and local communities.

7. The Strategy recognises the importance of good school buildings in meeting a range of local and national policy objectives. Subsequent guidance has been produced which focuses on the creation of schools well suited to the needs of users, in *School Design*; and *The 21st Century School* highlights a range of Scottish Executive policies that impact on the delivery of better public services through the school estate.

8. The Executive's and authorities' joint objectives for the 21st Century School are:

- To deliver better services through the school environment that focus on:

- the child at the centre - meeting the needs of individual children

- the school at the heart of the community - meeting the needs of communities: and

- To deliver these services, in respect of the school estate, through the right:

- condition - a safe, secure environment

- sufficiency - schools that match demand

- suitability - supporting the delivery of better public services including the provision

of the right facilities

- life cycle management - taking the long term view

- design - turning our objectives into reality.

9. The current huge expansion in investment in the school estate - Scotland's biggest ever school building programme - must mean not just more investment but smarter investment. This requires careful forethought and planning. There is no single blueprint for the future; the right solution locally must reflect the particular needs, aspirations and wishes of today's pupils, staff, parents and communities. Authorities must balance all of these with their own responsibilities to ensure that there will be proper provision for the pupils and communities of the future.

### **School Estate Management Plans**

10. The framework for implementation of the School Estate Strategy sets out the roles and responsibilities of stakeholders; implementation techniques and mechanisms such as the development of School Estate Management Plans; the resources required; the timeframe; and the ways in which forward progress and success will be measured.

11. A central feature of the framework is the development by each education authority of its School Estate Management Plan. These are intended to help authorities identify and draw together needs, priorities and funding streams, consider a wide range of complex issues bearing on the school estate and take a long term view of the future. The resultant plans are strategic, management tools, formulated and produced in an inclusive manner, reflecting an appropriate level of consultation with stakeholders and integrated with authorities' other asset management and community plans. Guidance on preparation of School Estate Management Plans is available as part of the series of School Estate Strategy publications.

12. The process of school estate management planning should follow a logical sequence:

- Step 1 - define authority-wide objectives: to reflect the strategy and local circumstances. These should be strategic, taking account of the wider picture, the long term, and sustainability.

- Step 2 - assess current position: audit the existing school estate - taking account of condition, sufficiency, suitability, life cycle management and design - and the extent to which it meets current and future objectives.

- Step 3 - consider options: identify and assess the range of options to meet the objectives. Each option then needs to be appraised, considering the costs and benefits (in all senses, not just the financial) of each option over the short and long term, taking account of available resources, and identifying the option that offers the best overall outcomes.
- Step 4 - develop the plan: it needs to be both detailed and long term, although the level of detail will inevitably be greater for earlier years.
- Step 5 - implementation: phasing to address and balance maintenance, refurbishment and replacement requirements.
- Step 6 - monitor, review, evaluate: against the plan's objectives. The plan should be reviewed, maintained and regularly updated so that it continues to contain and provide good quality management information.

13. The Scottish Executive has also issued guidance on the Option Appraisal process. This is a technique for setting objectives, creating and reviewing options and analysing their relative merits. An effective option appraisal should help ensure that all relevant factors have been taken into account in deciding whether a proposed project should proceed and, if so, how best to carry it out. It should be a process that involves consultation prior to final decisions being taken, and that leaves a clear audit trail.

### **The Legislation**

14. The roles and responsibilities of education authorities and Scottish Ministers are set out in legislation. The legislation that is directly relevant to proposals to change the status of schools, for example changing the site or altering the catchment area of any school, providing a new school or discontinuing/closing a school is the Education (Scotland) Act 1980 (the "1980 Act") as amended, including by the Education (Scotland) Act 1981; and the Education (Publication and Consultation Etc) (Scotland) Regulations 1981 plus the various Amendment Regulations made in 1987, 1988, and 1989.

