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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 165 (C. 12)**

**EDUCATION**

**The Children and Young People (Scotland)  
Act 2014 (Commencement No. 2, Transitional  
and Transitory Provisions) Order 2014**

<i>Made</i>	- - - -	<i>5th June 2014</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>9th June 2014</i>
<i>Coming into force</i>	- -	<i>1st August 2014</i>

The Scottish Ministers make the following Order in exercise of the powers conferred on them by section 102(3) and (4) of the Children and Young People (Scotland) Act 2014(1).

**Citation, commencement and interpretation**

**1.** (1) This Order may be cited as the Children and Young People (Scotland) Act 2014 (Commencement No. 2, Transitional and Transitory Provisions) Order 2014 and comes into force on 1st August 2014.

(2) In this Order—

“the 2014 Act” means the Children and Young People (Scotland) Act 2014;

“the 2010 Act” means the Schools (Consultation) (Scotland) Act 2010(2);

“closure proposal” has the meaning given in section 2(1)(b) of the 2010 Act;

“HMIE” has the meaning given in section 8(7) of the 2010 Act;

“proposal paper” means the proposal paper prepared by an education authority under section 4 of the 2010 Act as it had effect immediately before 1st August 2014;

“rural school” has the meaning given in section 14(1) of the 2010 Act; and

“school” has the meaning given in section 21(1) of the 2010 Act.

### **Appointed day**

2. (1) 1st August 2014 is the day appointed for the coming into force of the provisions of the 2014 Act specified in column 1 of the Schedule to this Order (the subject-matter of which is described in column 2 of the Schedule).

(2) Where a purpose is specified in column 3 of the Schedule in relation to any provision specified in column 1 of the Schedule, that provision comes into force on 1st August 2014 for that purpose only.

### **Transitional: restriction on closure proposals**

3. (1) Paragraph (2) applies in relation to a decision made by the Scottish Ministers under section 16(2)(a) of the 2010 Act (refusal to consent to the proposal) on or after 1st August 2014 and before the date on which section 81(2) of the 2014 Act (repeal of section 16 of the 2010 Act) comes into force.

(2) Section 2A (restriction on closure proposals) of the 2010 Act<sup>(3)</sup>, is to be read as if—

(a) in subsection (2)(a), for sub-paragraph (ii) there was substituted—

“(ii) a decision of the Scottish Ministers in relation to the proposal under section 16(2)(a),”; and

(b) in subsection (2), for paragraph (b), there was substituted—

“(b) “(b) such a decision is made by the Scottish Ministers on the day on which the Scottish Ministers inform the education authority of the decision.”.

### **Transitional: where decision made not to implement a closure proposal before 1st August 2014**

4. Section 2A (restriction on closure proposals) of the 2010 Act does not apply to a decision made before 1st August 2014 not to implement a school closure proposal.

### **Transitional: special provision for rural school closure proposals**

5. The amendments made to the 2010 Act by section 80 of the 2014 Act (special provision for rural school closure proposals) do not apply in any case where an education authority has published a proposal paper before 1st August 2014 in relation to a rural school closure proposal.

### **Transitory: HMIE**

6. (1) This article has effect until the date on which section 81(2) of the 2014 Act (repeal of section 16 of the 2010 Act) comes into force.

(2) Section 17B(3) of the 2010 Act<sup>(4)</sup>, is to be read as if—

(a) for “the Panel” in both places there was substituted “the Scottish Ministers”; and

(b) for “for the purpose of subsection (1)” there was substituted “for the purpose of their consideration of the matter of consent (including conditions) under section 16(2)”.

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(3) Section 2A is inserted by section 77 of the 2014 Act.

(4) Section 17B(3) is inserted by section 81(4) of the 2014 Act.

St Andrew's House, Edinburgh  
5th June 2014

*MICHAEL RUSSELL*  
A member of the Scottish Government

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## SCHEDULE

Article 2

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provisions of the 2014 Act</i>	<i>Subject-matter</i>	<i>Purpose</i>
Section 76	References to the Schools (Consultation) (Scotland) Act 2010	
Section 77	Restriction on closure proposals	
Section 78	Financial implications of closure proposals	
Section 79	Correction of proposal paper	
Section 80	Special provision for rural school closure proposals	
Section 81(1)(a), (b) and (c) and (3)(b)	Call-in of closure proposals	
Section 81(4)	Call-in of closure proposals	For the purpose of commencing section 17B(3) of the 2010 Act
Section 81(4)	Call-in of closure proposals	So far as is necessary to enable Scottish Ministers to make regulations under section 17B(5) of the 2010 Act
Section 81(5)	Call-in of closure proposals	So far as is necessary to enable Scottish Ministers to make regulations under paragraphs 1(9) and 2(5) of schedule 2A to the 2010 Act.
Section 81(8)(b)	Call-in of closure proposals	So far as is necessary to enable Scottish Ministers to make regulations under section 17B(5) of, and paragraphs 1(9) and 2(5) of schedule 2A to, the 2010 Act.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order brings into force the following provisions of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”) on 1st August 2014: sections 76, 77, 78, 79, 80, 81(1)(a), (b) and (c),

(3)(b), (4), (5) and (8)(b) (of the provisions commenced by this Order, section 81(4), (5) and (8)(b) are commenced only partially).

