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

# **Delegated Powers in the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill**



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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 [Children \(Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty\) Bill](#) (“the Bill”) at Stage 1.
2. The Bill was introduced by the Scottish Government on 30 April 2025. The lead committee is the Equalities, Human Rights and Civil Justice Committee.

# Overview of the Bill

3. Currently, section 9 of the Education (Scotland) Act 1980 gives parents a right to withdraw their child from both religious observance (“RO”) and religious and moral education (“RME”) in schools.
4. The Scottish Government states in its Policy Memorandum that it considers that the current legislation on RO and RME in Scotland raises questions in connection with its obligations under the United Nations Convention on the Rights of the Child (“UNCRC”). It considers that those questions arise due to the lack of statutory opportunity for the child to participate in any decision to withdraw them from RO and RME, in light of Article 12 of the UNCRC which gives children the right to have their views considered in matters which affect them, and Article 14, which details the right to freedom of thought, conscience and religion.
5. The purpose of the Bill is therefore to make statutory provision that, where a parent has made a request to withdraw a pupil from instruction in RO or RME, the operator of the school must tell the pupil about the request and tell the pupil about their right to object to the withdrawal. The operator of the school must have regard to any views expressed by the pupil about the request, taking into account the pupil's age and maturity. The operator is not required to comply with this requirement if it is satisfied that the pupil is not capable of forming a view. However, the pupil is to be presumed to be capable of forming a view unless the contrary is shown.
6. If the pupil objects to all or part of the parent's request, the operator must seek to discuss the pupil's objection with the pupil and the parent and have regard to any views expressed during any discussion. Ultimately, if the pupil continues to object after such a discussion has taken place, the operator of the school must not give effect to the parent's request, to the extent of the pupil's objection.
7. The Bill also modifies the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (“the UNCRC Act”). The Scottish Government was required, in light of the Supreme Court judgment, to include an exception to the rule that a public authority must act compatibly with the UNCRC requirements when exercising relevant functions, where that public authority was required to act incompatibly by legislation which has originated in the UK Parliament. This Bill makes equivalent provision in respect of legislation which has originated in the Scottish Parliament. The Scottish Government sought to include an amendment dealing with this matter during the Reconsideration Stage for the UNCRC Bill. The amendment was deemed to be outwith the scope of the Reconsideration Stage, and therefore the Scottish Government has chosen to include the amendment in this Bill.

# Delegated Powers

8. The Bill confers 2 powers to make subordinate legislation on the Scottish Ministers and 1 power to issue guidance.
9. The Scottish Government has produced [a Delegated Powers Memorandum](#) (“DPM”) which sets out the reasons for taking the delegated powers in the Bill and for the procedure chosen. The Committee's consideration of the powers and recommendations are set out below.

# Review of relevant powers

## Section 1(3) (inserting new section 9B into the Education (Scotland) Act 1980: Guidance to operators on section 9A

**Power conferred on: Scottish Ministers**

**Power exercisable by: Guidance**

**Parliamentary procedure: No procedure**

### Provision

10. Section 9 of the Education (Scotland) Act 1980 (“the 1980 Act”) gives parents of pupils in public schools and grant-aided schools the right to withdraw the pupil from religious instruction or religious observance. Section 1 of this Bill inserts a new section 9A into the 1980 Act, which provides that operators of such schools must take into account the views of the pupil when such a request is made.
11. Section 1(3) of the Bill inserts a new section 9B into the 1980 Act which provides a power for the Scottish Ministers to issue guidance for education authorities and managers of grant-aided schools about carrying out their functions under this Bill. Section 9B provides that an operator must have regard to any guidance that the Scottish Ministers may give about those functions.
12. Guidance issued under this provision will not be subject to any parliamentary procedure.

