

# **Consultation on Amending the Schools (Consultation) (Scotland) Act 2010: Analysis of Written Responses**

**CONSULTATION ON AMENDING THE SCHOOLS  
(CONSULTATION) (SCOTLAND) ACT 2010:  
ANALYSIS OF WRITTEN RESPONSES**

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## EXECUTIVE SUMMARY

1. Following publication of the Scottish Government's response to a report by the Commission on the Delivery of Rural Education (the Commission), a public consultation was undertaken to seek the views of stakeholders on proposed amendments to the Schools (Consultation) (Scotland) Act 2010.<sup>1</sup> These amendments would be required to implement specific recommendations made in the Commission's report.
2. The consultation ran from 12 July 2013 to 2 September 2013 and focused on six issues: (i) whether a presumption against rural school closures should be set out in legislation; (ii) whether local authorities should be required to provide relevant financial information as part of a school closure consultation; (iii) a potentially expanded role for Education Scotland in school closure proposals; (iv) the basis upon which school closure proposals should be determined; (v) proposed new arbitration / dispute resolution arrangements; and (vi) whether there should be a five year moratorium on closure proposals for the same school. It included six questions, three of which had two parts – so nine questions altogether. Most of the questions contained a closed (tick box) question and a space for further comments.
3. The consultation received 226 submissions, of which 222 formed the basis for analysis. These comprised 137 responses from individuals (62%) and 85 from organisations (38%). Just over half of organisational responses (54%) were from parent councils or other similar organisations and just over a fifth (22%) were from local authorities. Other organisational respondents included primary and secondary schools, teachers' unions and community councils.
4. The responses to the closed (tick-box) questions indicated support among respondents for all of the Scottish Government's proposals, with between 58% - 94% of respondents indicating agreement with specific proposals. The strongest support was voiced for:
  - Amending the 2010 Act to make it clear that relevant financial information should be included in a school closure consultation – 94% of respondents agreed with this.
  - Amending the 2010 Act to provide clarity regarding the role of Scottish Ministers in considering the process and merits of the closure proposal – 93% agreed with this.
5. There was less agreement that the criteria set out in the consultation document were appropriate as a dispute resolution process under the 2010 Act (58% agreed with this). In addition, there was a clear difference in views between local authorities and other respondents regarding the proposed five year moratorium on school closure proposals for the same school. A majority of local authority respondents were not in favour of a five year moratorium, whereas most other respondents supported this proposal.

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<sup>1</sup> Copies of the Commission's report and the Scottish Government's response are available at: <http://www.scotland.gov.uk/About/Review/CommissionRuralEducation>

6. Respondents' comments highlighted some concerns about an expanded role for Education Scotland in closure consultations, as well as concerns about establishing an independent referral mechanism (separate from Scottish Ministers) to determine school closures. Respondents also expressed a need for greater clarity about the operational relationships between education authorities, Education Scotland, Scottish Ministers and the proposed independent referral body when a school closure proposal is called in.
7. Across all questions, respondents' comments often highlighted the tensions between local and central government on the one hand, and between local authorities and their local communities on the other, which are inherent in the subject of school closures.

# 1 INTRODUCTION AND BACKGROUND

- 1.1 The Schools (Consultation) (Scotland) Act 2010 (hereafter referred to as the “2010 Act”) requires local authorities to consult local communities about any proposals they bring forward to close, relocate or change the catchment areas of schools, and then to publish a report on that consultation. Although the 2010 Act does not expressly state that there is a presumption against the closure of rural schools, it requires education authorities to give “special regard” to three rural factors and to demonstrate that they have considered all other possible options before proposing the closure of a rural school. This legislation was created in response to a growing feeling within rural communities in particular, that schools were being closed without proper and full consultation with the communities they served.
- 1.2 Since the law came into force on 5 April 2010, numerous proposals have been brought forward by local authorities to close or change the catchment areas of schools. At the same time, it became apparent that the interpretation by local authorities and local school communities of the requirements under the 2010 Act has varied and there was an inconsistency of approach in its application across Scotland, especially in relation to rural schools. There was therefore a need for further clarification on the application of the Act.
- 1.3 Thus, in August 2011, the Scottish Government and COSLA established the Commission on the Delivery of Rural Education (hereafter referred to as “the Commission”), with a remit to examine: (i) how the delivery of rural education could maximise the attainment, achievement and life chances of young people in rural areas, and (ii) the link between rural education and rural communities more broadly. The Commission was also asked to review the 2010 Act and its application and make recommendations on the delivery of all aspects of education in rural areas. A year-long voluntary moratorium was introduced on rural school closure proposals from June 2011 in order to give the Commission space in which to conduct its work. The Commission issued a call for written evidence, and also took oral evidence from communities and through a programme of school visits and public meetings across 12 local authority areas.
- 1.4 The Commission's work was due to be completed in August 2012. However, it was agreed to delay publication of the Commission’s report to take into account a forthcoming Appeal in the Court of Session that was relevant to the operation of the 2010 Act. This appeal was heard in November 2012, and a judgement received on 6 February 2013.
- 1.5 The Commission’s report, published in April 2013, included 38 recommendations on the delivery of all aspects of education in rural areas. The Scottish Government’s response, published two months later, accepted 37 of these recommendations.<sup>2</sup> Only Recommendation 20 was not accepted. This stated that:

“It should be acceptable for an Educational Benefits Statement to conclude that the educational impact is neutral, with no overall

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<sup>2</sup> The Commission’s report and the Scottish Government’s response are both available from: <http://www.scotland.gov.uk/About/Review/CommissionRuralEducation>

educational detriment to the children directly concerned. In such circumstances, if a closure continued to be proposed, it would be essential that any other factors are fully and transparently scrutinised, including identifying clear overall benefit to the rural communities involved.”

- 1.6 This recommendation was not accepted because the Scottish Government held the view that establishing educational benefits for the children involved must continue to be the key requirement for all school closures, in line with the commitment made by the Parliament when passing the 2010 Act. The Government considered it essential that the main driver for school closure proposals should continue to be educational improvement and that educational changes, which are disruptive to individuals and communities, should only be made based on a positive educational impact on the children and young people involved.
- 1.7 The Scottish Government has begun the process of implementing the other 37 recommendations in the Commission’s report. Many of these, in particular those regarding closure consultations, also have implications for policy in urban areas. Moreover, some of the Commission’s recommendations will require amendments to be made to the 2010 Act.

### **The consultation**

- 1.8 Thus, between 12 July 2013 and 2 September 2013, the Scottish Government carried out a public consultation which set out its policy proposals in relation to the Commission’s recommended changes to the 2010 Act. The consultation focused specifically on:
  - Whether the presumption against rural school closure should be set out in legislation
  - Whether relevant financial information should be included in a school closure consultation
  - The role of Education Scotland
  - The basis upon which school closure proposals should be determined
  - Possible arbitration / dispute resolution arrangements
  - Whether there should be a five year moratorium on closure proposals for the same school.
- 1.9 The purpose of the consultation was to seek the views of stakeholders (local education authorities, parents, schools, parent councils, etc.) about these proposals. The consultation document was promoted through the Scottish Government web page, and the Engage for Education and Education Scotland’s Parentzone websites. In addition, to help raise awareness of the consultation, during the consultation period the Scottish Government policy team organised a series of regional meetings targeted at parent groups such as the National Parent Forum of Scotland, Scottish Rural School Network and the Scottish Parent Teacher Council.

- 1.10 The consultation paper included six questions, three of which included two parts – or nine questions altogether. Most of the questions contained a closed (tick-box) question, and a space for further comments.
- 1.11 Responses could be submitted electronically through an online questionnaire. Alternatively, respondents could send their comments by email or in writing to the School Estates Team.

## **Methods**

- 1.12 Analysis of the responses focused primarily on: (a) whether respondents supported the Scottish Government's proposals as set out in the consultation document; and (b) any reasons they gave for supporting, or not supporting, the proposals. Both quantitative and qualitative analysis were undertaken.
- 1.13 All responses received by email or in writing were entered into the same database containing the responses received through the online questionnaire. Comments submitted in the form of non-standard responses (i.e. those that did not use the consultation questionnaire) were entered under the relevant questions where appropriate. Comments that did not relate to any of the consultation questions were also entered into the database as "any other comments" to ensure inclusion in the analysis.
- 1.14 Among those respondents who submitted their responses by email were a small number who ticked two boxes for one or more of the closed questions, but made no other comment to explain why they had done so. Thus, the responses to these specific questions were treated as invalid and not counted towards the response rates for those questions. However, the rest of the response was included in the analysis.
- 1.15 There were also a small number of responses in which the respondent did not answer the closed (tick-box) question, but their comments made it possible to infer whether they agreed or disagreed with the proposal. In these cases, the response to the closed question was imputed and counted towards the response rates for those questions. Where the respondent did not answer a closed question, and their comments provided no clarification about whether they agreed or disagreed with the proposal, the comments were included in the analysis but the closed question was left blank.



## 2 RESPONSE TO THE CONSULTATION

2.1 This section provides details of the number and types of respondents to the consultation, the geographical distribution of respondents, and the response rates for individual questions.

