

Schools (Residential Outdoor Education) (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This Delegated Powers Memorandum has been prepared by the Non-Government Bills Unit on behalf of Liz Smith MSP, the member in charge of the Bill, in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Schools (Residential Outdoor Education) (Scotland) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 50–EN);
 - a Financial Memorandum (SP Bill 50–FM);
 - a Policy Memorandum (SP Bill 50–PM);
 - statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 50–LC).
3. This Memorandum has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

Outline of Bill provisions

4. The Bill is short, consisting of five sections. It makes provision for residential outdoor education by amending the Education (Scotland) Act 1980. The Bill places a statutory duty on education authorities and managers of grant-aided schools¹ to ensure that pupils attending schools under their management are provided with the opportunity to experience one course (being four overnight stays and five days – i.e. the equivalent of one school week, which need not take place in one visit) of residential outdoor education during their school education. There is an obligation on the Scottish Ministers to provide guidance to education authorities and managers of grant-aided schools on

¹ Grant-aided schools are independent of education authorities and supported financially by the Scottish Ministers.

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how to fulfil this duty. The Bill requires the Scottish Ministers to provide separate funding directly to the education authorities and managers of grant-aided schools to finance the provision of residential outdoor education. It also provides that education authorities must have regard to the provision of residential outdoor education by independent schools before placing a pupil in such a school.

5. Further information about the Bill's provisions is contained in the Explanatory Notes, Policy Memorandum and Financial Memorandum.

Rationale for subordinate legislation

6. The Bill contains one duty to issue guidance and one delegated powers provision, described in more detail below. In considering if and how provision should be set out in subordinate legislation or covered in guidance, rather than on the face of the Bill, the Member has had careful regard to—

- the relatively better position of the Scottish Ministers when compared with an individual Member in making decisions on the best use of public resources to meet objectives;
- the need to achieve the appropriate balance between the importance of the issue and the need to provide flexibility to respond to changing and unforeseen circumstances quickly, in light of experience, without the need for primary legislation;
- the possible requirement to make further provision over time which cannot necessarily be foreseen at present.

Delegated powers

Section 1: Guidance on residential outdoor education

Power conferred on: Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: None

Provision

7. Section 1 inserts three new sections into the Education (Scotland) Act 1980. The second of these, section 6B, requires the Scottish Ministers to provide guidance to education authorities and managers of grant-aided schools about their duty to provide residential outdoor education. Subsection (2) requires education authorities and managers of grant-aided schools to have regard to this guidance. Subsection (4) of section 6B lists the matters that must be covered in the guidance, this list however being non-exhaustive. Subsection (5) allows the Scottish Ministers to revise guidance (and any revised guidance must be published). And subsection (7) requires the Scottish Ministers to consult with a variety of organisations and persons.

Reason for taking power

8. The Member thinks it prudent to leave it to the Scottish Ministers to provide, in guidance, to education authorities and managers of grant-aided schools details, on how this residential outdoor education is to be delivered. This allows the Scottish Ministers to react and respond to practical experience and to consult, for example, those who will be responsible for providing (or securing the provision of) residential outdoor education, those currently running outdoor centres and the persons representing them, relevant parents or voluntary organisations such as youth hostel organisations (section 6B(7)). The Member believes that the Scottish Ministers are in the best position to advise, for example, on how residential outdoor education should be provided, ensuring that it fits in with existing education frameworks, such as Getting it Right for Every Child,² and other existing documents that already provide guidance for teachers and other practitioners in relation to outdoor learning (section 6B(4)(b)). Guidance must include practical guidance around school inspections in relation to the duty to provide residential outdoor education (section 6B(4)(g)). The guidance is further expected to assist education authorities and managers of grant-aided schools in their consideration of the suitability of residential outdoor education to a pupil's age, ability, aptitude and any additional support needs (subsection (4)(c)). Guidance could also provide examples of how an area in which teaching and learning by means of the Gaelic language is provided may be identified, and whether and how this could be incorporated into the provision of residential outdoor education (subsection (4)(h)).

Choice of procedure

9. The Scottish Ministers require this power to make guidance relevant to the Bill as detailed above. As such, given it makes provision for guidance and not regulation, no procedure is considered necessary. Guidance does not have the force of law, so requiring the Parliament to scrutinise this particular guidance would not, in the Member's view, be an effective use of parliamentary time.

Section 3: Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative procedure if adding to, replacing or omitting any part of the text of an Act, otherwise negative procedure

Provision

10. Section 3(1) enables the Scottish Ministers by regulations to make any incidental, supplementary, transitional, consequential, transitory or savings provision they consider appropriate (including modifying any enactment and making different provision for different purposes) so as to give full effect to the Bill.

² [Getting it right for every child \(GIRFEC\) - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Reason for taking power

11. As with any new body of law, the Bill may give rise to a need for ancillary provision. The Bill does amend existing legislation. While the Member has given careful consideration to the provisions of the Bill, she recognises that, for example, transitional arrangements might be considered necessary to provide for some flexibility with implementation. Given the level and scope of Scottish education legislation there may be some need for incidental, consequential and supplementary changes. This power ensures that issues of an ancillary nature clearly within the scope and policy intention of the Bill, which may arise, can be dealt with effectively by the Scottish Ministers. Without such a power it would be necessary to return to the Parliament with another Bill to deal with any minor matters to properly give effect to a Bill already passed by the Parliament.

Choice of procedure

12. Regulations made under section 3(1) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure. Otherwise, regulations made under this section are subject to the negative procedure. That approach is typical for ancillary powers of this type and reflects the fact that the Parliament should be able to carefully scrutinise any amendments to primary legislation, while ancillary changes to subordinate legislation are likely to be of a more technical nature and so merit a lesser degree of parliamentary scrutiny.

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