15. Circulars issued to local authorities (1074 in November 1981 and 1174 in December 1988) provide detailed guidance on the legislation referred to above and also set out authorities' general duties, and specific issues relating to denominational schools, distances to alternative schools and school capacity. This new guidance builds on and adds to what is contained in the earlier circulars. It does not supersede them.

### **The Education Authority's Role and Statutory Responsibilities**

16. The task facing an education authority is a complex and challenging one. It must meet and fulfil a wide range of statutory duties and responsibilities and in so doing it must always be answerable and accountable to its electorate for its policies and decisions, as a normal part of the democratic process. What is set out below covers the principal statutory duties and responsibilities placed by Parliament on education authorities in relation to the local provision by them of school education.

17. In summary, under section 1 of the 1980 Act authorities have an overarching statutory duty to provide adequate and efficient provision of education for their area. That of course includes the provision of school buildings. Section 2 of the Standards in Scotland's Schools etc Act 2000 sets out a duty relating to the direction of the education provided, and section 3(2) sets out authorities' responsibilities to endeavour to secure improvement in the quality of education in their schools. The Local Government in Scotland Act 2003 specifies authorities' duties to secure best value ie continuous improvement in the performance of their functions as well as their responsibilities relating to community planning

18. Other parts of the 1980 Act are relevant to school estate proposals, in particular sections 22 and 22A-D, which deal with discontinuance, closure, merging or moving of schools, consultation on certain educational matters, the consent requirement for certain changes, and matters specifically concerning denominational schools. Most of these sections require to be read with the relevant 1981 and amendment regulations. Under section 28 of the 1980 Act authorities, in exercising their powers and duties, are required to have regard to the wishes of parents so far as is compatible with the provision of suitable education and the avoidance of unreasonable public expenditure.

19. Where an authority proposes to change existing school provision in any of various ways, including closing, merging or changing the site or catchment area of a school, it is required by the Education (Publication and Consultation Etc) (Scotland) Regulations 1981 to publicise its proposal, consult parents and School Boards affected, and allow them and other interested parties a minimum 28 day period to make their views known to

the authority. The regulations set out full details of the categories of people to be consulted over the various types of proposal and the form that the publication of proposals and consultations should take. For example, notification of a proposal should indicate where representations should be sent and/or the details of a public meeting at which authority representatives will be present. There are specific provisions where proposals affect denominational and single sex schools. The regulations themselves must be referred to for full details. The authority must then have regard to comments received, in reaching its decision. Once its decision is made, the regulations do not in any way prescribe the time period before it can be implemented.

### **Scottish Ministers' Role and Statutory Responsibilities**

**20.** In all cases the final decision rests with the education authority as to how to fulfil its statutory duties, including such decisions as whether to close, merge or change the site of a school. It is not the role of Ministers to second guess decisions taken by an authority or to act as some sort of 'appeal court' for those who disagree with a Council's decision. Ministers could never be in possession of all the local facts and 'intelligence' that informs a Council decision, such as would enable them somehow to 're run' or 're take' the Council's decision. Despite widespread assumptions to the contrary, Ministers have no locus to, and cannot interfere or intervene in Council proposals for and decisions on school changes or closures beyond their defined role in cases where the Council decision must be referred for Ministerial consent.

**21.** Parliament has tightly restricted the circumstances in which Ministers become involved in these processes, by prescribing in statute the circumstances in which an authority cannot implement its decision without obtaining the consent of Scottish Ministers. For instance in cases of proposed closure there is a requirement for referral to Ministers where:

- the school's roll exceeds 80% of the its capacity, or
- primary pupils would have to attend an alternative school 5 or more miles distant from their present one (or 10 or more miles in the case of secondary pupils), or
- in certain circumstances where there is a proposed change to the provision of denominational education in an area.

**22.** In seeking the consent of Ministers, it is the responsibility of authorities to ensure that any and all material facts and reasoning are submitted for Ministers' consideration, at very least including:

- all details of the consultation proposals, responses and outcome
- how the principles set out at paragraph 26 apply
- relevant factors such as those illustrated in paragraph 27
- whether the proposal has evolved during the consultation and decision-making process, and
- how the proposal and decision relate to the legislative framework as set out in the 1980, 2002 and 2003 Acts referred to in paragraphs 17 to 19.