### Number of responses received and types of respondents

2.2 The consultation received 226 submissions. Of these, 171 were submitted through the online questionnaire and 55 were submitted by email. Four of the total 226 submissions were not included in the analysis for the following reasons:

- One response was an exact duplicate of another response submitted by the same respondent. In this case, one of the responses was included in the analysis and the other removed.
- One response (received through the online database) contained only the contact details of the respondent; the complete response was sent separately by email. In this case, the complete response was retained, and the incomplete response removed.
- Two different responses were submitted by a single respondent. In both cases, the respondent had answered only the closed (tick-box) questions and made no additional comments. However, the responses to the closed questions were contradictory. In this case, the respondent’s later submission was retained and the earlier submission removed.
- One response was clearly intended as a joke. This was removed.

2.3 Thus the analysis was based on **222 responses**. These included responses from 137 individuals and 85 groups / organisations (Table 2.1).

**Table 2.1: Number of responses included in the analysis**

Respondent type	n	%
Individuals	137	62%
Groups / organisations	85	38%
<b>Total</b>	<b>222</b>	<b>100%</b>

2.4 Group / organisational respondents included local authorities, parent councils and other similar organisations, primary and secondary schools, unions and community councils (Table 2.2). A complete list of group / organisational respondents is provided at Annex 1.

**Table 2.2: Group / organisational respondent types**

Group / organisational respondent type	n	%
Parent councils or similar organisations	46	54%
Local authorities	19	22%
Primary or secondary schools	5	6%
Unions	3	4%
Community councils	3	4%
Other	9	11%
<b>Total</b>	<b>85</b>	<b>100%</b>

Note: Percentages do not total 100% due to rounding.

## Geographical distribution of respondents

2.5 Respondents came from 28 out of the 32 Scottish local authority areas. (There were no respondents from Clackmannanshire, East Renfrewshire, Falkirk or West Dunbartonshire council areas.) In addition, one response was received from an individual living in England. The largest proportion of responses came from individuals / groups based in Argyll & Bute, Aberdeenshire, Edinburgh City, Shetland Isles, Highland and Moray Council areas (Table 2.3).

**Table 2.3: Number of responses, by local authority area**

Local authority area	n	%
Aberdeen	11	5%
Aberdeenshire	34	15%
Angus	7	3%
Argyll & Bute	35	16%
Comhairle nan Eilean Siar	6	3%
East Dunbartonshire	6	3%
Edinburgh City	23	10%
Fife	6	3%
Highland	13	6%
Moray	13	6%
North Lanarkshire	10	5%
Orkney Islands	8	4%
Shetland Islands	17	8%
Other *	32	14%
<b>Total**</b>	<b>221</b>	<b>100%</b>

Note: Percentages do not total 100% due to rounding.

\* Other – includes areas from which 5 or fewer responses were received: Dumfries & Galloway, Dundee City, East Ayrshire, East Lothian, Glasgow City, Inverclyde, Midlothian, North Ayrshire, Perth & Kinross, Renfrewshire, Scottish Borders, South Ayrshire, South Lanarkshire, Stirling, West Lothian, Northumbria (England).

\*\* It was not possible to determine the local authority area for one individual as no postal address was provided.

## Responses to individual questions

2.6 Not all respondents answered all the questions in the consultation. Response rates for the closed (tick-box) questions ranged from 91-99%. Response rates for the open questions were substantially lower, ranging from 16-39%. Annex 2 provides details of the number of responses received against each question.

### 3 THE PRESUMPTION AGAINST CLOSURE (Q1)

- 3.1 This chapter provides an analysis of the responses to Question 1 in the consultation.
- 3.2 The 2010 Act had intended to create a “presumption against closure” for rural schools to protect them from closure in some circumstances. However, the Act did not expressly state that there is such a presumption. Instead, it set out three tests, or matters of “special regard” that local authorities are required to consider before bringing forward any proposals to close a rural school. These are:
- Whether there is any viable alternative to the closure proposal
  - The likely effect on the local community in consequence of the proposal (if implemented)
  - The likely effect caused by any different travelling arrangements that may be required in consequence of the proposal (if implemented).
- 3.3 The “presumption against closure” was challenged in the Court of Session Appeal, *Comhairle nan Eilean Siar v. Scottish Ministers* and the judicial Opinion from this case stated that the provisions in the 2010 Act (section 12) do not have the effect of a legislative presumption against the closure of rural schools.<sup>3</sup> Thus, the Commission’s report (Recommendation 24) stated that:
- “Recommendation 24: A new, clearer understanding of ‘a presumption against closure’ should be set out by the Scottish Government in the statutory guidance accompanying the 2010 Act to reduce conflict and provide clarity and protection for communities and local authorities.”
- 3.4 The Scottish Government has accepted this recommendation. However, in light of the Court of Session ruling, the Government is of the view that the necessary clarification cannot simply be made through an addition to the statutory guidance. Rather, an amendment to the 2010 Act would be required. Thus, the Government is considering bringing forward a short amendment to the 2010 Act for the purpose of clarification. In relation to this, the consultation asked:

**Question 1:** Do you support clarifying the presumption against closure of rural schools by stating it in legislation by means of an amendment to the 2010 Act?

**Key points:**

- Most respondents (84%) supported an amendment to the 2010 Act to clarify the presumption against closure of rural schools.
- Parent councils and other parent groups were generally strongly in favour of the amendment and saw the amendment as giving greater protection to rural schools and local communities.
- Local authorities were also largely supportive of the amendment but expressed concern that the clarification of the presumption should not make it more difficult to close schools when closure was warranted.

<sup>3</sup> See Scottish Court Service: [www.scotcourts.gov.uk/opinions/2013CSIH45.html](http://www.scotcourts.gov.uk/opinions/2013CSIH45.html)

3.5 In total, 220 (out of 222) respondents answered this question – 136 individuals and 84 organisations. Of these, 84% agreed with the proposal to clarify the presumption against the closure of rural schools by stating it in legislation and 10% disagreed (Table 3.1). There was a similar pattern of response for both individual and organisational respondents, and across different types of organisational respondents.

**Table 3.1: Q1: Do you support clarifying the presumption against closure of rural schools by stating it in legislation by means of an amendment to the 2010 Act?**

Response	Individuals		Organisations		Total	
	n	%	n	%	n	%
Yes	109	80%	75	89%	184	84%
No	18	13%	5	6%	23	10%
Don't Know	9	7%	4	5%	13	6%
<b>Total</b>	<b>136</b>	<b>100%</b>	<b>84</b>	<b>100%</b>	<b>220</b>	<b>100%</b>

3.6 Seventy-two (72) respondents – 31 individuals and 41 groups – provided further comment in response to Question 1. This represents a third (32%) of all respondents.

**Support for clarifying the presumption in legislation**

3.7 Those who supported amending the 2010 Act to clarify the presumption against closure generally thought that this would:

- Address the confusion that had arisen about the intentions of the 2010 Act
- Help to manage expectations and ensure that all stakeholders have a shared understanding of the requirements of the Act and the definition of “presumption”, thus reducing conflict between local authorities and communities
- Give greater protection and security to local communities and rural schools
- Provide the means to challenge decisions on closures if necessary
- Reflect the intention of the Scottish Parliament in enacting the 2010 legislation.

3.8 Parents’ groups, in particular, voiced strong support for the amendment, suggesting that local authorities have largely ignored the presumption against closure which was intended in the 2010 Act. Parents’ groups often expressed the belief that rural schools should only be closed as a last resort, after all other options have been considered and ruled out.

“While the 2010 Act was viewed as introducing a presumption against closure it was clear that many Local Authorities viewed the Act as more of a mechanism to follow while closing schools rather than as any defence for the schools. The Presumption against Closure must be core to any legislation and ensures that any closure of a rural school happens only after exhaustive measures to properly examine alternatives.” (Parent council)

- 3.9 Although most local authorities indicated support for the amendment, they nevertheless also made the following points:
- The clarification of the presumption against closure should not make it more difficult for councils to close schools when closure is warranted.
  - Consultations on rural school closures should not only take account of educational benefit, but also wider social and economic sustainability issues.
  - Recommendation 20 from the Commission’s report should be implemented along with the other 37 recommendations as it is difficult in practice to demonstrate that one school is “better” than another when there are a multitude of factors to consider.
- 3.10 Very occasionally respondents who indicated support for the amendment made the point that they were not necessarily in favour of a presumption against closure, but they **were** in favour of having the matter clarified in legislation.

### **Disagreement with the presumption against closure**

- 3.11 Among those who answered “no” to Question 1, comments generally focused on the respondents’ disagreement with the presumption against closure. The reasons given for disagreement were that:
- It gives communities unrealistic expectations that their school will not be closed unless a special case is made to do so.
  - A presumption in legislation will not provide any greater clarity or protection for communities or local authorities.
  - It creates an inconsistency in the way urban and rural schools are treated.
  - It may not be in the best interests of pupils for very small schools to stay open.
  - Local authorities should not be restricted in the management of their school estates; they need the flexibility to be able to use their resources to meet all local needs.
  - A presumption against closure cannot be justified in terms of cost-effectiveness / best value.

