



Clerk to the Delegated Powers and Law Reform Committee  
Room T1.01  
Scottish Parliament  
0131 348 5212  
[DPLR.Committee@scottish.parliament.uk](mailto:DPLR.Committee@scottish.parliament.uk)

Chris Nicholson  
Deputy Head of Business Division (Solicitor)  
Scottish Government

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### **Education (Scotland) Bill at Stage 1**

1. The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 5 May and seeks an explanation of the following matters:

#### **Section 7 – Initial assessments**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations</b>
<b>Parliamentary procedure:</b>	<b>negative</b>

2. Section 7 of the Bill relates to initial assessments of the need for Gaelic Medium Primary Education (GMPE), and applies where an education authority receives a parental request under section 5 of the Bill. Where the authority is required to make an initial assessment for the need for GMPE, both within the area designated as the GMPE assessment area under section 6 and within the specified child's year group.

3. Section 7(5) provides that where, following an initial assessment area, the authority is satisfied that the various conditions in section 7(6) are met, the authority must determine that there is a potential need for GMPE in the area.

4. There are 2 conditions in subsection (6), in (a) and (b). Paragraph (a) provides that the child specified in the request and the children resident in that GMPE assessment area who are in the same year group as the specified child, and in respect of whose parents the authority holds information about demand as mentioned in section 5(3), total 5 or more in number. Paragraph (b) provides that the

demand for GMPE in respect of children in a different year group is at, or is likely to increase to, a level that the authority considers reasonable.

5. Section 7(7) provides that the Scottish Ministers may by regulations amend section 7(6)(a) so as to substitute a different number for the number of children there specified. The power also enables the Ministers to provide that the number of children specified is to be read as a different number, in the application of that subsection to such education authorities as may be specified in the regulations. In essence the power enables the Scottish Ministers to change the threshold figure for determining whether there is demand for GMPE in a particular area, sufficient to justify securing GMPE, or to apply different threshold figures for different education authorities.

6. The power is subject to the negative procedure and, while not altering the substance of the duty placed on education authorities to determine that there is a need for GMPE in a particular area when a certain threshold is reached, the power is nonetheless significant to the practical operation of Part 2 of the Bill and its scope and application.

**7. The Committee therefore asks the Scottish Government:**

- **For further justification of the choice of negative procedure for the exercise of this power, given its apparent significance and the fact that it permits the variation of the threshold figure beyond which an education authority must determine that there is a potential need for GMPE in a particular assessment area?**

**Section 10 – Full assessments**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations</b>
<b>Parliamentary procedure:</b>	<b>negative</b>

8. Section 10 of the Bill relates to full assessments of the need for GMPE. Where, at the conclusion of the initial assessment process, an education authority determines that there is a potential need for GMPE in that assessment area, the authority must either carry out a full assessment, or proceed directly to securing GMPE. Where the authority concludes at the end of the initial assessment process that there is *not* a potential need for GMPE in the area, it is not required to take any further action. However it may still exercise its discretion and either undertake a full assessment, or proceed directly to securing GMPE.

9. The full assessment procedure requires the education authority to consult with the bodies as specified in section 10(3). The education authority must then decide whether to secure the provision of GMPE in the particular assessment area. Section 10(7) sets out a list of matters to which the education authority must have regard in making its decision. In addition to the matters specified in the list in section 10(7), the authority must also have regard to any other matters it considers to be relevant to the decision.

10. Section 10(8) provides that the Scottish Ministers may by regulations modify sections 10(3) or 10(7). They may also make such other modifications of section 10, as they consider necessary or expedient in consequence of any modification of section 10(3). The power is subject to the negative procedure, and permits the modification of primary legislation.

11. Section 10(8)(b) also permits the Scottish Ministers to make “such other modifications” of section 10 as they consider necessary or expedient in consequence of any modification of section 10(3). However there is no further specification of what those consequential modifications may include.

12. **The Committee therefore asks the Scottish Government:**

- **Why is it considered appropriate that the power in section 10(8)(b) is subject to the negative procedure, given that it permits modifications to primary legislation, the nature of which is not specified further beyond the requirement that Ministers consider them to be necessary or expedient in consequence of any modification of subsection (3)?**

## **Section 12 – Power to extend part to early learning and childcare**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations</b>
<b>Parliamentary procedure:</b>	<b>affirmative where textual amendments made to primary legislation; otherwise negative</b>

13. Section 12 of the Bill enables the making of regulations which would extend the provisions of Part 2 of the Bill, relating to GMPE, to early learning and childcare.

14. At present, Part 2 applies only in respect of primary school education. A request under section 5 can only require the education authority to assess the need for Gaelic Medium education in primary schools. This power is subject to the negative procedure, except where it is exercised to make textual modifications to primary legislation. The power would permit a request made under section 5 to be treated by the education authority as a request to assess the need for Gaelic medium education in its area in respect of the duty to provide early learning and childcare.

15. Section 12(4)(a) provides that regulations made to extend Part 2 to early learning and childcare may modify Part 2, the 1980 Act or any other enactment. Section 12(4)(b) provides that such regulations may provide for any provision of Part 2, the 1980 Act and any other enactment to apply with or without modifications. The power is generally to be subject to the negative procedure, but where it is exercised so as to make textual amendments to primary legislation, the affirmative procedure will apply.

16. The extension of Part 2 to early learning and childcare would represent a significant departure in policy terms from the position under the Bill at present, as the assessment process presently applies only in respect of primary education.

17. **The Committee therefore asks the Scottish Government:**

- **For further explanation why this power is not subject to the affirmative procedure in its entirety, rather than to the negative procedure where regulations made in its exercise do not make textual amendments to primary legislation?**

18. Please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Friday 15 May 2015.

**Euan Donald**  
**Clerk to the Committee**