



## **Delegated Powers and Law Reform Committee**

Jenny Gilruth MSP  
Cabinet Secretary for Education and Skills

**19 March 2025**

Dear Cabinet Secretary

### **Tertiary Education and Training (Funding and Governance) (Scotland) Bill at Stage 1**

The Delegated Powers and Law Reform Committee considered the above Bill at its meeting on Tuesday, 18 March, and agreed to ask the following questions in relation to the following delegated power contained in the Bill.

#### **Section 10 inserting new section 17A into the 2005 Act: power to issue guidance**

In relation to the above power, the Delegated Powers Memorandum (“DPM”) sets out that this power is to give more structure to existing informal guidance for fundable bodies; and to make clear that the Scottish Funding Council can issue guidance to other persons, including employers and training providers, who receive funding under the SFC’s new functions. The DPM also notes that the Scottish Government considers that no parliamentary procedure is appropriate as it is guidance and not of a regulatory nature. Further, that it allows for guidance to be issued and updated quickly, and given that it might be extensive, detailed and non-regulatory, requiring parliamentary scrutiny might not be the best use of parliamentary time.

However, fundable bodies and other persons “must have regard to” such guidance and will be expected to follow it. Such guidance will inform them as to how they will be expected to carry out their activities and there may be consequences for a failure to have regard to the guidance without good reason.

As such, the Committee’s questions why the Scottish Government has not specified the type of content of any guidance to be issued, why there is no parliamentary oversight of such guidance and whether there should be a duty to publish it given it is to be put on a statutory footing.


Contact: Delegated Powers and Law Reform Committee, The Scottish Parliament,  
Edinburgh, EH99 1SP.  
Email: [dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot).  
We welcome calls through Relay UK and in BSL through Contact Scotland BSL.

The Committee therefore asks the Scottish Government—

- **To explain why the power to issue guidance to which bodies or persons must have regard does not specify the type of content that any guidance might include?**
- **As guidance is to be put on a statutory basis to which bodies or persons must have regard why it considers it is not appropriate that there is any parliamentary oversight of this guidance?**
- **As guidance is to be put on a statutory basis to which bodies or persons must have regard is it appropriate that, as well as a duty to consult before issuing guidance and for reasons of transparency and accessibility, that there should also be a duty to publish the guidance rather than publishing being a choice?**

I would be grateful if you could please email your response to these questions to: [dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot), by **Tuesday, 1 April**.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stuart', with a stylized flourish at the end.

**Stuart McMillan MSP**  
**Convener**