

T: 0131-244 7573
E: Liza.McLean@gov.scot

Lynda McDonald
Improving Outcomes Manager
Education
Clackmannanshire Council

By email

18 August 2021

Dear Lynda,

SCHOOLS (CONSULTATION) (SCOTLAND) ACT 2010: CLACKMANNANSHIRE COUNCIL – ABC NURSERY, ALLOA

I refer to your email of 30 June 2021 notifying Scottish Ministers of Clackmannanshire Council's decision of 24 June 2021 to implement the proposal to close ABC Nursery. Ministers have considered this proposal in line with the requirements set out in the Schools (Consultation) (Scotland) Act 2010 ("the 2010 Act").

Ministers have power under section 15(3) of the 2010 Act to call in a proposal in certain circumstances. Under section 17 of the 2010 Act, Ministers may only issue a call-in notice if it appears to them that the education authority may have failed:

- (a) in a significant regard to comply with the requirements imposed on it by (or under) the Act so far as they are relevant in relation to the closure proposal, or
- (b) to take proper account of a material consideration relevant to its decision to implement the proposal.

Section 15(2) of the 2010 Act requires an education authority to provide a copy of the proposal paper and the consultation report prepared under the Act to Ministers when notifying them of a closure proposal.

Section 15(4) of the 2010 Act requires Ministers, in considering whether to issue a call-in notice, to take into account any relevant representations made to them by any person during the 3 week period from the date that a closure decision is made. In relation to this closure proposal, the 3 week period began on 24 June 2021 and expired on 14 July 2021. No representations were received.

Having reviewed the documents provided by Clackmannanshire Council under section 15(2), Ministers consider that the procedural failures highlighted below do not, in the

circumstances, rise to the level in which a call-in would be warranted under the 2010 Act and do not intend to issue a call-in notice for this proposal.

Clackmannanshire Council may now implement its decision to close the ABC Nursery in line with the timescales set out in its proposal paper.

It should be noted that we have concerns that the consultation report omitted key sections, specifically, a full response, as required under section 10 of the 2010 Act, to the concerns raised during the consultation period, at the consultation meeting and to the points raised by Education Scotland. We note that this information was supplied to Ministers subsequently and that the Council has committed to publishing its full response to the issues raised on its website. The consultation report also did not set out, as required under section 10(4) to the 2010 Act, the opportunity that may arise for making representations to Scottish Ministers in the case of a closure proposal such as this. We recommend that the Council consider improvements that can be made to its procedures to avoid such errors in the future and to make full use of the materials available on the Scottish Government website, including the statutory guidance - [Schools \(Consultation\) \(Scotland\) Act 2010: guidance - gov.scot \(www.gov.scot\)](http://www.gov.scot/Schools/Consultation/Scotland/Act2010/guidance) .

Yours sincerely,



LIZA MCLEAN
INTERIM DEPUTY DIRECTOR, LEARNING WORKFORCE, INFRASTRUCTURE AND REFORM