

# **EDUCATION (SCOTLAND) BILL**

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## **SUPPLEMENTARY DELEGATED POWERS MEMORANDUM**

### **PURPOSE**

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Education (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum for the Bill as introduced.

### **PART A – POWERS TO MAKE SUBORDINATE LEGISLATION AMENDED AT STAGE 2**

*The Delegated Powers and Law Reform Committee in their Report of 10 June 2015 recommended some changes which have led to the following revisions.*

#### **Part 2 – Gaelic Medium Education**

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

**Power conferred on:           The Scottish Ministers**  
**Power exercisable by:       Regulations made by Scottish statutory instrument**  
**Revised or new power:       Revised**  
**Parliamentary procedure:   Affirmative**

##### ***Provision***

2. Section 7 sets out the initial assessment process that applies when an education authority has received a parental request under section 5 of the Bill. Following an initial assessment, an education authority must decide whether or not there is a potential need for Gaelic Medium Primary Education (“GMPE”) depending on whether or not it is satisfied that the condition in subsection (6) is met. Whichever determination an education authority makes, further duties in section 8 will apply. The condition in subsection (6) is 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, total 5 or more in number. Subsection (7) gives the Scottish Ministers the power to amend the condition in subsection (6) by regulations so as to substitute a different total number of children. The Scottish Ministers may exercise this power so that a different number applies in different education authority areas.

***Reason for taking power***

3. It is considered that the existence of demand for GMPE from the parents of 5 or more children in the same year group and resident in the same GMPE assessment area represents the point that it becomes viable to deliver GMPE in that area. That viability test is then the trigger for a fuller assessment of whether to secure the provision of GMPE. However, in practice, some education authorities have been willing to establish GMPE provision for class sizes below 5 and experience may demonstrate that what is viable in one education authority area may not represent viability in another education authority area with a different geography and population. In order to retain the flexibility to adapt to developments in practice and movements in population, it is considered that the Bill should contain a power for the Scottish Ministers, by regulations, to change the numerical threshold of 5 or more children and also to prescribe a different figure for different education authorities. It is considered appropriate to provide for this power by regulations as it may only require to be exercised in certain circumstances and at certain stages.

***Choice of procedure***

4. Following a recommendation by the Delegated Powers and Law Reform Committee, the Scottish Government agreed that these regulations should be subject to the affirmative procedure. This power is important in policy terms and could have significant effects on the manner in which the GMPE assessment process operates across Scotland and within particular education authority areas. Section 25(2) was therefore amended at Stage 2 so that any regulations made under section 7(7) will now be subject to the affirmative procedure.

**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 made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>Revised</b>
<b>Parliamentary procedure:</b>	<b>Affirmative</b>

***Provision***

5. Section 12 gives the Scottish Ministers the power, by regulations, to make such provision as they consider necessary or expedient to require an education authority to treat a parental request made under section 5(1) as a request to assess the need for GME at the level of early learning and childcare provided under section 1(1) of the 1980 Act (as read with section 1(1A) of that Act) i.e. the mandatory amount of early learning and childcare. Section 12(4)(a) provides that such regulations may do so by modifying Part 2 of the Bill or any other enactment. Section 12(4)(b) provides that such regulations may do so by providing that the Bill or any other enactment applies with such modifications as stated in the regulations.

***Reason for taking power***

6. Currently, the assessment process under the Bill is only in relation to primary school education. GME is most effective when provided from a young age. However, the potential resource implications of extending Part 2 of the Bill beyond primary school education mean that it is considered preferable to take a power to enable the Scottish Ministers to do so via subordinate legislation at a future date (if required) rather than to do so on the face of the Bill.

This is particularly the case when the duty imposed by the Children and Young People (Scotland) Act 2014 (“the 2014 Act”) to provide 600 hours of mandatory early learning and childcare has only recently been implemented. Therefore, section 12 gives the Scottish Ministers the power, by regulations, to extend Part 2 so that it will apply not only to GMPE but also to the early learning and childcare which an education authority is required to secure under section 47(1) of the 2014 Act.