**23.** Ministers' role in cases referred to them will principally be to act as a check that authorities have complied with all the statutory requirements and processes and have demonstrated that in all the circumstances they have taken a reasonable decision. They may call for further information and/or ask HMIE for advice on the proposal and will pay particular attention to the way in which the authority has presented its case and addressed and dealt with the various aspects of this guidance.

**24.** There is no set timescale for Ministers' consideration of applications for consent. Depending on the complexity of the case, it may take a matter of weeks or months.

### **Formulation and Consideration of Proposals for Change**

**25.** The 21st century school is a place that must support the diverse needs of pupils and local communities. In planning to fulfil their statutory duties and deliver this in practice, authorities have to formulate and agree on, and then set out their long term forward strategy. This must be the context within which more detailed or specific proposals will be formulated. Authorities will need to weigh up a large number of factors in order to

reach decisions that balance interests and achieve the best outcomes. The process of doing this has been called many things - cost benefit analysis (using the two terms in the wide, rather than just the financial sense), value for money, test of proportionate advantage, option appraisal etc. Irrespective of what it is called, it must be a rigorous and several stage process which broadly follows a sequence set out in the Executive's recent Optional Appraisal guidance:

- develop and assess options, weighing, balancing and analysing
- decide on proposal(s) for consultation
- engage in open and genuine consultation
- reach, explain and implement final decision

**26.** There are a number of guiding, underlying principles which the Executive considers should bear on authorities' formulation and consideration of proposals for changes to schools. These include:

- The vision set out in the joint Scottish Executive-COSLA School Estate Strategy, for
  - well designed, well built and well managed schools that
    - o support national and local priorities and
    - o inspire children, young people and communities; and for
      - a future school estate that
        - o meets our aspirations
        - o responds to evolving needs and
        - o is effectively managed and maintained over the long term.
- The broad objectives for the 21st Century School, as set out in paragraph 8.
- The need to apply a consistency of approach and process to the way in which proposals are formulated, considered, consulted and decided on.
- The need to identify, balance and weigh all the relevant factors in each case and be able to demonstrate and explain, openly and transparently, the decision making process and its 'audit trail'.
- A recognition that the final decision in each case will emerge from a process which takes into account a unique blend of current and local, as well as wider and longer term factors.

#### Identifying and Considering all the Relevant Factors

**27.** This is a matter for authorities' judgement and discretion, but always having regard to the importance of the views, focus and sensitivities of parents. The 'mix' and 'weight' of factors to be taken into account will differ in each case. There follows an illustrative but not exhaustive list of potential factors, highlighting some of the principal considerations which are likely to be in authorities' minds during the decision making and consultation processes. They are not presented in any ranked way except that the 'educational case' will always be key. If the judgement or decision is finely balanced, the quality of education provided to pupils, locally and more widely, now and in the future, will normally be the overarching consideration.

- (a) The Educational 'case' - the educational advantages for pupils directly affected, and for others further afield (so long as those advantages can be secured without disadvantaging the pupils directly affected). There will be many aspects to be considered here in the context of addressing the current disadvantages of present arrangements and the nature and scale of improvements which the proposals are intended to deliver - in and around the quality of the learning and teaching environment, opportunities for pupils' optimal learning and social interaction, how best to deliver a modern, flexible curriculum with appropriate opportunities for choice

and flexibility, access to facilities, both general and specialist and many other aspects of 'school education'.