Article 2 of the Order appoints 1st August 2014 as the day for the coming into force of the provisions mentioned in the Schedule to the Order. Some are partially commenced for restricted purposes only.

Article 3 makes transitional provision in relation to decisions taken in the period between the coming into force date of this Order and the commencement of section 81(2) of the 2014 Act (the repeal of section 16 of the Schools Consultation (Scotland) Act 2010 (determination of case)). It provides that in relation to section 2A of the Schools (Consultation) (Scotland) Act 2010 (“the 2010 Act”) as inserted by section 77 of the 2014 Act, references to the decision made by the School Closure Review Panel to refuse consent to a closure proposal are to be read as if they were references to the decision made by the Scottish Ministers to refuse such consent. Therefore where the Scottish Ministers decide to refuse consent to a closure proposal once section 2A of the 2010 Act is commenced (and before section 81(2) of the 2014 Act (repeal of section 16 of the 2010 Act) is commenced), there will be a restriction on any further closure proposals in relation to the same school for a five year period.

Article 4 makes transitional provision which provides that section 2A (restriction on closure proposals), as commenced by this Order on 1st August 2014, will not apply to a decision made before that date not to implement a school closure proposal. This applies both to an education authority’s decision not to implement the proposal (following the publication of the consultation report prepared by the authority under section 9(2) of the 2010 Act in relation to the proposal, whether or not the proposal was called in under section 15 of the 2010 Act) and to the Scottish Ministers’ decision to refuse consent to the proposal under section 16(2)(a) of the 2010 Act.

Article 5 makes transitional provision and applies in any case where an education authority has published a proposal paper, in relation to a rural school closure proposal, before 1st August 2014. Article 5(2) provides that the amendments made to the 2010 Act by section 80 of the 2014 Act (special provision for rural school closure proposals) do not apply to such a closure proposal and therefore the current law continues to apply to those cases.

Article 6 makes transitory provision for the period between the coming into force date of this Order and the commencement of section 81(2) of the 2014 Act (the repeal of section 16 of the 2010 Act (determination of case)). Article 6(2) provides that references to “the Panel” in section 17B(3) of the 2010 Act, as inserted by section 81(4) of the 2014 Act, are to be read as references to “the Scottish Ministers”. The reference to “for the purpose of subsection (1)” is to be read as a reference to “for the purpose of their consideration of the matter of consent (including conditions) under section 16(2)”. This therefore requires HMIE to provide the Scottish Ministers with such advice as to the educational aspects of the proposal as the Scottish Ministers may reasonably require of them for the purposes of their determination of a case once called in, until section 81(2) of the 2014 Act is commenced.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

The Bill for the 2014 Act received Royal Assent on 27th March 2014. Section 102(1) brought Part 18 of the 2014 Act into force on the day after Royal Assent (apart from sections 96, 97 and 98). Section 102(2) brought subsections (2) to (5) of section 47 (duty to secure provision of early learning and childcare) into force on the day after Royal Assent. The provisions of the 2014 Act commenced by earlier commencement orders are detailed in the table below.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Section 46	28th June 2014	2014/131
Section 47(1) and (6)	1st August 2014	2014/131
Section 48	1st August 2014	2014/131

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Section 49	1st August 2014	2014/131
Section 50	1st August 2014	2014/131
Section 51	1st August 2014	2014/131
Section 52	1st August 2014	2014/131
Section 53	1st August 2014	2014/131
Section 54	1st August 2014	2014/131
Section 55	1st August 2014	2014/131
Section 57 (partially)	1st August 2014	2014/131
Section 66 (partially)	1st August 2014	2014/131
Section 67(1) (partially)	1st August 2014	2014/131
Section 68 (partially)	1st August 2014	2014/131
Section 69	1st August 2014	2014/131
Section 70	1st August 2014	2014/131
Section 71 (partially)	1st August 2014	2014/131
Section 72	1st August 2014	2014/131
Section 73 (partially)	1st August 2014	2014/131
Section 74	1st August 2014	2014/131
Section 91 (partially)	1st August 2014	2014/131
Section 93(6) (partially)	1st August 2014	2014/131
Section 94	1st August 2014	2014/131
Section 96 (partially)	1st August 2014	2014/131
Section 97	1st August 2014	2014/131
Section 98 (partially)	28th June 2014	2014/131
Section 98 (partially)	1st August 2014	2014/131
Schedule 5, paragraph 1	1st August 2014	2014/131
Schedule 5, paragraphs 2(1) and (6)	28th June 2014	2014/131
Schedule 5, paragraph 2(2)	1st August 2014	2014/131
Schedule 5, paragraph 2(4)(b) (partially)	1st August 2014	2014/131
Schedule 5, paragraph 2(5)(b) (partially)	1st August 2014	2014/131
Schedule 5, paragraph 6	1st August 2014	2014/131
Schedule 5, paragraph 7	28th June 2014	2014/131
Schedule 5, paragraph 10	1st August 2014	2014/131