MEMORANDUM ON DELEGATED POWERS
SCOTTISH SCHOOLS (PARENTAL INVOLVEMENT) BILL

Purpose

1. As required under Rule 9.4A, this Memorandum has been prepared by the Scottish Executive to accompany the Scottish Schools (Parental Involvement) Bill introduced in the Scottish Parliament on 28 September 2005. It details the provisions in the Scottish Schools (Parental Involvement) Bill that confer powers to make subordinate legislation. It describes the persons upon whom the powers are conferred, the form in which the powers are to be exercised, the Parliamentary procedure to which the powers are to be subject and why it is considered necessary to delegate the powers. It does not form part of the Bill and has not been endorsed by the Parliament.

Background to the Bill

2. The following paragraph outlines the main provisions of the Bill. Further information about the Bill’s provisions are offered in the Explanatory Notes, Policy Memorandum and Financial Memorandum.

3. This Bill has been introduced as part of the Scottish Executive’s commitment to review and reform the legislation governing school boards (the School Boards (Scotland) Act 1988 (the “1988 Act”) and associated Regulations), made in Educating for Excellence: Choice and Opportunity (The Executive’s Response to the National Debate on Education) (January 2003). The 1988 Act established statutory parental representation in public schools (schools under the management of education authorities). The Bill has a broader focus in that it also extends to parents’ involvement in their own child’s education. The Bill also has to be considered in the context of other education legislation. At present the main statutory provisions relating to education are to be found in the Education (Scotland) Act 1980 (the “1980 Act”) and in the Standards in Scotland’s Schools etc. Act 2000 (the “2000 Act”). In relation to the education provided in public schools, the Bill places a duty on Scottish Ministers to promote parents’ involvement in their child’s school education; builds on and strengthens the existing duties placed on education authorities by the 2000 Act with regard to parents’ involvement in their own child’s school education and in school education generally; repeals the 1988 Act and associated legislation and makes provision for new arrangements for parental representation in schools; places a duty on education authorities to give advice and information to parents on the education of their own child; and requires education authorities to have a complaints procedure covering how they carry out their functions under the Bill.
Delegated Powers

Section 8(7) Functions of a parent council
Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

4. Section 8(7) confers powers on the Scottish Ministers to add to or alter the functions of a Parent Council set out in the Bill.

Justification for taking this power

5. The 1988 Act, which part of this Bill replaces, set out the functions and duties of a school board in detail. The main role of the new Parent Councils to be introduced by this Bill is in communicating with and representing parents and in doing so to support those managing the school. This power allows Ministers to amend the functions of Parent Councils without requiring primary legislation where a change is deemed appropriate. For example, once Parent Councils are established it may become apparent that existing functions should be altered, or new ones added. Any such additions or alterations would be brought about by means of statutory instrument subject to affirmative resolution procedure. As is normally the case with powers which allow amendment of primary legislation, affirmative procedure is considered appropriate in relation to adding to or altering the functions of parent councils currently listed in the Bill because of the greater opportunity for scrutiny and debate by the Parliament afforded by this procedure.

Section 14(3)(a) Procedures for appointment of headteacher or deputy and participation of a Parent Council
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative resolution of the Scottish Parliament

6. Section 14(3)(a) confers on Scottish Ministers the power to make regulations imposing requirements which the process involved in relation to headteacher and deputy headteacher appointments must satisfy.

Justification for taking this power

7. Section 14 replaces the current prescriptive appointment procedures for headteachers and deputy headteachers set out within Schedule 2 to the 1988 Act.

8. Instead of prescribing a new system centrally for senior management appointments, the Bill requires each education authority, in terms of section 14, to inform Ministers and Parent Councils about their procedures for filling such posts, and to involve the Parent Council (where one exists) in the appointment process. While provision has therefore been made for what is a more flexible appointment procedure, section 14(3) will enable Scottish Ministers to make provision by way of regulations setting out the specific requirements which those processes must satisfy. It is considered that negative resolution procedure is appropriate on the basis of the procedural nature of the subject matter.
9. Power is also conferred on Ministers enabling them, by notice, to require education authorities to change their appointment process to the extent set out in the notice. The power is considered necessary to allow action to be taken at short notice, where this is considered necessary in relation to that appointment process.

Section 21(1) Transitional provisions etc.

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution (but affirmative in relation to amendment or repeal of another enactment)

10. Section 21(1) confers powers on Scottish Ministers by order to make incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of the Bill. The power would be appropriate to allow Ministers to make changes to other legislation as a consequence of the Bill that are not apparent at the moment. In terms of section 22(3)(b) a statutory instrument containing an order under section 21(1), where the effect of that order would be to amend or repeal primary legislation, requires to be made by affirmative procedure. It is considered that an order which makes such an amendment or repeal should be subject to full scrutiny and debate by the Parliament and therefore made by affirmative procedure. In respect of other orders or regulations (aside from any made under section 8(7) as referred to earlier in this Memorandum) it is not considered necessary or desirable to require a higher level of Parliamentary involvement than that afforded by negative procedure, as provided for under section 22(2).

Section 24(2) Short title and commencement

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: No parliamentary procedure

11. Section 24(2) gives the Scottish Ministers power to commence provisions of the Act by order. Provision is made for different days being appointed for different provisions, for different areas, for different purposes or for different cases or classes of case. This would allow a phased approach to commencement for example by reference to education authority areas, or for different provisions in the Bill. No commencement date is specified in the Bill as Ministers are yet to determine when it would be appropriate to bring the substantive provisions of the Bill into force. As is normal with commencement orders, no form of parliamentary procedure is required.