“The issue for me is not about the ruralness of the school but of any school's cost effectiveness whether urban or rural. Any small school costs more per pupil to maintain and staff. Decisions on the closure of any school should be made on the same best value basis and rural schools should not be protected from these decisions merely because they are rural.” (Individual respondent)

### **Other relevant issues and suggestions**

- 3.12 Respondents raised the following other issues in their comments:
- There needs to be clarification (or a review) of the definition of “rural schools”, as anomalies exist.
  - Local authorities should be required to demonstrate that meaningful consultation with children and young people has taken place as part of the wider consultation on a school closure proposal.

## 4 PROVIDING FINANCIAL INFORMATION ON CLOSURE PROPOSALS (Q2)

- 4.1 This chapter provides an analysis of the responses to Question 2 in the consultation.
- 4.2 The Commission's report made two recommendations regarding the provision of financial information on closure proposals:

“Recommendation 21: School closure proposals should be accompanied by transparent, accurate and consistent financial information, rigorously evidencing any financial argument that is deployed. The impact, if any, of the proposal on the General Revenue Grant that the authority would receive in future should be clearly provided.”

“Recommendation 22: Clear guidance and a template for financial information should be developed to ensure financial information is presented in a complete and consistent manner.”

- 4.3 The Scottish Government accepted both of these recommendations, and has proposed to amend the 2010 Act to include a requirement for closure proposals to include transparent financial information in respect of the proposal. Thus, the consultation asked:

**Question 2:** Do you support amending the 2010 Act to make it clear that relevant financial information should be included in a school closure consultation?

### Key points:

- Most respondents (94%) supported the idea that financial information should be made available as part of school closure proposals, often commenting that the provision of this information was “essential” for the sake of transparency. (Respondents seldom commented directly on the question of whether the 2010 Act should be amended to achieve this.)
- There were differing views among respondents about the weight that should be given to financial information during closure consultations. Some (including parents' groups) thought that educational benefit should continue to be the primary factor in decisions, while others (including local authorities) thought that local authorities had a duty to take cost into account.
- Respondents saw the advantages of presenting financial information in a consistent way. A wide range of suggestions were made about what should and should not be included in financial reports.
- Local authorities anticipated difficulties in compiling consistent financial information due to inconsistencies between councils in how costs are apportioned, and lack of accurate information about Grant-Aided Expenditure.
- Those who were opposed to the provision of financial information were concerned that it could result in too much weight being given to this information in closure consultations.

4.4 In total, 221 (out of 222) respondents answered this question – 136 individuals and 85 organisations. Of these, 94% agreed with the proposal to amend the 2010 Act to make it clear that relevant financial information should be included in a school closure consultation and 3% disagreed (Table 4.1). There was a similar pattern of response among individual and organisational respondents and across different types of organisational respondents.

**Table 4.1: Q2: Do you support amending the 2010 Act to make it clear that relevant financial information should be included in a school closure consultation?**

Response	Individuals		Organisations		Total	
	n	%	n	%	n	%
Yes	124	91%	84	99%	208	94%
No	7	5%	–	0%	7	3%
Don't Know	5	4%	1	1%	6	3%
<b>Total</b>	<b>136</b>	<b>100%</b>	<b>85</b>	<b>100%</b>	<b>221</b>	<b>100%</b>

4.5 Seventy-nine (79) respondents – 30 individuals and 49 organisations – provided further comment in relation to Question 2. This represents just over a third (36%) of all respondents.

**Support for providing financial information as part of school closure proposals**

- 4.6 The following reasons were given by respondents for supporting the proposal:
- It would make the entire consultation process more transparent
  - It would result in a wider (and clearer) understanding of the financial impact of a closure, and thus a better consultation exercise
  - It would clearly highlight the cost of maintaining small rural schools.

4.7 Some respondents (including parents’ groups) were in favour of the publication of financial information because they perceived that school closure proposals were, in reality, often financially driven without this being made explicit in consultations. Thus, it was thought that making the information available would lead to a more open and honest discussion about proposed closures.

“It is vital that parent bodies receive financial information. Previous [local authority] closure consultations have tried to shoehorn “educational benefit” reasons into what really were financially driven decisions. It would make for a much more transparent and grown-up conversation between local authorities and interested groups if all relevant financial information was available during a consultation.”  
(Parent council)

4.8 Some local authority respondents said that in the interests of transparency, they already provided financial information as part of their closure proposals. There was a view that any guidance for local authorities about how financial statements should be prepared and interpreted would be welcomed.

4.9 Respondents had different views about the weight that financial information should be given in a closure decision. Some (including parents’ groups)

emphasised that the decision to close a school should **not** be based on financial arguments, but should continue to focus on educational benefit. Other respondents (including local authorities) argued that local authorities had a duty to take financial factors into account in closure proposals, particularly in the current economic climate and that Best Value principles should apply:

“It is our strong view that Best Value principles and considerations should underpin our management of the public purse... Currently in [local authority], the cost of providing schooling per pupil ranges from £29,069 to £2,867. Therefore, within the current economic climate Local Authorities should not be prevented from considering the financial factors associated with any school closure decision. The educational factors must be considered in context and it is important that communities are able to assess the relative impact of all factors.”  
(Local authority)

- 4.10 It was not unusual for respondents to acknowledge that the cost per pupil for running a small school is more than in a large school. However, parents’ groups thought this information was misleading and that it incorrectly suggested that rural schools are being favoured financially.

### **Suggestions regarding the presentation of financial information**

- 4.11 Respondents saw benefits in presenting the financial statement using a standard template:

- It would make the compiling of the information more straightforward
- It would remove confusion over what is relevant / not relevant
- It would ensure consistency across proposals and across local authorities.

- 4.12 Respondents often made a range of comments about the nature of the information should be included in the financial statement, and about the use of a template for presenting this information. For example:

- It should be “clear”, “concise”, “detailed”, “complete”, “honest”, and easy for ordinary people to understand.
- Speculative information (e.g. the proceeds of the sale of a school building), should be clearly identified as such.
- Parents’ views (particularly their thoughts about how money can be saved in relation to a particular school) should be included.
- The “true cost” of closure should be presented, including the costs of extra travel, redundancy payments, redeployment of staff, maintenance of an empty building and financial impacts on parents and others in the community.
- The financial statement should relate only to the school closure being considered, not the local authority’s general finances.

- 4.13 In contrast, one respondent suggested that it may **not** be appropriate to publish certain “commercially sensitive” information, including: information about teachers’ salaries and land valuations.



- 4.14 Local authority respondents identified several potential difficulties in compiling financial information for the purposes of a school closure proposal:
- One reported that there are currently inconsistencies between councils in the way “support costs” are classified and apportioned. There was a concern that any requirement to include support costs in the template would introduce an inconsistency in the calculation of costs for closure proposals. A similar comment was made about redundancy / severance costs which may come from different budgets in different councils.
  - Others suggested it would be very difficult to calculate the impact of a school closure proposal on Grant-Aided Expenditure (GAE) without detailed guidance. It was suggested that accurate information may simply not be available.
- 4.15 Several parents’ groups, in referring to their own experience of taking part in closure consultations, perceived that financial information provided by local authorities is not always correct, and therefore there was a call for the information presented by local authorities to be independently scrutinised and verified. Some went further and asked for the financial statements to be prepared by independent third parties. Others argued that incorrect financial statements published by local authorities should result in the dismissal of a closure proposal.
- 4.16 There was a suggestion that **all** stakeholders, including school workforce / teaching unions, should be involved with COSLA, parents and the Scottish Government in the development of the financial information template and guidance.

### **Disagreement with or uncertainty about the proposal**

- 4.17 As noted above, most respondents agreed with the proposal to amend the 2010 Act to require financial information to be included in school closure proposals. However, among those who disagreed with the proposal, or who were not sure about it, concerns were expressed that financial information, if published as part of the closure consultation, would result in too much weight being given to that information in closure decisions. This group thought the publication of this information could lead to greater conflict between local authorities and communities in closure consultations.

### **Other relevant issues**

- 4.18 Other points or suggestions made by respondents were that:
- There is a lack of transparency in how education budgets are spent.
  - The 2010 Act should also be amended to give local authorities the powers to provide financial or other assistance to individuals / families who may incur significant additional costs as a result of a school closure, and who cannot reasonably be expected to meet these additional costs.
  - There should be a requirement to evaluate the impact of a school closure to determine whether the anticipated savings related to the closure were achieved.

## 5 CLARIFYING AND EXPANDING EDUCATION SCOTLAND'S ROLE (Q3A/3B)

- 5.1 This section presents an analysis of the responses to Questions 3A and 3B from the consultation.
- 5.2 At present, the 2010 Act requires local authorities to notify Education Scotland regarding any school closure consultations, and to send Education Scotland a copy of the published closure proposal paper and a summary of representations received during the consultation. Education Scotland has a statutory duty to prepare a report on the educational aspects of the proposal and to submit this to the local authority within three weeks. The local authority is required to consider any issues raised by Education Scotland, along with any other representations it has received, and publish its response to these issues in its final consultation report. There is then no further statutory role for Education Scotland, although Scottish Ministers may seek advice from Education Scotland as required if a proposal is called in.
- 5.3 The Commission's report recommended that:
- “Recommendation 18: Education Scotland should have a wider role in providing a detailed response to the proposed educational benefits and a more sustained involvement in a school closure proposal.”
- 5.4 The Scottish Government accepted this recommendation, and has suggested that the role of Education Scotland could be expanded to include, among other things: providing local authorities with detailed good practice guidance for the preparation of Educational Benefits Statements; developing a self-evaluation toolkit for local authorities in undertaking their consultations; and clarifying the role of Education Scotland in the provision of additional advice to Scottish Ministers. A working group involving Education Scotland, COSLA, education authorities and the Scottish Government will be established to agree Education Scotland's enhanced role. The focus of the consultation therefore, was on the principle of giving Education Scotland a greater role in closure proposals, and the means by which this should be clarified:

**Question 3A:** Do you support giving Education Scotland a more sustained role in a school closure proposal?

**Question 3B:** If so, would you prefer Education Scotland's role to be clarified through legislation or a Memorandum of Understanding?

