



Stuart McMillan MSP
Convener
Delegated Powers and Law Reform Committee
dplr.committee@parliament.scot

Your ref: Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill

9 December 2022

Dear Convener,

I note the Committee's letter dated 14 November 2022 to Pam Duncan-Glancy MSP in relation to the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill. While it is of course for the Member in charge of the Bill to respond to the Committee's correspondence, it might be helpful for the Committee to receive the Scottish Government's view on the point raised in the letter too.

The Committee's letter appears to overstate the extent of a legal duty to "have regard" to guidance issued by the Scottish Ministers. It certainly requires those on whom the duty is imposed to consider the guidance, but it does not require it to be considered as the only or top priority, which may only be departed from in "exceptional" circumstances.

There does not appear to be anything out of the ordinary about the guidance that may be issued under section 14 of the Bill, or about the manner in which the power is to be exercised, which would render it necessary to make it subject to parliamentary procedure.

In the Scottish Government's view, it would be inappropriate to make guidance issued under section 14 of the Bill subject to the negative procedure. This is a procedure designed to ensure appropriate parliamentary scrutiny of subordinate legislation. Guidance is not subordinate legislation, as is clear from section 37 of the Interpretation and Legislative Reform (Scotland) Act 2010 (read with section 27 and the definition of "subordinate legislation" in schedule 1), and Rule 9.3.3B of the Standing Orders of the Scottish Parliament.

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I would also highlight other existing approaches to enable parliamentary scrutiny of guidance. For example, the laying of draft guidance before the Scottish Parliament in advance of it being finalised or the requirement for the Scottish Ministers to lay a copy of the guidance before the Parliament.

I hope that this letter is of some assistance to the Committee, and I look forward to reading your Stage 1 report (and that of the Education, Children and Young People Committee) in due course.

CLARE HAUGHEY

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