### ***Choice of procedure***

7. Following a recommendation by the Delegated Powers and Law Reform Committee, the Scottish Government agreed that any regulations made under section 12(1) should be subject to the affirmative procedure in all cases and not only where primary legislation is textually amended. Exercise of this power will be an important decision and should be informed by careful consideration of a number of issues. The lead committee and the Parliament as a whole should be involved in that debate. Section 25(2) was therefore amended at Stage 2 so that any regulations made under section 12(1) will now be subject to the affirmative procedure.

***The following revisions are not as a result of recommendations by the Delegated Powers and Law Reform Committee but are changes to existing powers.***

## **PART 1: Inequalities of Outcome**

### **Section A1: Pupils experiencing inequalities of outcome (new section 3A(2)(b)(ii) of the Standards in Scotland’s Schools etc. Act 2000)**

**Power conferred on:           The Scottish Ministers**  
**Power exercisable by:       Regulations made by Scottish statutory instrument**  
**Revised or new power:       Revised**  
**Parliamentary procedure:   Affirmative**

### ***Provision***

8. Section A1 inserts new sections 3A and 3B into the Standards in Scotland’s Schools etc. Act 2000 (the 2000 Act). New sections 3A and 3B place duties on the Scottish Ministers and education authorities to plan and deliver education services in a way that is designed to reduce the inequalities of outcome experienced by pupils which result from socio-economic disadvantage. New sections 3A and 3B replace with modifications sections 1 and 2 of the Bill as introduced. Section 3A(2)(b)(ii) enables the Scottish Ministers, by regulations, to extend the scope of the duties set out in sections 3A(1) and 3B(2) with a view to ensuring that the planning and delivery of education policy and services is undertaken in such a way as to promote a reduction in inequalities of outcome for other groups of children in addition to those specified in section 3A(2)(a). Section 3A(2)(b)(ii) replicates, with minor drafting changes, section 1(3)(b) of the Bill included on introduction and discussed in paragraphs 7 to 10 of the Delegated Powers Memorandum.<sup>1</sup>

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<sup>1</sup> [http://www.scottish.parliament.uk/S4\\_Bills/Education\\_DPM\\_.pdf](http://www.scottish.parliament.uk/S4_Bills/Education_DPM_.pdf)

### ***Reason for taking the power***

9. The reason for taking this power is to allow the Scottish Ministers in future to broaden the focus of the duties placed on the Scottish Ministers and education authorities so as to require that education policy and services be directed not only towards the reduction in inequalities of outcome experienced by those children impacted by socio-economic disadvantage but also to other specific groups of children who experience inequalities of outcome for a reason other than as a result of socio-economic disadvantage. This flexibility will allow the Scottish Ministers to respond in instances where it is identified that those other groups of children should benefit from the duties in new section 3A and section 3B of the 2000 Act.

### ***Choice of Procedure***

10. The regulations are subject to affirmative procedure in terms of section 3A(3) of the 2000 Act. The power will be used to widen the scope of the new section 3A and 3B duties which will have potentially significant implications for education authorities in terms of how they exercise their functions and for the Scottish Ministers in terms of how they exercise their powers. As such it is considered that the Parliament would take a keen interest in this power to extend the scope of those duties to certain children and therefore affirmative procedure provides an appropriate level of parliamentary scrutiny. This is consistent with former section 1(3)(b) of the Bill as former section 25(2) of the Bill provided that any regulations made under section 1(3)(b) were to be subject to the affirmative procedure.

### **Schedule – Paragraph 23**

<b>Power conferred on:</b>	<b>The Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Rules made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>Revised</b>
<b>Parliamentary procedure:</b>	<b>Negative</b>

### ***Provision***

11. Paragraph 11(2) of schedule 1 to the 2004 Act was amended by the Bill at introduction to provide that rules made by the Scottish Ministers in relation to the practice and procedure of the Additional Support Needs Tribunals for Scotland (“ASNTS”) may include provision enabling specified matters in respect of the decision of an authority as to whether a child aged 12 years or over has the capacity to exercise a right under the 2004 Act, or whether it is in their best interests to do so, to be decided by a convener of a Tribunal alone.