### Key points:

- Most respondents (77%) supported giving Education Scotland a more sustained role in closure proposals.
- However, significant concerns were raised, both by those who supported and those who did not support a greater role for Education Scotland.
- Respondents' comments suggested that there were differing views between parents' groups / communities and local authorities in what they saw as the benefits of an enhanced role for Education Scotland. Local

authorities thought that this could result in fewer closure proposals being called in by Ministers, whereas parents' groups thought that Education Scotland would bring greater scrutiny and transparency to the consultation process.

- ▶ Just over half of respondents (54%) wanted Education Scotland's role to be clarified through legislation, while 21% felt it should be clarified through a memorandum of understanding. However, a quarter of respondents (25%) were not sure.
- ▶ Local authorities tended to prefer clarification through a memorandum of understanding to allow flexibility, while parents' groups tended to prefer legislation to achieve maximum clarity.

5.5 In total, 220 (out of 222) respondents answered Question 3A – 136 individuals and 84 organisations. Of these, around three-quarters (77%) were in favour of giving Education Scotland a more sustained role in school closure proposals and 10% were not, while 13% were unsure (did not know). (See Table 5.1.)

**Table 5.1: Q3A: Do you support giving Education Scotland a more sustained role in a school closure proposal?**

Response	Individuals		Organisations		Total	
	n	%	n	%	n	%
Yes	100	74%	70	83%	170	77%
No	15	11%	7	8%	22	10%
Don't know	21	15%	7	8%	28	13%
<b>Total</b>	<b>136</b>	<b>100%</b>	<b>84</b>	<b>100%</b>	<b>220</b>	<b>100%</b>

Note: Percentages do not total 100% due to rounding.

5.6 Eighty-five (85) respondents – 36 individuals and 49 organisations – offered further comment at Question 3A. This represents 38% of all respondents.

## Support for Education Scotland having a more sustained role

### *Local authority views*

5.7 Local authorities that favoured an enhanced role for Education Scotland thought this would have the potential to reduce the number of closure proposals that are called in. There was general agreement among this group that it would be useful for local authorities to be able to seek advice from Education Scotland at an earlier stage in the development of Educational Benefit Statements, and there was a suggestion that local authorities should be able to discuss their statements with Education Scotland before the initial publication of their consultation document.

5.8 Local authorities also believed it would be helpful if Scottish Ministers could seek further input from Education Scotland when they are considering whether to call in a proposal, or in determining a proposal – particularly to ascertain whether the local authority has satisfactorily responded to the points highlighted in Education Scotland's report on the educational aspects of the proposal.

- 5.9 Some local authority respondents had positive views of working in partnership with Education Scotland in relation to educational quality, and these respondents suggested it would be helpful for Education Scotland to have an enhanced role in rationalisation and closure proposals:

“Local authorities are increasingly working in partnership with Education Scotland and a more sustained role for Education Scotland in rationalisation and closure proposals would be helpful.... A model of engagement based on partnership between Education Scotland and the local authority would allow for discussion and advice and might well reduce the number of proposals which are called in by Ministers.”  
(Local authority)

### ***Views of parent groups and other respondents***

- 5.10 In contrast, other (non-local authority) respondents saw the benefits of an enhanced role for Education Scotland in terms of the greater scrutiny and transparency that an independent, national body could bring to the process of closure consultations.
- 5.11 In speaking of their own experiences of closure consultations, parents’ groups and other respondents highlighted instances where Educational Benefits Statements were based on incorrect data, lack of evidence and were copied and pasted directly from statements related to other schools. Therefore, these respondents saw Education Scotland as providing an independent check on the quality of the local authority’s Educational Benefits Statements.

“From our experience we feel that a closure process would benefit from a national body with centralised expertise and also somewhat independent of the educational arguments put forward by the educational authority locally. We feel that Education Scotland could also encourage more transparent recognition and discussion of how any educational disbenefits through closure would be managed. Our local authority did not manage to identify a single disbenefit and chose to focus only on perceived benefits.” (Parent council)

- 5.12 Some respondents also commented that the high quality of education in small rural schools was generally recognised by Education Scotland and suggested that a greater role for Education Scotland would thus ensure that the quality of education in rural schools was given an increased emphasis by local authorities.
- 5.13 Some respondents expressed only **qualified** support for a more sustained role for Education Scotland. For example, some parents’ groups emphasised that their support was contingent on Education Scotland being outwith local authority (or COSLA) control, while some local authority respondents supported a more sustained role for Education Scotland so long as this role was limited to the provision of advice.

### **Concerns about a more sustained role for Education Scotland**

- 5.14 Respondents who were not in favour of a more sustained role for Education Scotland raised a number of concerns. Many of these same concerns were also highlighted by respondents who said they were in favour of a greater role

for Education Scotland as well as those who said they were not sure. The three issues raised most frequently were:

- The potential for conflict of interest: Some respondents thought that if Education Scotland had a role in advising local authorities how to produce better quality Educational Benefit Statements, this could be seen as Education Scotland “coaching” local authorities to make closure more likely. It would also undermine their independence in the eyes of stakeholders. Parents’ groups, in particular, were concerned that an enhanced role for Education Scotland should not improve the local authority case for closure, while local authorities were concerned about the public perception of an enhanced role for Education Scotland.
- Lack of capacity in Education Scotland: Some local authority respondents highlighted “significant capacity issues” in Education Scotland, and expressed concerns that these would be exacerbated if the organisation were given a more sustained role in closure consultations.
- Concerns about Education Scotland’s performance: Some respondents made a distinction between Education Scotland’s role in school inspections (which was well regarded) and their role in school closure consultations. Some respondents expressed a lack of confidence in the organisation based on their experience of the latter.

5.15 Other concerns raised by respondents were that:

- Education Scotland is not democratically accountable for the decisions they take.
- There was a perception that Education Scotland may not be impartial once “drawn into the political arena”.
- Education Scotland’s role in monitoring the quality of educational delivery was perceived to be inconsistent with a role in ascertaining the educational benefit of school closures, or in influencing whether a school stays open or is closed.

5.16 There was also a question about whether a more sustained involvement from Education Scotland would have an adverse impact on the timescales for closure proposals which were already perceived to be lengthy.

### **Other relevant issues and suggestions**

5.17 Respondents raised a range of other issues and made a variety of suggestions.

- The nature of educational benefit: Some respondents thought educational benefit should be seen in its widest sense (i.e. should include a reference to safety, transport, physical conditions of school buildings, and impact on communities). Alternatively, others felt the Education Scotland’s role should be restricted to comment on educational benefit in its narrowest sense.
- When specialist input / advice would be needed: There was a view that if a closure proposal related to a school which offers Gaelic, that specialist input (in addition to that from Education Scotland) should be sought (e.g. Bòrd na Gàidhlig should be invited to comment on such proposals).

- Consulting children and young people: An enhanced role for Education Scotland should include use of the Children’s Rights Impact Assessment – to ensure that the closure proposal has been looked at from the viewpoint of the children who will be affected.

5.18 Respondents also expressed a need for further detail or clarification about the relationship between an enhanced role for Education Scotland and the role of the independent referral mechanism also discussed in the consultation document (see Chapter 7).

### Legislation or memorandum of understanding

5.19 In total, 211 respondents – 132 individuals and 79 organisations – replied to Question 3B.<sup>4</sup> Of these, over half (54%) wanted Education Scotland’s role to be clarified through legislation, and 21% through a memorandum of understanding. However, a quarter (25%) did not know. (See Table 5.2.)

**Table 5.2: Q3B: If so, would you prefer Education Scotland’s role to be clarified through legislation or a Memorandum of Understanding?**

Response	Individuals		Organisations		Total	
	n	%	n	%	n	%
Legislation	67	51%	46	58%	113	54%
Memorandum of Understanding	24	18%	21	27%	45	21%
Don’t know	41	31%	12	15%	53	25%
<b>Total</b>	<b>132</b>	<b>100%</b>	<b>79</b>	<b>100%</b>	<b>211</b>	<b>100%</b>

5.20 Among the local authority respondents who replied to Question 3B, just over half (10 out of 17, 59%) expressed a preference for clarification through a memorandum of understanding, whereas just over half of parents’ groups (28 out of 46, 61%) preferred clarification through legislation.

5.21 As the consultation document did not invite further comment on this issue, very few respondents made comments. However, among those who did, it was suggested that legislation would provide maximum clarity. In contrast, those who preferred a memorandum of understanding thought that this would enable greater flexibility – particularly if the role of Education Scotland in closure proposals would require to be changed again in the future.