- (b) Travel distances and times - this must be a major consideration in proposing any changes to the pattern of school provision ie the implications of the new pattern of home to school distances and travel times, the effect of lengthening the school day for some, issues of safety, the provision and availability of transport, impact on access to extra-curricular activities, and always taking account of the age of the pupils affected.
- (c) Future pupil and population projections - authorities must be mindful of the need to fulfil their statutory duties into the future, as well as now. They must plan ahead on the basis of the best available population, pupil and school roll projections, deciding how and when best to make changes to the pattern of school provision and planning investment in the estate which will improve the quality of and underpin the delivery of school education over the lifetime of the schools in question ie for decades to come.
- (d) Community Planning and Use - integrating the consideration of proposals for change with the wider community planning process is important; how the proposals square with authorities' own community planning responsibilities and reflect other community interests, and also with the overall objective of better delivery of public services. The concept of the integrated community school is central here - how a school building is integral to, and serves the needs of, its local community in ways beyond just the provision of school education to pupils; the 'place' of the school in a community and the key role, in the widest sense, that it often fulfils.
- (e) Rural Sustainability and Development - much has been said about the role of the local school in a rural community. There will always be a need for rural schools - Scotland's geography dictates that - and there are plenty of examples of vibrant, small rural schools serving very local, or wider areas. It is the pattern of rural schooling that is the issue. Authorities need to manage change in the provision of rural schooling alongside and in a way that synchronises with other policies relating to rural development and sustaining the viability of rural communities. This will always require fine judgement on the authority's part, recognising and responding to trends but avoiding precipitating them.
- (f) Urban Communities and Regeneration - schools are every bit as important an element to the community landscape in urban areas, in terms of their contribution to the viability and sustainability of communities, and alongside the range of other policies designed to promote economic development and regeneration in the urban setting. Proposed changes to the pattern of schooling in towns and cities provoke no less debate and strength of feeling than in rural areas.
- (g) Financial Considerations - authorities have a statutory duty to provide 'efficient' as well as adequate school education for their area and to secure best value in the performance of their functions. The financial advantages and disadvantages of proposals, as compared with the status quo, are of major relevance as authorities strive to derive maximum benefit from the deployment of finite resources. All aspects of the financial picture need to be factored in eg the costs of the proposals and the expected returns, considerations of cost-effectiveness over the long term, savings in future revenue and maintenance expenditure which may accrue from capital expenditure now, additional cost elements such as transport etc.
- (h) Other Alternatives, 'Lateral Thinking' - in terms of buildings, can they be used differently and more imaginatively, is there the possibility of shared use ie for other purposes for which there is a local demand? Conversely, if the state of the building is a problem are there other available, underused local buildings which might be brought into the equation? Have changes to management systems and arrangements been considered such as networks of smaller schools sharing management, teaching and other resources and facilities? Has full account been taken of developments in educational and other technologies and their implications for the delivery of education?
- (i) The 'unique' local factors - in the case of every proposal relating to a specific school there will be factors and issues unique to that case.

## School Closures

**28.** Of all the changes to the status of a school that may be proposed, the most controversial is likely to be closure. The popular school closure is a very rare thing.

**29.** There are various reasons which may prompt an authority to consider the future of a school, including its possible closure. The following few are only illustrative of some. The school roll - either in a single or a group of schools - may have fallen below what is optimal in terms of educational opportunity, choice and flexibility, and the social interaction of pupils; there may be significant under occupancy of the buildings; the condition

and suitability of buildings and facilities may be below acceptable standards and/or beyond economic repair; there may be new opportunities, for various reasons, to provide better buildings and facilities, and improve the quality of educational provision, nearby. Sudden, even unexpected changes in these factors or the circumstances of a school may prompt an authority into consideration of its medium or long term future. Rationalisation of the pattern of school provision, involving mergers or closures, may also be contemplated where there would be a significant release of resources, capital or revenue, as would benefit both the local and the wider community in achieving better educational outcomes from future spend and/or where authorities see opportunity for improving the quality of education for all pupils or for securing best value, in terms of the statutory duties set out in paragraph 17.