12. Paragraph 23 of the Schedule to the Bill amends paragraph 11(2) of schedule 1 to the 2004 Act to provide that Ministers, in making rules as to the practice and procedure of the ASNTS can include provision for or in connection with:

- (i) the practice and procedure relating to matters to be determined by a convener alone in relation to capacity decisions;
- (ii) applying section 19(2) of the 2004 Act (powers of disposal of a Tribunal) to a convener determining a capacity related matter, as it applies to a Tribunal;
- (iii) enabling a Tribunal in specified circumstances to review the decisions, orders or awards of a convener alone following a capacity determination and to take such action in respect of these as it thinks fit, and

- (iv) seeking the views of children whose parents have made references to a Tribunal under section 18(1) of the 2004 Act in relation to the children.

***Reason for taking power***

13. Schedule 1 to the 2004 Act places a duty on the Scottish Ministers to make detailed rules of practice and procedure to be followed by ASNTS in determining references made to them under section 18 of the 2004 Act. The various amendments to the rule-making power in paragraph 11 of schedule 1 to the 2004 Act are being made in consequence of the amendments made to the 2004 Act to extend various rights under that Act to children aged 12 or over with capacity. Children aged 12 years or over may exercise various rights under the 2004 Act (such as to request an assessment of their additional support needs) if the authority considers that the child has capacity (as defined in the substituted section 3 of the 2004 Act, inserted by paragraph 2 of the schedule to the Bill, and if it is considered to not to have an adverse impact on the wellbeing of the child).

14. Section 18 is being amended by paragraph 17 of the schedule to the Bill to allow children aged 12 years or over to make a reference to the ASNTS in relation to the education authority determination of capacity and adverse impact on wellbeing. It is the policy that these references should be determined by a convener of the Tribunal alone and it is considered appropriate to amend the rule-making power in paragraph 11 of schedule 1 to the 2004 Act to allow provision to be made for the matters mentioned in paragraph 12.

15. The matters mentioned in paragraph 12 concern the practice and procedure of the ASNTS. It is appropriate for this procedural detail to be included in subordinate legislation, which is in keeping with the general character of the existing rule making power conferred on the Scottish Ministers in relation to the Tribunal in paragraph 11 of schedule 1 to the 2004 Act. It also allows the provision to be amended as required in future, should this be necessary.

***Choice of procedure***

16. The changes made to the scope of the rule-making power by the Bill are relatively minor and it is considered appropriate that they remain subject to the negative procedure (rules made under paragraph 11 of schedule 1 to the 2004 Act are currently subject to negative procedure). The amendment made to paragraph 11 will extend this rule-making power to allow the matters mentioned in paragraph 12 above.

17. As stated above, given the rules relate to procedural matters, it is considered appropriate that they remain subject to the negative procedure and not subject to a higher level of scrutiny by the Parliament as would otherwise be required if they concerned anything more substantive.

## **PART B: FURTHER PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED AT STAGE 2**

### **PART 1: Inequalities of Outcome**

#### **Section 1B: Plans and reports**

**(new section 3E(2) and 3F(4) of the Standards in Scotland's Schools etc. Act 2000)**

<b>Power conferred on:</b>	<b>The Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Revised or new power:</b>	<b>New</b>
<b>Parliamentary procedure:</b>	<b>Negative</b>

#### ***Provision***

18. Section 1B inserts new sections 3E, 3F, 3G and 3H into the Standards in Scotland's Schools etc. Act 2000 ("the 2000 Act"). Those sections require the Scottish Ministers and education authorities to prepare and publish "annual plans" and "annual reports". Section 3E requires the Scottish Ministers, before the beginning of the "planning period", to prepare and publish an annual plan setting out the steps they propose to take during the relevant 12 month "planning period" to reduce the inequalities of outcome experienced by pupils as a result of socio-economic disadvantage and the educational benefits for those pupils that they consider will result from taking those steps.

19. Section 3F requires that education authorities, before the beginning of the planning period each year, prepare and publish an annual plan which will include equivalent information. Further, the education authority annual plan will describe activity planned for the relevant 12 month "planning period" to comply with the duty imposed by section 3B(3) (duty to seek and have regard to views of, and provide appropriate advice to, certain persons) and all planned activity designed to support the authority in achieving the strategic priorities of the National Improvement Framework which is established by section 3C of the 2000 Act.