<sup>4</sup> Some of those who replied ‘no’ to Question 3A also answered Question 3B. In addition, some of those who replied ‘yes’ to Question 3A did not answer Question 3B.

## 6 THE BASIS FOR DETERMINING SCHOOL CLOSURE PROPOSALS (Q4)

- 6.1 This chapter presents an analysis of responses to Question 4 in the consultation document.
- 6.2 In line with the judgement in the case of *Comhairle nan Eilean Siar v. Scottish Ministers*, the Commission agreed that Scottish Ministers' role under the 2010 Act should require consideration of both the process followed and the merits of a school closure proposal that has been called in. In addition, the Commission recommended that, once the proposal had been called in, Ministers should have three options (including a new third option) in relation to the proposals:
- “Recommendation 33: Scottish Ministers' role under the 2010 Act, as set out in the judgement in the case of *Comhairle nan Eilean Siar v. Scottish Ministers*, requires consideration of both the process followed and the merits of a school closure proposal that has been called in. Ministers should have three options in relation to these proposals, to:
- Consent, including consent with conditions
  - Refuse consent or
  - Remit the proposal back to the local authority for reconsideration.
- 6.3 The new third option would allow Ministers to set out reasons for their decision on a school closure proposal that had been called in, and then give the local authority the opportunity to address any flaws in the consultation process or proposal without necessarily having to start the consultation process all over again. This procedure would take into account the primacy of the education authority who were seen to be best placed to understand local issues.
- 6.4 The Scottish Government accepted this recommendation, and proposed, in the first instance, to amend the 2010 Act to clarify the role of Scottish Ministers in determining a school closure proposal once it has been called in. The consultation asked:

**Question 4:** Do you support amending the 2010 Act to provide clarity regarding Ministers' role in considering both the process and merits of the closure proposal?

**Key points:**

- Most respondents (93%) supported the proposal to amend the 2010 Act to clarify Ministers' role in closure proposals.
- Those few who were opposed to the proposal either thought that Ministers should not have a role in closure decisions, or that the clarification was unnecessary.
- Respondents commented about the proposal to give Ministers the option to remit closure proposals back to the local authorities for reconsideration. Local authorities generally saw this as positive, but other respondents had concerns.
- Similarly, local authorities welcomed the Government's recognition of the

primacy of the education authority in making school closure decisions, but other respondents wanted Scottish Ministers to have the final decision in these matters.

- 6.5 In total, 216 (out of 222) respondents answered this question – 135 individuals and 81 organisations. Of these, 93% supported the proposal to amend the 2010 Act to clarify the role of ministers and 3% did not (Table 6.1).

**Table 6.1: Q4: Do you support amending the 2010 Act to provide clarity regarding Ministers' role in considering both the process and merits of the closure proposal?**

Response	Individuals		Organisations		Total	
	n	%	n	%	n	%
Yes	120	89%	80	99%	200	93%
No	6	4%	–	0%	6	3%
Don't know	9	7%	1	1%	10	5%
<b>Total</b>	<b>135</b>	<b>100%</b>	<b>81</b>	<b>100%</b>	<b>216</b>	<b>100%</b>

Note: Percentages do not total 100% due to rounding.

- 6.6 Sixty-one (61) respondents – 23 individuals and 38 organisations – provided further comment in relation to Question 4. This represents just over a quarter (27%) of all respondents. Compared to other open questions in the consultation, this is a relatively low response rate.

### Support for clarifying the role of Ministers

- 6.7 In general, those who indicated support for the proposal simply reiterated that it would be helpful to clarify that Ministers have a role in considering both the process and the merits of a closure proposal. Those who gave reasons for their support thought that greater clarity would:
- Dispel the current confusion, both within communities and within education authorities, about the role of Ministers
  - Assist public confidence
  - Protect Ministers from accusations of bias
  - Prevent manipulation of the 2010 Act by local authorities.
- 6.8 Local authority respondents, in particular, suggested that the recent court case (Comhairle nan Eilean Siar v. Scottish Ministers) had shown that there is a lack of clarity in the 2010 Act regarding the powers of Ministers in determining a called-in proposals, and therefore it was important to make this clear.

“It is absolutely critical that the role of Ministers is provided with clarity and certainty. There is a high level of confusion that exists in this regard at the present time. For example when a call-in is enacted, which happens more often than not, many stakeholders believe that the call-in process can result in Ministers blocking the decision of the local authority. Clearly this is not a position which Ministers can take as they are considering both the process and the merits of the closure proposal.” (Local authority)



- 6.9 There was also a view that it would be positive for all parties if Ministers considered the merits of proposals as well as compliance with procedure, and that attempting to separate out these two issues could lead to undesirable results in determining a closure proposal.

### **Disagreement with clarifying the role of Ministers**

- 6.10 As the table above shows, there were a very small number of respondents who did not support the proposal to clarify the role of Ministers through an amendment of the 2010 Act. Moreover, only three of these provided further comment on the question.
- 6.11 Two individuals did not think Ministers should be involved in school closures at all – that their involvement had made the issue “too political” and that such decisions should be made at a local, not a national level. A third individual argued that there is no need for an amendment to the 2010 Act since the recent court ruling had provided adequate clarity on the role of Ministers.

### **Other relevant issues and comments**

- 6.12 In their comments on Question 4, respondents frequently raised two other issues. These are discussed briefly here.

### ***Remitting closure proposals back to local authorities for reconsideration***

- 6.13 Some respondents commented on the plans to give Ministers the option to remit a called-in proposal back to the local authority for reconsideration. However, there appeared to be a difference in the views of local authorities and other respondents on this matter.
- 6.14 Local authorities generally saw this proposed change in a positive light, suggesting that:
- It would ensure that the time and effort spent in consulting is not wasted because of minor technicalities, oversights or administrative errors.
  - It was consistent with the local education authority having primacy in closure decisions.
- 6.15 In contrast, parents’ groups and other non-local authority respondents generally expressed concern that this proposal would result in an extended period of uncertainty for local communities, school staff and pupils, and that it would, in effect, give local authorities a second chance to work on their closure proposal.
- “We are very concerned with the proposal to "remit the proposal back to the local authority for reconsideration". This would just continue a destructive and damaging process for a school.... Why should Local Authorities get another chance to work on their case to close a school? There is sufficient guidance and support for these professionals. It just gives them another bite at the cherry, tipping the balance in their favour.” (Parent council)
- 6.16 It was suggested that guidance should be published which sets out the circumstances in which Scottish Ministers would consent, refuse or remit a proposal back to the local authority, so that “the third option does not become

the automatic first choice” where one of the other two outcomes would be more appropriate.

### ***Primacy of the education authority in closure decisions***

6.17 Another common theme in respondents’ comments on this question related to the “primacy of the education authority” in closure decisions. In general, local authorities said that they welcomed the statement in the consultation document that the Government recognised the primacy of the education authorities to take decisions based on their local knowledge. Local authorities repeatedly emphasised that it was they, and not the Scottish Government, who have responsibility for effective school provision in their areas and who are accountable to their local communities for these decisions.

“While Government and its agencies have a very valid role in checking the basis on which Councils make their decisions, it is not for Government to replace those decisions, nor to supplant local decision making structures and processes with alternatives.” (Local authority)

6.18 Some argued that the process of Ministerial call-in should be an exception, not a routine part of closure proposals, although it was also accepted that there needed to be an appeals process where correct consultation procedures had not been followed.

6.19 However, some thought that further clarification was needed about: (i) the roles of Ministers, education authorities, Education Scotland and the proposed independent referral body (discussed in the following chapter); and (ii) about how the primacy of the local authority would be respected in these relationships.

6.20 In contrast to these views, parents’ groups and other respondents expressed concerns about the ability of local authorities to make fair decisions about school closures. While some acknowledged that local authorities are best-placed to understand local issues, there was a belief that their local knowledge also made them vulnerable to pressure from influential local individuals and groups. It was suggested that “local party politics” can also play a significant role in local decisions about schools. Moreover, education authorities were perceived as failing to take account of central government policies, or even the policies of other departments within their own organisations (such as Planning) when making decisions about school closures.

6.21 For these reasons, this group of respondents did not necessarily think that local education authorities should have primacy in decisions on proposals that are called in. Rather, they believed that Scottish Ministers would have a fairer and less biased view of closure proposals, and thus Ministers should have the final decision.

## 7 ESTABLISHING AN INDEPENDENT REFERRAL MECHANISM (Q5A/5B)

- 7.1 This chapter presents an analysis of responses to Questions 5A and 5B from the consultation.
- 7.2 The Commission's report made two recommendations regarding the Ministerial call-in process – Recommendation 33, which was discussed in the previous chapter and Recommendation 34:

“Recommendation 34: The referral mechanism for school closure decisions should continue to be to Scottish Ministers, as an accessible mechanism that communities value. Once a sufficient period of time has elapsed for the impact of the Commission's other recommendations to be assessed, a further review could consider the effectiveness of alternative approaches.”

