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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Delegated powers in the Schools (Residential Outdoor Education) (Scotland) Bill (as amended at Stage 2)



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. This report considers the delegated powers in the [Schools \(Residential Outdoor Education\) \(Scotland\) Bill](#) (“the Bill”) as amended at Stage 2.
2. The Committee previously considered the delegated powers in the Bill at its meeting on 29 October 2024. Thereafter, it published a report on 1 November 2024 indicating that it was content with the two delegated powers in the Bill.

Overview of the Bill

3. This is a Members Bill which was introduced by Liz Smith MSP on 20 June 2024. The lead committee was the Education, Children and Young People Committee.
4. The Policy Memorandum explains the policy objective of the Bill is that “all pupils should have the opportunity to attend residential outdoor education during their school career” and that “the level of provision of residential outdoor education has continued to decline and the Member considers that, to protect the continuation of this valuable opportunity for young people, it is necessary to legislate to ensure that it is a requirement that education authorities must offer residential outdoor education at least once in a pupil’s school career”.

Delegated Powers

5. At Stage 1, the Bill conferred one power to make subordinate legislation and one power to issue guidance. Both powers are conferred on the Scottish Ministers.
6. A new commencement power has been added at Stage 2. The Member has produced a [Supplementary Delegated Powers Memorandum](#) which sets out the reasons for taking the new delegated power in the Bill. The power to issue guidance has also been amended at Stage 2, although this is not addressed in the Supplementary Delegated Powers Memorandum.

Review of relevant powers

Section 1: guidance on residential outdoor education

Power conferred on: the Scottish Ministers

Power exercisable by: guidance

Parliamentary procedure: none

Revised or new power: revised

Provision

7. As introduced, new section 6B of the Education (Scotland) Act 1980, as inserted by section 1 of the Bill, requires the Scottish Ministers to prepare and publish guidance to education authorities and managers of grant-aided schools about their duties under new section 6A (also inserted by section 1 of the Bill). Section 6B(4) lists matters that must be provided for in guidance.
8. At Stage 2, the list in section 6B(4) has been amended to include two new requirements.
9. The power is not subject to any procedure.

Committee consideration

10. The two new requirements are:
 - section 6B(4)(da) – provision about the funding sources available;
 - section 6B(i) – provision about the delivery of residential outdoor education by means of the Gaelic language.
11. These new requirements will provide additional information in the guidance issued to schools and education authorities. As the Committee was content with the guidance power at introduction, and because the amendments appear to enhance the information which is to be included in guidance, the Committee is content with the power as amended at Stage 2.

12. The Committee is content with the revised power to issue guidance.

Section 4: Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

Revised or new power: New power

Provision

13. As introduced, section 4 of the Bill would have commenced all provisions of the Bill by 7 July following Royal Assent. The Bill did not contain the usual power that the Committee sees in Bills which allows provisions of the Bill to be commenced at times to be determined in commencement regulations.
14. At Stage 2, section 4 has been amended to add such a commencement power for the Scottish Ministers. Sections 3, 4 and 5 of the Bill will come into force on the day after Royal Assent. This is the same position as at introduction of the Bill. Section 4(2) has been amended so that sections 1 and 2 of the Bill will come into force at a time determined by Ministers in regulations. New section 4(3) enables the inclusion of transitional, transitory and savings provisions in commencement regulations. It also allows commencement regulations to make different provision for different purposes which can include different descriptions of pupils, schools and education authorities or grant-aided schools.
15. Section 4(4) also provides that the Scottish Ministers must make commencement regulations no later than 30 September 2027.
16. There is no procedure applying to such regulations, which is normal for commencement regulations.

Committee consideration

17. Commencement powers are common in Bills which are scrutinised by the Committee. The power in section 4 to commence the Bill, as amended at Stage 2, is similar to that found in most Bills. As the Supplementary Delegated Powers Memorandum states, the amendments enable the Scottish Ministers:
 - ” to have control over the commencement of the Bill so that it can be brought into force once there is more certainty as to the exact date at which education authorities and managers of grant-aided schools will be equipped to fulfil their duties under the Bill.
18. Allowing commencement of the provisions of a Bill by regulations allows for proper consideration of the factors that require to be in place or addressed before legislation is brought into effect. The Committee is content with the revised power, given that it reflects common practice for commencement contained in most Bills.
19. **The Committee is content with the revised power in principle. The Committee is also content that regulations made under it would not be subject to any Parliamentary procedure which is common to most commencement powers.**