**29.** The process by which an authority arrives at a decision to propose and consult on a closure should be as rigorous as for any other category of decision, and should not fundamentally differ in approach. Authorities should proceed to consider all aspects of the relevant factors. Every situation, and the range of possible options and solutions, will be different and will require to be considered on its merits. If an educational advantage will occur to the wider community that clearly should not be secured at the cost of educationally disadvantaging pupils directly affected by the closure. In other words there must be advantages both locally and on the wider scale.

### **A Consultative Process**

**30.** Consultation is key to this whole process. If the process commands respect then, for the great majority of people, so will the outcome. Experience and 'good practice' both dictate that there should be a real emphasis here on both the quality and quantity of consultation. The emphasis should be on more consultation, more information, more time, rather than less; a fuller process rather than the minimum required to comply with the legislation.

**31.** When authorities generate debate about potential changes to schools, including closure, they know that there will be an impact on the feelings of people in the community - on their sense of place and community - as well as an impact on individual children, on which parents will rightly focus. It is a debate in which there are no 'absolutes'. Invariably there is a balance of arguments to be weighed against each other. It is important that all those consulted on closure proposals feel that they have been listened to and have had the opportunity properly to understand and assess the balance of arguments for and against.

**32.** Authorities must be confident of the grounds for their proposals, and well prepared to articulate and explain them. They should set out the case for change, the advantages and disadvantages, the costs and savings, fully, clearly and openly. Paragraph 19 describes the main statutory requirements for the formal consultation process. There should be great clarity about precisely what it is that the Council is seeking to achieve, and why, about the range of options, and why one in particular has been chosen, about the short term effects and the longer term considerations, and about how the authority plans to maximise the benefits and minimise any disbenefits. If there is clarity, the public can understand and judge the proposals. They may not agree with them, but Councils often have to work towards longer-terms horizons and take a wider view and people need to have that perspective clearly set out before them, and to understand what Councils intend. The more open and transparent the process of debate and consultation, the better for all concerned. For it is the responsibility of a democratically elected Council to listen to communities and to account for its decisions to its local electorate.

### **Taking the Final Decision**

**33.** Experience demonstrates that consultations are indeed heeded. Initial proposals are often changed during the course of the process. That is as it should be. Council decisions are influenced by representations made and by the public debate engaged in. Original proposals may be shelved or deferred, or if they do proceed, the plans for the alternative provision may be changed in some way. New options may be agreed and/or become the subject of further consultation. Implementation plans and timescales may be adjusted.

**34.** Justice and fair play has to be done and be seen to be done. The gains that will be derived from a proposal, especially a closure, must stand scrutiny and outweigh any negative effects. There is no equation, or formula, or 'balance sheet' which can deliver the "right decision" at the end of the day. The emphasis must always be on a rigorous testing of the proposals for change consulted upon, weighing up a range of factors on the way and taking into account the local situation and the representations that have been received before decisions are arrived at.

**35.** The final decision may be one which is unpalatable in a particular community or quarter - it will rarely please everybody. But the Council has to reach a decision which takes account of and balances all the

complex and sometimes conflicting factors relating to the particular case, in the context of fulfilling all its statutory duties and other responsibilities.

### Information for Parents

36. This guidance is principally for education authorities, but it will also be of close interest to parents and others who have an interest in the future of the school estate. The guidance in full, including the covering Ministerial letter to Education Conveners, is available on the 'Parentzone' website.

Further Information and Copies etc

37. Electronic copies of this guidance are available on the School Estate and 'Parentzone' websites at:

[www.scotland.gov.uk/schoolestate](http://www.scotland.gov.uk/schoolestate) &

<http://www.parentzonescotland.gov.uk/>

There are also direct links via the School Estate website to the publications in the School Estate Strategy series which are referred to in this guidance:

The School Estate Strategy

School Design

The 21st Century School

School Estate Management Plans

Option Appraisal

### Note

Summary reference is made in this guidance to relevant primary and secondary legislation, although it cannot be taken as an authoritative interpretation of any statutory provisions. Interested parties need to refer to the legislation and regulations directly, for full details.

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