- 7.3 In its response to this recommendation, the Scottish Government stated that it was concerned that there is a perception that Ministers' role in the process of school closures can never be impartial. Therefore, the Government has stated that it would like to begin **now** the process of exploring other options for determining school closures. The proposal, set out in the consultation document, is to establish an independent referral mechanism, such as arbitration, and the key aspects of such a mechanism were outlined. Two questions were asked in the consultation:

**Question 5A:** Do you agree that the criteria specified in paragraph 5.6 are appropriate as a dispute resolution process under the 2010 Act?

**Question 5A, part 2:** If not, what criteria would you support?

**Question 5B:** Do you support replacing the current Ministerial determination of school closure proposals that have been called in with an independent referral mechanism such as arbitration?

**Question 5B, part 2:** If not, what other options for dispute resolution would you suggest?

### Key points:

- A majority of respondents (58%) agreed that the criteria presented in the consultation document formed an appropriate basis for a dispute resolution process. However, one third of respondents (33%) did not know.
- In addition, 70% of respondents supported the idea that the current Ministerial determination of school closure proposals should be replaced with an independent referral mechanism.
- Respondents were not invited to comment on these questions if they agreed with the proposals, and therefore there were a relatively small number of comments made in response to both these questions.
- These comments did, however, highlight concerns about lack of clarity in the

proposals; a loss of accountability for decision-making; increased bureaucracy; lengthier decision-making times; and difficulties for communities in understanding how such a body would operate and how to access it.

- There was a strong view among those who were opposed to the creation of an independent referral mechanism that Scottish Ministers should continue to have the final decision on school closure proposals.

7.4 In total, 213 (out of 222) respondents – 133 individuals and 80 organisations – replied to Question 5A. Of these, 58% agreed that the criteria set out in the consultation document would be appropriate in a dispute resolution process, and 9% disagreed. One-third of respondents (33%) said they were unsure (did not know) whether the specified criteria were appropriate (Table 7.1). Individual respondents were considerably more likely than organisational respondents to say “don’t know” in response to Question 5A, while organisational respondents were more likely than individuals to say “yes”.

**Table 7.1: Q5A: Do you agree that the criteria specified in paragraph 5.6 are appropriate as a dispute resolution process under the 2010 Act?**

Response	Individuals		Organisations		Total	
	n	%	n	%	n	%
Yes	66	50%	58	73%	124	58%
No	10	8%	8	10%	18	9%
Don't know	57	43%	14	18%	71	33%
<b>Total</b>	<b>133</b>	<b>100%</b>	<b>80</b>	<b>100%</b>	<b>213</b>	<b>100%</b>

Note: Percentages do not total 100% due to rounding.

7.5 Thirty-five (35) respondents submitted comments in response to Question 5A, part 2 – 16 individuals and 19 organisations. This represents 16% of all respondents – the lowest response rate for any question in the consultation.

### Appropriateness of proposed dispute resolution criteria

#### *Supporting views*

7.6 Most of those who agreed with the dispute resolution criteria set out in the consultation document made no further comment. Among those who **did** offer further comment, the following points were made:

- The criteria set out in the consultation document were seen to be sensible, sufficient and to provide a robust framework for a future referral mechanism.
- An additional criterion should be added: that the independent adjudicator must be properly informed, and that the decision should consider relevant specialist advice.
- The dispute resolution mechanism should be simple, objective, “truly independent” and “not influenced by COSLA”.

7.7 There was also a specific comment regarding the “Accessibility” criterion: namely that there should not be **any** cost to parent councils or other school

communities in seeking arbitration, as this would act as a barrier to these groups.

### ***Views in opposition***

- 7.8 Among those who ticked “no” to Question 5A, many expressed disagreement with the idea of establishing an independent referral mechanism rather than with the dispute resolution criteria set out in the consultation document.
- 7.9 However, some respondents made general comments on the criteria that: they were “too vague”, they should focus on the reasons why a school must close and the evidence for that, and they should include “Transparency” as one of the criteria – i.e. the dispute resolution process should enable parents to understand how the process works. There was also a view that the dispute resolution mechanism should include a school visit by the independent panel as part of the process of assessing the merits of a school closure proposal and its impact on the community.
- 7.10 There were a relatively small number of specific suggestions on the second, third and fourth criterion:
- Time limited: Respondents thought that the dispute resolution process should not be unnecessarily lengthy, but that it needs to allow sufficient time for all parties to “take advice, gather resources and make their case”.
  - Authority and certainty: Several respondents suggested that there should be scope for a further right of appeal other than on points of law.
  - Fairness and objectivity: Several respondents queried what was meant by “a reasonable education authority”.

### ***Other comments and views***

- 7.11 As noted above, around a third of respondents ticked “don’t know” in response to Question 5A. Within this group, it was common for respondents to request details about how “a reasonable education authority” would be defined. In addition, there was a more substantive request for clarification made by one organisational respondent. This respondent argued that the terminology used in the consultation document was potentially confusing, and that there was a lack of clarity about: (i) the relationships between local authorities, Scottish Ministers and the proposed new independent body, and (ii) the mechanisms for decision-making between these three. This made it impossible to form a view on the proposal.

### **Replacing Ministerial determination with an independent referral mechanism**

- 7.12 In total, 214 (out of 222) respondents – 133 individuals and 81 organisations – replied to Question 5B. Of these, 70% were in favour of replacing the current Ministerial determination of school closure proposals that have been called in with an independent referral mechanism, and 15% were opposed. Sixteen percent (16%) were unsure (did not know). (See Table 7.2.)
- 7.13 Although two-thirds (65%) of organisational respondents said they supported replacing Ministerial determination with an independent referral mechanism, organisational respondents were also more likely than individual respondents to

reply “no” to Question 5B. One-quarter (25%) of parents’ groups and half of local authorities (50%) were not supportive of this proposal.

**Table 7.2: Q5B: Do you support replacing the current Ministerial determination of school closure proposals that have been called in with an independent referral mechanism such as arbitration?**

Response	Individuals		Organisations		Total	
	n	%	n	%	n	%
Yes	96	72%	53	65%	149	70%
No	9	7%	22	27%	31	15%
Don't know	28	21%	6	7%	34	16%
<b>Total</b>	<b>133</b>	<b>100%</b>	<b>81</b>	<b>100%</b>	<b>214</b>	<b>100%</b>

Note: Percentages do not total 100% due to rounding.

7.14 Altogether, 43 respondents commented in response to Question 5B, part 2 – 17 individuals and 26 organisations. This represents 19% of all respondents, again a very low response rate compared to other questions in the consultation.

***Views in support of replacing Ministerial determination with an independent referral mechanism***

7.15 As with Question 5A, many of those who responded “yes” to Question 5B, did not provide further comment since comments were only invited from those who disagreed with the question. Among those who agreed with the question and **did** comment, qualified support was often expressed. More specifically, the following points were made:

- More detail is required about the constitution of such a body and the grounds for its involvement in a school closure proposal.
- The independent referral mechanism should be proportionate and not create a high cost or lengthy arbitration process.
- It must be open, transparent and free from conflict of interest; in particular, it will need to be entirely independent of the educational establishment, local authorities (including COSLA) and pressure groups.
- Communities will need to be given clear information about how to access the independent referral mechanism and what the referral process will involve.

7.16 Respondents often commented that the credibility of the independent referral body / panel, and their willingness to support it, would depend in large measure on its composition – i.e. who its members were. The general view was that the body should be entirely independent. Therefore, it was rare for respondents to suggest – as one local authority respondent did – that the body should comprise suitably experienced and qualified individuals, such as, for example, former senior officers of local authorities or Education Scotland, or – as one parent council respondent suggested – that it should include parents, young people and teachers from other parts of Scotland, or national representatives from, for example, the Scottish Youth Parliament, the National Parents Forum or teaching unions.

7.17 A few respondents suggested that the body best able to provide the necessary independence, objectivity and credibility would be the judiciary.

***Views opposed to an independent referral mechanism***

7.18 Among those who disagreed with replacing Ministerial determination of closure proposals with an independent referral mechanism, respondents often expressed very strong views. The main reason given for disagreeing was that it would be less accountable. Other reasons included the likelihood of:

- Additional cost
- Increased bureaucracy (particularly given the proposal for an enhanced role for Education Scotland)
- Lengthier decision-making times
- Difficulties for communities in understanding how such a body operates and being able to access it in practice.

7.19 In addition, it was pointed out that the proposal to establish such a mechanism was contrary to the Commission's recommendation that the referral mechanism for school closure decisions should continue to be with Scottish Ministers. Those who disagreed with changing the current arrangement of Ministerial determination of closure proposals frequently emphasised that the final decision should continue to reside with Ministers.

“[D]ecisions will be removed from elected representatives to a panel / individual not accountable to the electorate. Reforming the 'call-in' process, but keeping Ministers' current role, is the best option. The Commission recommended increased transparency and a time limit on how long the process should take. The Commission's proposals should be supported.” (Local authority)

“I think we require accountability, and nothing is more accountable than a politician who wants to keep their job. Another faceless referral system will result in faceless results. It is true these may be unpolitical, but accountability is required. If this independent referral mechanism was directly elected I would support, but my guess it will be more quango with no responsibility and an expense account.” (Individual respondent)

7.20 Respondents thought that the Ministerial call-in process already represented an objective and independent mechanism. Some suggested that Ministers provided a safeguard for communities, and that Ministers were more likely than their local authorities to be objective and impartial.