20. Annual reports produced by the Scottish Ministers and education authorities under section 3G and 3H will describe activity delivered in the preceding "planning period". Sections 3E(2) and 3F(4) define the "planning period" as meaning the period of 12 months beginning with such day as the Scottish Ministers prescribe by regulations. The powers therefore enable the Scottish Ministers to set the start date of the respective "planning periods" for the purposes of the ministerial planning and reporting arrangements, and the education authority planning and reporting arrangements.

#### ***Reason for taking the power***

21. The powers provide the Scottish Ministers with the flexibility to set the planning periods for the purposes of annual planning and reporting under sections 3E, 3F, 3G and 3H. Those planning periods will always cover a period of 12 months but it will be open to Ministers to set the start date for those periods by regulations.

### ***Choice of Procedure***

22. The regulations are subject to the negative procedure in terms of new sections 3E(3) and 3F(5) of the 2000 Act. The powers could not be used to change the requirement to plan and report on the matters specified. Instead, it could only be used to set the start date for the 12 month period to which each plan and subsequent report relates. It is therefore considered that the level of parliamentary scrutiny afforded by the negative procedure is sufficient. The negative procedure is considered to offer an appropriate balance between, on the one hand, expediency and convenience and, on the other, the need for scrutiny for a provision of this nature.

## **PART 3: Miscellaneous**

### **Section 17B – Learning hours**

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Regulations made by Scottish statutory instrument  
**Revised or new power:** New  
**Parliamentary procedure:** Affirmative

### ***Provision***

23. Section 17B amends the Education (Scotland) Act 1980 by inserting new section 2ZA, to make provision requiring education authorities and the managers of grant-aided schools to provide all pupils with a minimum number of hours of school education. Subsection 2ZA(1) provides that education authorities and managers of grant-aided schools must make available each year to pupils for whose education they are responsible, no fewer than the number of learning hours prescribed by the Scottish Ministers by regulations. Section 2ZA(4) provides that regulations made under section 2ZA(1) may provide differently for different purposes, and for different types of pupil.

### ***Reasons for taking power***

24. The power would enable the Scottish Ministers to make specific provision about the minimum number of learning hours, the type of school education that will constitute learning hours and the purposes in which and type of pupils for whom such learning hours will apply. It is considered that the level of detail required in setting out these provisions makes it appropriate for them to be set out in subordinate legislation. Further, it is possible that the nature and number of learning hours as prescribed may require to be amended from time to time to account for changing circumstances. Providing for this information to be defined in regulations allows the Scottish Ministers the flexibility to amend the details of the duty placed on education authorities and managers of grant-aided schools should the need arise in due course. Finally, placing the detail of this duty in regulations, affords the opportunity for the Scottish Ministers to consult with all stakeholders in advance of exercising the power; an opportunity which is believed to be important, given the complexity and wide ranging nature of the issues involved.

### ***Choice of procedure***

25. The regulation-making power in new section 2ZA(1) and (5) of the 1980 Act, as amended by section 17B of the Bill, are subject to the affirmative procedure in terms of section 133(2XA) of the Education (Scotland) Act 1980, as amended by section 17B(3) of the Bill.

26. The power will be used to prescribe the nature and the minimum number of hours of teaching time in schools, which will have potentially significant implications for education authorities, learners, parents and teachers. As such, it is considered that the Parliament would take a keen interest in this power, and that the affirmative procedure therefore provides the appropriate level of parliamentary scrutiny.

**Section 18: Provision of School Meals  
(new Section 53ZA of the Education (Scotland) Act 1980)**

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Regulations made by Scottish statutory instrument  
**Revised or new power:** New  
**Parliamentary procedure:** Affirmative

***Provision***

27. New section 53ZA of the 1980 Act will create a new regulation-making power which will allow the Scottish Ministers to make regulations imposing a further requirement on education authorities to provide or secure meals other than school lunches, for eligible pre-school children who meet the free school meal criteria in section 53(7) (as amended by section 18 of the Bill at introduction).

***Reason for taking the power***

28. The purpose of creating this regulation-making power is to future-proof the legislation, so that changes can be made to free school meal provision, as early learning and childcare expands and becomes more flexible.

29. The regulation-making power will allow the Scottish Ministers to impose a duty on education authorities to provide meals other than a lunch, in accordance with children's early learning and childcare sessions, if they wish to in future. For example, children who meet the free school lunch criteria who have a morning session could receive a breakfast and children who meet the free school lunch criteria who have an afternoon session could receive an evening meal.