### Committee consideration

13. The Scottish Government states in its DPM that the purpose of providing guidance will be to support education authorities and managers of grant-aided schools to carry out the process for involving a pupil in a decision about their withdrawal from religious instruction or religious observance in a consistent and robust manner, ensuring that there is an inclusive and objective approach to how the process is undertaken.
14. The Committee has recently been considering carefully powers to publish guidance, especially where there is a requirement to “have regard” to such guidance, and whether those powers should be subject to some form of parliamentary procedure. In this instance, it appears that the power to issue guidance will be used to provide supplementary advice to operators about the process to follow in involving a pupil in such a decision, rather than to place any substantive obligations on the operator.
15. The Committee considers that sufficient detail has been set out in new section 9A in respect of the operation of the involvement of a pupil in such decision making. It provides that the operator must:
  - tell the pupil about any parental request,
  - tell the pupil about their right to object to withdrawal,
  - give the pupil an opportunity to express their view in the manner that they

prefer, or a manner that is suitable to the pupil if they have not indicated a preference or it is not reasonable to accommodate their preference,

- seek to discuss the pupil's objection with the pupil and the parent,
- not give effect to the parent's request to the extent of the pupil's objection, if the pupil still objects after such a discussion with the operator and the parents.

16. Given the detail on the face of the Bill, it is not considered that it is likely that guidance could be issued to make any substantive provision about the rights involved. It may therefore be considered disproportionate to make such guidance subject to any parliamentary procedure.

**17. In light of the above, the Committee is content with the power to issue guidance in section 1, and that such guidance would not be subject to parliamentary procedure.**

### **Section 3: Power to make ancillary provision**

#### **Power conferred on: Scottish Ministers**

#### **Power exercisable by: Regulations made by Scottish statutory instrument**

#### **Parliamentary procedure: Affirmative if making textual amendments to an Act, but otherwise negative**

#### **Provision**

18. Section 3 provides that the Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Bill.
19. Regulations made under this section will be subject to the negative procedure unless they add to, replace or omit any part of the text of an Act in which case they are subject to the affirmative procedure.

#### **Committee consideration**

20. The DPM states that the Scottish Ministers consider it appropriate for the full range of ancillary powers to be available to facilitate the transition from the current law on withdrawal from RO and RME, and the compatibility duty in the UNCRC Act, to the new arrangements as provided for in the Bill.
21. The Committee agrees that it is appropriate to include an ancillary power in this Bill. The extent of the power is restricted as it can only be used for the purposes of giving full effect to the Bill as enacted. The power allows issues of an ancillary nature which may arise to be dealt with by the Scottish Ministers. Without such a power, any changes would require to be made by primary legislation, which the Committee considers would not be an effective use of either the Parliament's time or the Scottish Government's resources.

22. The Committee also considers it appropriate that the affirmative procedure would apply where the power is exercised to amend primary legislation, but that the negative procedure would apply in all other cases.

- 23. The Committee finds the power acceptable in principle, and is content with the specified parliamentary procedures, which are dependent on whether or not the power is exercised to amend primary legislation.**

#### **Section 4: Commencement**

##### **Power conferred on: Scottish Ministers**

##### **Power exercisable by: Regulations made by Scottish statutory instrument**

##### **Parliamentary procedure: Laid, no procedure**

##### **Provision**

24. Section 4 provides that Part 3 (final provisions) will come into force on the day after Royal Assent. It also provides that the Scottish Ministers may, by regulations, appoint days on which the remaining provisions of the Bill come into force. Regulations under section 4 may include transitional, transitory or saving provision and may make different provision for different purposes.
25. As is standard for commencement powers, regulations will be laid before the Parliament but not subject to any further procedure.

##### **Committee consideration**

26. The DPM explains that the power will enable the Scottish Ministers to bring the provisions of the Bill into force and manage the effects of their commencement.
27. It is standard to take a power at the end of a Bill to commence those sections of the Bill that are not commenced by the Bill itself. This allows the Scottish Ministers to appoint the day on which those sections are to be commenced. The Committee is therefore content with the power in principle.
28. It is also standard that commencement regulations are laid before the Parliament but are not subject to further procedure.

- 29. The Committee is content with the power in principle, and that regulations will be laid before the Parliament but will not be subject to further procedure.**