7.21 Moreover, the appropriateness of using arbitration as a dispute resolution mechanism in relation to school closure proposals was challenged – because of the nature of arbitration which requires all parties to agree to be bound by the decision. There was a view that such a process should not be imposed by legislation.

7.22 If the decision is taken to proceed with an independent referral system, then local authority respondents wished to see the following issues taken in account:

- The “key aspects” should be consistent with best value
- In order to ensure objectivity, decisions should be taken by a panel, not an individual.
- Local authorities should continue to have the principal role in decisions.

7.23 Another view was that if a separate independent referral body were established, its role should be to report to Ministers for a final decision.

***Other options for dispute resolution***

7.24 Few respondents offered suggestions for other dispute resolution options. One respondent suggested that an “independent panel” could be a good idea. Another suggestion (from some parent council representatives) was that the final decisions on local school closures should be taken through a local referendum involving local registered voters who, it was argued, would be most affected by the proposal closure.

***Other views and comments***

7.25 The point was also made by some respondents that there was insufficient information in the consultation document for respondents to understand how such an independent referral mechanism would operate in practice.

7.26 Some of the respondents who were uncertain about whether to support an independent referral mechanism said that they would first need assurances that:

- Potential arbitrators had a good understanding of the dynamics of rural communities as well as an in-depth knowledge of the education system
- The body would be entirely independent
- If such an independent body were established, there would still be a right of appeal to Ministers on all grounds, and not just on points of law.



## 8 A FIVE-YEAR MORATORIUM BETWEEN SCHOOL CLOSURE PROPOSALS (Q6A/6B)

- 8.1 This chapter presents an analysis of responses to Questions 6A and 6B – the final two questions in the consultation.
- 8.2 During its review, the Commission heard evidence that some small schools had faced repeated closure proposals at short intervals, and that this had had a corrosive impact on these communities. The Commission’s report suggested that following a failed closure proposal, a community should be given “breathing space” – a period of time in which no further closure proposal would be brought forward. The report recommended:

“Recommendation 31: Once a school closure proposal has undergone full consideration under the 2010 Act and it is agreed not to close the school, local authorities should make no further closure proposal for at least five years unless there is a significant relevant change.”

- 8.3 The Scottish Government accepted this recommendation, and has sought views about whether the recommendation would best be delivered through an amendment to the 2010 Act or through the provision of statutory guidance to local authorities:

**Question 6A:** Do you support a five year moratorium between closure proposals for the same school?

**Question 6B:** If so, would you prefer this provision to be made in guidance or legislation?

### Key points:

- Three-quarters of respondents (75%) supported a five-year moratorium between closure proposals for the same school.
- However, there was a difference between local authorities and other organisational respondents in their replies to this question. A majority of local authorities (13 out of 19) were opposed to a five-year moratorium. In contrast, other organisations were largely in favour of a moratorium of five years – or more.
- One of the main themes arising across all these comments was the need to clearly define what constitutes a “significant relevant change”.
- Those who supported a five-year moratorium generally also thought that: (i) “significant relevant changes” should **not** include changes in local authority finances; (ii) the moratorium requirements should be set out in **legislation**; and (iii) the moratorium should be **retrospective**.
- In contrast, those who opposed a five-year moratorium held opposite views on these three issues. This group thought that: (i) “significant relevant changes” **should** include changes in local authority finances; (ii) the moratorium should be implemented through **guidance**, not legislation; and (iii) it should **not** be retrospective.

8.4 In total, 219 (out of 222) respondents – 136 individuals and 83 organisations – replied to Question 6A. Of these, three-quarters (75%) were in favour of a five-year moratorium between closure proposals for the same school and 19% were opposed. Six percent (6%) of respondents said they did not know whether they supported the proposal or not (Table 8.1).

**Table 8.1: Q6A: Do you support a five-year moratorium between closure proposals for the same school?**

Response	Individuals		Organisations		Total	
	n	%	n	%	n	%
Yes	102	75%	62	75%	164	75%
No	21	15%	20	24%	41	19%
Don't know	13	10%	1	1%	14	6%
<b>Total</b>	<b>136</b>	<b>100%</b>	<b>83</b>	<b>100%</b>	<b>219</b>	<b>100%</b>

8.5 There was a difference between local authorities and other organisational respondents in their answers to Question 6A. A majority of local authorities were not in favour of a five-year moratorium between closure proposals for the same school, whereas most other organisational respondents were (Table 8.2).

**Table 8.2: Q6A: Do you support a five-year moratorium between closure proposals for the same school? Comparison of organisational respondents**

	Local authorities		Parent groups		Other orgs		Total	
	n	%	n	%	n	%	n	%
Yes	5	26%	41	91%	16	84%	62	75%
No	13	68%	4	9%	3	16%	20	24%
Don't know	1	5%	–	0%	–	0%	1	1%
<b>Total</b>	<b>19</b>	<b>100%</b>	<b>45</b>	<b>100%</b>	<b>19</b>	<b>100%</b>	<b>83</b>	<b>100%</b>

8.6 Eighty-six (86) respondents – 35 individuals and 51 organisations – provided further comments in relation to Question 6A. This represents 39% of all respondents.

**Views in support of a five-year moratorium**

8.7 It was common for respondents to refer to their own experiences of closure proposals, describing them as “stressful”, “traumatic” and “destructive”. It was suggested that whether a proposal resulted in the closure of a school or not, the process caused “upheaval”, led to a “lack of trust” between communities and the local authority, and “damaged confidence” within communities. Respondents also highlighted the detrimental and corrosive effect that a single school closure proposal can have on school rolls, school staffing and ultimately on communities as parents begin to take decisions to move their children to other schools, or to leave the community altogether.

8.8 Thus, respondents who were in favour of a five-year moratorium between closure proposals on the same school said that the moratorium would:

- Reduce uncertainty in communities
- Give communities greater security and confidence
- Provide communities with “time to recover”.

8.9 This “time to recover” could then be spent more positively on making improvements in the school which had been the subject of a closure proposal.

“This proposal will help to reduce uncertainty in communities and remove the potential threat of closure which has caused parents to either remove their children from the school or be reluctant to send them there in the first place. Such uncertainty has often led to great anxiety in certain areas in Scotland and has also led to diminishing school rolls in certain areas. This in turn has reduced the stability to develop and maintain pupil numbers, thereby further increasing the threat of closure.” (Other organisational respondent)

8.10 In addition, because of the stress and upheaval that can result from a closure consultation, it was common for those who supported the five-year moratorium to say that seven years would be preferable, since this would prevent any child having to go through a closure proposal twice. Two respondents also suggested that a 10-year moratorium would be better.

8.11 This group of respondents also generally thought that:

- “Significant relevant changes” should not include changes in local authority finances
- The moratorium requirements should be set out in legislation
- The moratorium should be retrospective

### **Views opposed to a five-year moratorium**

8.12 The main reasons given by respondents who opposed a five-year moratorium between closure proposals for the same school were that five years is too long and the proposal is too rigid.

8.13 Local authority respondents in particular, argued that circumstances in small rural communities can change rapidly and unpredictably. In addition, there can be situations where parents agree that their children’s educational needs can be better met elsewhere. This group of respondents was concerned that local authorities should not be prevented from responding to such changes flexibly as and when required.

8.14 Alternative suggestions for a moratorium period ranged from 1-3 years, although some respondents suggested that a mandatory moratorium on school closure of any length of time was “inappropriate” and “arbitrary”. Some made the point that setting such a moratorium was in conflict with the primacy of local authorities in making decisions about the use of their resources.

“Any such moratorium externally imposes a restriction to the decisions that local authorities may make in relation to their use of resources and represents a much wider principle in relation to local democracy and decision making.” (Local authority)

- 8.15 A less common view was that the five-year moratorium should **only** apply if the local authority itself had taken a decision not to proceed with a closure proposal for a particular school. If the proposal had been called in and refused by Scottish Ministers, the local authority should be given the option to review the reasons for refusal and proceed with further consultation if required.
- 8.16 Those who were opposed to the five-year moratorium generally had opposite views to those who were in favour on other issues. Specifically, these respondents thought that:
- “Significant relevant changes” should include changes in local authority finances
  - If a five-year moratorium between closure proposals for the same school is implemented, it should be done through guidance rather than legislation
  - It should **not** be retrospective.

### **Other relevant issues and suggestions**

- 8.17 As noted above, many respondents – both those who agreed and those who disagreed with the five-year moratorium – thought that it was important to clearly define what is meant by a “significant relevant change”. Indeed, there was a question about whether a series of small changes, taken together might be considered to be a “significant” change. In addition, there was a concern about the proposal to allow a change in the condition of the building to be included in the definition of “significant relevant change”:

“We are concerned that such matters as a change in condition of the building may be used as justification to overrule this moratorium. If a Local Authority is not willing to take even basic measures to cut costs and is only carrying out the bare minimum of maintenance, then it would not be surprising if a building’s assessed status would change for the worse. A case of managed run down.” (Parent council)

- 8.18 Other issues raised by respondents were that:
- There is a need to consult more meaningfully with children and young people, and with parents who have taken a decision to send their children away from a school being threatened with closure.
  - There may need to be a different process for a school which is empty – although it was argued that consultation should still be required to formally close a school where the roll had fallen to zero.