30. The Scottish Government will provide free school lunch provision where it can within current budget constraints, and will take all opportunities to expand where it can. However, there is no funding available within the current budget to extend free school meals in this way. If funding became available and the policy intention remains the same, having the regulation-making power will allow the Scottish Ministers to provide for this.

***Choice of Procedure***

31. Any regulations made under section 53ZA will be subject to the affirmative procedure. This is considered appropriate as the provision in the regulations would require education authorities to provide or secure meals other than lunches for eligible pre-school children receiving early learning and childcare who meet the free school lunch/meal criteria.

32. This would be a significant change in policy, with associated financial implications and therefore it is considered that the higher level of scrutiny that affirmative procedure affords the



Parliament is appropriate. Further, consultation and engagement with local government would be necessary, especially in relation to additional costs.

**Section 18A: Clothing grants  
(new section 54A of the Education (Scotland) Act 1980)**

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Regulations made by Scottish statutory instrument  
**Revised or new power:** New  
**Parliamentary procedure:** Affirmative

*Provision*

33. Section 18A of the Bill inserts new section 54A of the Education (Scotland) Act 1980 (“the 1980 Act”). New section 54A makes provision about clothing grants. Subsection (1) enables the Scottish Ministers to make regulations requiring an education authority to pay a grant of a specified amount to or in respect of a pupil of a specified description for the provision of clothing for the pupil; subsection (4) defines “specified” as meaning specified in regulations under section 54A(1). Subsection (2) provides that such regulations may make the payment of a grant subject to specified conditions (including conditions as to repayment) and subsection (3) enables the regulations to make different provision for different purposes. Section 18(3) of the Bill amends section 133 of the 1980 Act (regulations etc) to provide that these regulations are subject to the affirmative procedure.

*Reason for taking the power*

34. While local authorities currently have a general duty to make provision for school clothing, there is a lack of consistency in approach across Scotland. New section 54A gives Ministers the power through regulations to place local authorities under a duty to pay a grant of a specified amount for the provision of clothing for certain pupils under certain conditions. New section 54A also offers flexibility to make different provision for different purposes; for example a different amount of grant could be set for primary school pupils as compared with secondary school pupils.

35. New section 54A future-proofs the legislative framework by allowing local authorities to meet the needs of the children and young people, for whom they are responsible, through the provision of school clothing grants. It will also allow the Government the flexibility to amend or extend entitlement to school clothing grants if required in the future. Providing children and young people who need it most with school clothing grants will help to remove barriers to education, reduce inequality gaps, raise attainment and improve their health and wellbeing.

*Choice of Procedure*

36. Regulations under new section 54A of the 1980 Act are subject to the affirmative procedure. It is considered appropriate for the regulations to be subject to this procedure given that specifying a level of school clothing grant and the children and young people who are entitled to such a grant would be a policy in which the Parliament are likely to take an interest. Any new regulations will need to be scrutinised and approved by the Parliament before they are made.

**Section 22A: Head teachers: education and training standards  
(new sections 90A and 98DA of the Education (Scotland) Act 1980)**

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Regulations made by Scottish statutory instrument  
**Revised or new power:** New  
**Parliamentary procedure:** Affirmative

***Provision***

37. Section 22A inserts new sections 90A and 98DA into the 1980 Act. New section 90A extends the regulation-making power in section 2 and 74(1) of that Act to allow Ministers by regulations, to specify the standards of education and training which prospective head teachers at grant-aided and education authority managed schools are required to have before they can be appointed to the position.

38. New section 98DA gives Ministers a regulation-making power to provide for the education and training which prospective head teachers at independent schools are required to have before they can be appointed to the position. Section 98DA makes it clear that such provision can apply to independent schools already registered or to a school which is the subject of an application for registration as an independent school.

39. New sections 90A(3) and 98DA(3) provide Ministers with flexibility in relation to the power to make regulations under section 2 or 74(1) which make provision under section 90A(1) or 98DA as it allows the regulations to make different provision for different purposes. It also allows exceptions and exemptions from the general rule to be made. Such regulations may also make consequential, transitional or transitory provision or savings.

