

Scottish Rural Schools Network

19/02/2015

Dear Cabinet Secretary,

Firstly my belated congratulations on your appointment. We, as an organisation, have had very productive relationships with your immediate predecessors and we very much look forward to working with you in the future.

My reason for writing in this instance is a very disturbing development yesterday which threatens the very core of the amendments to the Schools (Consultation) Act introduced only a few months ago. Many of us worked very hard to achieve a consensus position on points of basic principle and we had hoped that legislation had been drafted by Government lawyers which would rectify the main failings seen in the operation of the original Act.

I took part in the Committee stages of the Bill and followed all of the debates. It was clear that Parliament understood the impact that repeated closure consultations on the same school had in destabilising communities, teachers and children. Parliament saw the need to stop the practice of interminable threats and introduced a 5 year moratorium on closure proposals after an unsuccessful closure attempt. This gives communities, prospective parents and school staff some immediate security which encourages continued involvement.

Yesterday Shetland Islands Council (SIC) voted not to proceed with closures of the Junior Secondaries on the islands Whalsay and Yell. By any normal understanding of the amendments to the Act this would trigger a moratorium period of 5 years for both schools. SIC are clearly of the opinion that this is not the case. They clearly believe that by not publishing a consultation report for both of the completed consultation processes that they can avoid being bound by the legislative changes. They have already pencilled in early 2017 as a possible date for revisiting these consultations. This would mean yet another two years of uncertainty for two schools for whom it was the clear democratic will of Parliament that the sword of Damocles be removed in order for them to progress with the business of educating their youth.

The local press have made a very good effort at portraying the position of the Council yesterday. The report can be found at this address....

<http://www.shetnews.co.uk/news/10184-parents-cautious-over-two-year-school-closure-freeze>

SIC are cynically using their interpretation of the wording of the amendment to the Act...

Section 2A (2) (a) (I) a decision not to implement the proposal made by the education authority **following the publication of a consultation report** in relation to the proposal (whether or not the proposal was called-in under section 15).

They clearly believe that not publishing a consultation report easily subverts the democratic will of Parliament. This clearly has serious ramifications for schools across Scotland if their interpretation is allowed to stand legally. We can now envisage a situation (because SIC has laid out the process

very clearly) where schools and communities become embroiled in interminable consultation processes which could last many years with repeated consultation with no consultation report every time that officials realise they are to lose the vote. As soon as it is clear you are to lose the vote you call halt to the process and refuse to publish a consultation report in order to rerun a consultation at a point in the near future when you have a new, gullible batch of councillors who will bend to the will of officials. This new development means that we all may well have made things worse for communities and not better. If that is the case then I personally have a case to answer but not nearly as much as the Scottish Government officials and legislation drafters.

I believe (and fervently hope) that this is not the case and that we collectively made a better job of things than SIC believe.

SIC have failed in several key aspects of the legislation....

- 1) Section 5 Correction of the proposal paper. During the consultation process new procedures were put in place which were meant to ensure that challenges to the proposal paper had to be given serious consideration. Subsection (2) states that notifiers of errors must be informed of the Council's position and any action the authority have taken in response to the challenge. I have been contacted by "notifiers" who have had no such contact during the consultation process.
- 2) Education Scotland Guidance The guidance by Education Scotland, supplied to local authorities, does not link the consultation report to the decision not to go ahead with the closure. They give a definition of what triggers a 5 year moratorium ". A final decision is defined as a decision where a council decides not to proceed with an ongoing proposal" To any reasonable person the decision made yesterday by the Council was a decision not to proceed with an ongoing proposal.
- 3) Section 9 Consultation report. Subsection (2) of the Section 9 states clearly that... "The education authority **must** then prepare a consultation report." Note my emphasis on the word **MUST**. The legislation does not make the steps following the publication of a proposal paper optional. Once you have set in motion the very serious set of cogs in making changes to the school estate you should not be allowed to duck in and out of the process whenever you like. It is my belief that the legislation has cognisance of this and is very clear that the subsequent actions are compulsory once you have set down this path.
- 4) Section 10 Content of the report. Amendments to the Act intended that individuals or groups who challenge under Section 5 should have their concerns recognised and both their challenge and the authority's response included in the consultation report. All of these participants in the process have again been failed by SIC's deliberate deviation from the requirements of the Act.

Quite simply either SIC's interpretation of the Act is correct and they can avoid a moratorium in this manner or our interpretation is correct and the moratorium for these two schools is now in place. We would very much like the Scottish Government to clarify the position on this before this process spreads to other areas. Serious mistakes were made at the introduction of the original Act which caused knock on effects for years. We do not want to be in the same position immediately with the amendments. If by some bizarre legal interpretation it is deemed that SIC are correct we will obviously be looking to have the wording of the Act amended as soon as possible to bring it back into line with the obvious democratic intent.

Legal intricacies aside this should be an early example for you in your new position of the type of people we have to deal with and why we have had to fight tooth and nail for every small change to legislation. SIC are fully aware of the reasons for, and intent of, the legislation but yet are cynically prepared to subvert that for their own ends. The only end they seem prepared to accept is closure of island schools in whatever shape or form they can achieve. They have been consulting now on

closures in the northern isles for many years (one of their own pro-closure councillors put it this week at 18 years and I have no reason to doubt him). This flouting of the law is only the latest incarnation which shows what they are capable of. Many people now question whether these people are fit to serve the public. This is both from the aspects of competency and their attitude to legislation.

Finally, this also brings into question the value of public legislation with no personal penalty. If you contravene the Freedom of Information Act deliberately then you are liable to personal prosecution with serious consequences. As we have seen time and again you can infringe the Schools (Consultation) Act with impunity.

I very much look forward to your reply regarding the correct interpretation of the legislation. I will shortly be making our concerns known to the MSPs involved in the amendment process and to the press. If you would like to give me any advice on the matter you can give me a call at any time on 07885 774497.

Best regards,

Sandy Longmuir SRSN