### **Legislation vs statutory guidance**

- 8.19 Altogether, 202 respondents – 123 individuals and 79 organisations – replied to Question 6B.<sup>5</sup> Of these, 65% were in favour of making the five-year moratorium explicit in legislation, 25% were in favour of providing guidance only, and 10% were unsure (did not know). (See Table 8.3.)

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<sup>5</sup> Some of those who replied ‘no’ to Question 6A also answered Question 6B. In addition, some of those who replied ‘yes’ to Question 6A did not answer Question 6B.

**Table 8.3: Q6B: If so, would you prefer this provision to be made in guidance or legislation?**

Response	Individuals		Organisations		Total	
	n	%	n	%	n	%
Guidance	28	23%	22	28%	50	25%
Legislation	79	64%	53	67%	132	65%
Don't know	16	13%	4	5%	20	10%
<b>Total</b>	<b>123</b>	<b>100%</b>	<b>79</b>	<b>100%</b>	<b>202</b>	<b>100%</b>

8.20 As noted above, there was a difference between local authorities and other organisational respondents in their answers to this question. Of those local authorities that responded to Question 6B, all but one (15 out of 16) said that if a moratorium were implemented, it should be done through guidance rather than through legislation. In contrast, other organisational respondents were largely in favour of implementation through legislation. (See Table 8.4)

**Table 8.4: Question 6B: If so, would you prefer this provision to be made in guidance or legislation? Comparison of organisational respondents**

	Local authorities		Parent groups		Other orgs		Total	
	n	%	n	%	n	%	n	%
Guidance	15	94%	4	9%	3	17%	22	28%
Legislation	1	6%	38	84%	14	78%	53	67%
Don't know	–	0%	3	7%	1	6%	4	5%
<b>Total</b>	<b>16</b>	<b>100%</b>	<b>45</b>	<b>100%</b>	<b>18</b>	<b>100%</b>	<b>79</b>	<b>100%</b>

Note: Percentages do not total 100% due to rounding.

8.21 The consultation document did not invite respondents to comment on Question 6B, and therefore, there were few comments made about this issue. Among those who **did** comment, in general, local authorities preferred the moratorium to be implemented through guidance to allow flexibility, while other respondents preferred legislation to ensure clarity and to avoid misinterpretation.

## 9 RECURRING THEMES

9.1 Throughout this consultation, several themes arose repeatedly across all questions. These often highlighted the tensions which are inherent in the issue of school closures between local and central government on the one hand, and between local authorities and their local communities on the other.

9.2 Recurring messages from local authorities were that:

- Local authorities should have primacy in making decisions about the future of their local schools. The provision of education is the responsibility of local authorities, and local authorities are accountable to their local electorates for these decisions.
- Local authorities need to have the freedom and flexibility to make decisions based on Best Value principles. This means taking into account the economic arguments for closure, as well as the educational benefit arguments.
- Local authorities strongly felt that the Scottish Government should also accept the Commission's Recommendation 20, which allows for Educational Benefits Statements to conclude that the educational impact of a proposed closure is neutral.

9.3 Recurring messages from parents' groups were that:

- Educational benefit should continue to be the primary focus of closure proposals.
- Local authorities were seen to be biased towards closure of small schools, and there was a view that these decisions were often driven by financial pressures, rather than the best interests of children or local communities.
- Local communities should continue to have recourse to appeal against decisions by local authorities which are based on incorrect information and poor quality consultation, and in general, local communities valued the role of Scottish Ministers in acting as the final arbiters of these decisions.

### The consultation process

9.4 There were also some recurring messages across all respondents about the consultation process itself.

- Parents' groups and individual respondents frequently expressed dissatisfaction with the short timescales for the consultation, and the difficulty of some of the language in the consultation document. It was suggested that the short timescales, in particular, may result in the Scottish Government **not** obtaining the considered response that it would have liked to receive.
- Local authorities often expressed the view that the consultation document was unclear about the proposed relationships between different agencies (i.e. education authorities, Education Scotland, Scottish Ministers and proposed independent referral body) during the call-in process.

## ANNEX 1: LIST OF ORGANISATIONAL RESPONDENTS

### Local authorities (19)

- Aberdeen City Council
- Aberdeenshire Council
- Argyll & Bute Council
- City of Edinburgh Council
- Comhairle nan Eilean Siar
- Dumfries & Galloway Council – Education Services
- East Ayrshire Council
- East Dunbartonshire Council – officer response
- East Lothian Council
- Fife Council
- Glasgow City Council
- Highland Council
- North Ayrshire Council – Education and Skills
- North Lanarkshire Council
- Perth & Kinross Council
- Shetland Islands Council – Education and Families Committee
- South Ayrshire Council
- South Lanarkshire Council – Education Resources
- West Lothian Council

### Parent group or similar (46)

- Arbirlot Primary School Parent Council
- Baldernock Primary School Parent Council
- Balloch Primary School Parent Council
- Barcaldine Primary School Parent Council
- Barr Primary and Nursery School Parent Council
- Botriphnie Primary School Parent Council
- Breascleite Parent Council
- Burghead Primary School Parent Council
- Burravoe Primary School Parent Council
- Burray School Parent Council
- Carnock Primary School Parents Council
- Chryston High School Parents' Association
- Clachan Parent Council
- Clermiston Parent Council
- Comann nam Pàrant (Dùn Èideann & Lodainn)
- Cullivoe Parent Council
- Davidson Mains Primary School Parent Council
- Dunino Primary School Parent Council
- Dunvegan Primary Parent Council
- Dyce Academy Parent Council
- Eassie Primary School Parent Council
- Edinbane Parent Council
- Findochty Parent Support Group
- Forgandenny Primary School Parent Council
- Glassary Primary School Parent Council

- Humble Parent Council
- Kildrum Primary School Parent Council
- Killermont Primary School Council
- Kilmodan School Parent Council
- Langbank Primary Parent Partnership
- Liff Primary Parent Carer Council
- Lochnell Primary School Parent Council
- Lossimouth High School Parent Partnership
- Mattocks Primary School Parent Council
- Middleton Park Parent Council
- Muirhouse Primary School & Nursery Parent Council
- Pentland Primary School Parent Council
- Redhall School Parent Council
- The Royal High School Parent Council
- Sandwick Junior High School Parent Council
- Save Abronhill High School Working Group
- Scottish Parent Teacher Council
- St Cuthbert's Parent Council
- St Ninian's RC Primary Parent Council
- Toward Primary School Parent Council
- Ulva School Parent Council

### Schools (5)

- Davidson's Mains Primary School
- Eday Community School
- Leith Walk Primary School and Nursery Class
- North Ronaldsay Community School
- Papa Westray Primary School

### Community councils (3)

- Croftamie Community Council
- Hunters Quay Community Council
- West Loch Fyne Community Council

### Unions (3)

- NASUWT
- The Educational Institute of Scotland
- Voice Scotland

### Other (9)

- The Accounts Commission for Scotland
- Argyll Rural Schools Network
- Association of Directors of Education in Scotland (ADES)
- Bòrd na Gàidhlig
- Brora and District Action Group (BaDAG)
- Church of Scotland
- Scotland's Commissioner for Children and Young People
- Scottish Rural Schools Network
- SNP Aberdeenshire Council Group

## ANNEX 2: NUMBER OF RESPONSES RECEIVED FOR EACH QUESTION

Question	Individuals	Orgs / groups	Total (% of total 222 responses)
Q1, part 1: Do you support clarifying the presumption against closure of rural schools by stating it in legislation by means of an amendment to the 2010 Act?	136	84	220 (99%)
Q1, part 2: Do you have any comments?	31	41	72 (32%)
Q2, part 1: Do you support amending the 2010 Act to make it clear that relevant financial information should be included in a school closure consultation?	136	85	221 (99%)
Q2, part 2: Do you have any comments?	30	49	79 (36%)
Q3A, part 1: Do you support giving Education Scotland a more sustained role in a school closure proposal?	136	84	220 (99%)
Q3A, part 2: Do you have any comments?	36	49	85 (38%)
Q3B. If so, would you prefer Education Scotland's role to be clarified through legislation or a Memorandum of Understanding?	132	79	211 (95%)
Q4, part 1: Do you support amending the 2010 Act to provide clarity regarding Ministers' role in considering both the process and merits of the closure proposal?	135	81	216 (97%)
Q4, part 2: Do you have any comments?	23	38	61 (27%)
Q5A, part 1: Do you agree that the criteria specified in paragraph 5.6 are appropriate as a dispute resolution process under the 2010 Act?	133	80	213 (96%)
Q5A, part 2: If not, what criteria would you support?	16	19	35 (16%)
Q5B, part 1: Do you support replacing the current Ministerial determination of school closure proposals that have been called in with an independent referral mechanism such as arbitration?	133	81	214 (96%)
Q5B, part 2: If not, what other options for dispute resolution would you suggest?	17	26	43 (19%)
Q6A, part 1: Do you support a five year moratorium between closure proposals for the same school?	136	83	219 (99%)
Q6A, part 2: Do you have any comments?	35	51	86 (39%)
Q6B. If so, would you prefer this provision to be made in guidance or legislation?	123	79	202 (91%)





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