***Reason for taking the power***

40. Since 2005 there has been an expectation that head teachers should meet the General Teaching Council for Scotland's Standard for Headship before they can be appointed. There is however no legal basis underpinning this policy and the powers in 90A and 98DA will allow the Scottish Ministers to make regulations which will require that all prospective head teachers wishing to be appointed to the role in any school in Scotland (whether education authority managed, grant-aided or independent) must have been awarded the Standard for Headship before taking up the post. A regulation-making power is required to give Ministers the flexibility to amend the standards and training that prospective head teachers must demonstrate. While this will initially be defined by referring to the General Teaching Council for Scotland's Standard for Headship, a regulation making power is also necessary to allow Ministers to take into account possible changes in the educational landscape that may require alternative provision to be brought forward and exceptions and exemptions to be made.

***Choice of Procedure***

41. Regulations made under sections 2 or 74(1) (which make provision under section 90A(1) or 98DA(1)) will be subject to the affirmative procedure and section 133 of the 1980 Act is being amended to allow for this (see section 22A(3) of the Bill). Given that regulations will place

specific conditions on the appointment of a large number of critical school staff across all schools in Scotland it is considered that this level of parliamentary scrutiny is appropriate.

### **Schedule – Paragraph 3**

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Regulations made by Scottish statutory instrument  
**Revised or new power:** New  
**Parliamentary procedure:** Negative

#### ***Provision***

42. The schedule to the Bill makes various amendments to the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”) to extend to children aged 12 years or over with capacity, various rights under the 2004 Act. New section 3AA (inserted by paragraph 3 of the schedule to the Bill) introduces a new regulation making power (section 3AA(3)) to enable the Scottish Ministers to make provision to amend the list of factors specified in subsection (2) which are to be taken into account by an education authority when considering whether the wellbeing of a child aged 12 years and over would be adversely affected, for example, by the child exercising one of their rights under the 2004 Act.

#### ***Reason for taking power***

43. The factors to be considered by an authority when considering whether something would have an adverse effect on a child’s wellbeing in section 3AA(2) mirror those factors listed section 96(2) of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”) which must be considered when a person is to assess the wellbeing of a child or young person under the 2014 Act. There is an order-making power in section 96(6) of the 2014 Act which allows the Scottish Ministers to modify the list in section 96(2) if required. A similar provision has been included in new section 3AA(3) of the 2004 Act (as inserted by paragraph 3 of the schedule to the Bill) to enable a consistent approach to be taken in relation to the factors listed in section 3AA(2), and so that if the factors listed in section 96(2) of the 2014 Act are modified in the future, they can be modified in the 2004 Act.

#### ***Choice of procedure***

44. Regulations under new section 3AA(3) are subject to the negative procedure. It is considered appropriate for the regulations to be subject to this procedure, given the power will be used only once the factors listed in section 96(2) of the 2014 Act are modified by an order under section 96(6) of that Act. The order-making power in section 96(6) is subject to the affirmative procedure, therefore the Parliament will already have had the opportunity to consider modification of these factors by the time any regulations are made under new section 3AA(3) of the 2004 Act. As these amendments will be consequential to amendments made under the 2014 Act it is not considered necessary or appropriate to require the Parliament to positively approve by resolution the same modifications a further time.

**Schedule – Paragraph 20A**

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Regulations made by Scottish statutory instrument  
**Revised or new power:** New  
**Parliamentary procedure:** Negative

***Provision***

45. Paragraph 20A of the schedule to the Bill amends and introduces a new regulation-making power in section 27A to enable the Scottish Ministers to make provision specifying the information which the Scottish Ministers must collect from education authorities in relation to pupils with additional support needs.

***Reason for taking power***

46. The regulation-making power has been taken to enable the Scottish Ministers to vary, by regulation, the information that is collected under section 27A about pupils with additional support needs. The regulation-making power will afford flexibility in terms of the type of information that Ministers will be able to collect from education authorities about such pupils, if required, in future. It is intended that the first set of regulations made under section 27A(1) (as amended), will list the information currently specified in section 27A(1) (as unamended) as well as potentially new and additional types of information.

***Choice of procedure***

47. Regulations made under section 27A(1) as amended, will be subject to the negative procedure. It is considered that this level of scrutiny by the Parliament is appropriate, as the subject matter of the regulations is administrative.



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