

CHILDREN'S WELLBEING AND SCHOOLS BILL

Supplementary Memorandum from the Department for Education to the Delegated Powers and Regulatory Reform Committee (for Lords Committee stage)

A. INTRODUCTION

1. The Government has tabled amendments to the Children's Wellbeing and Schools Bill ("the Bill") for Lords Committee stage. These amendments introduce 1 new delegated power and amend several existing delegated powers, all of which follow from making provision for Scotland and / or Wales.
2. This supplementary memorandum explains the nature of the powers, and the reasons for the procedure selected.

B. DELEGATED POWERS

Clause 11: Amendments to Scottish legislation which will have the effect of modifying Scottish Ministers powers to make regulations

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary Procedure: Negative and affirmative

Context and purpose

3. The amendments to the Scottish legislation are to the definitions of "secure accommodation in relation to England" in the Children (Scotland) Act 1995 ("1995 Act") and in the Children's Hearings (Scotland) Act 2011 ("2011 Act"). This will bring the relevant definitions in line with section 25 of the Children Act 1989. It will have the effect of revising the meaning of "secure accommodation in relation to England" wherever those definitions are used.
4. Changing the definition will have consequences in respect of the following powers:
 - a. Section 75 of the 1995 Act, which enables Scottish Ministers to make provision as to the placing of a child in secure accommodation and as to the procedure for so doing.
 - b. s.132(5) of the 2011 Act - The power of Scottish Ministers to provide for the review of a compulsory supervision order including a secure accommodation authorisation more frequently than every three months.
 - c. s.151(6) of the 2011 Act - The power of Scottish Ministers to make provision in regulations about decisions relating to the placement of children into, and their removal from, secure accommodation. Such regulations may have a bearing on when a Chief Social Work Officer will decide to place a child into "relevant accommodation" in England, as defined in section 25 of the Children Act 1989.
 - d. s.152(1) of the 2011 Act - The power of Scottish Ministers to specify circumstances in which a child may be placed in secure accommodation when they are subject to an order or warrant which does not include a secure accommodation authorisation.

- e. s.153(1) of the 2011 Act - The power of Scottish Ministers to make regulations about children placed in secure accommodation.
5. The amendment to the definition also has consequences for the following powers in the Criminal Procedure (Scotland) Act 1995 because the latter cross-references to definitions in the 2011 Act:
- a. s. 44(5) - The power of Scottish Ministers to make such provision as they consider necessary as regards the detention in secure accommodation of children in respect of whom orders have been made under section 44.
 - b. s. 208A(4) - The power of Scottish Ministers by regulations to make provision about the detention in secure accommodation of children who are convicted on indictment under section 208(1) or detained without limit of time under section 205(2).
 - c. s. 216(8) - The power of Scottish Ministers to make provision about the detention of a child in secure accommodation where the child would, if they were an adult, be liable to be imprisoned in default of payment of any fine and a court considers that none of the other methods by which the case may legally be dealt with is suitable. In such cases, the court may order that the child be detained for such period, not exceeding one month, as may be specified in the order in a place chosen by the local authority in whose area the court is situated. That place may be secure accommodation.

Justification for the power

6. Powers already exist for Scottish Ministers to regulate and make provision for placement of children in secure accommodation. The present changes merely ensure that those powers are available in relation to the placement of children in relevant accommodation in England.

Justification for the procedure

7. The amendments made by this Bill are not intended to alter the procedure provided for in the Scottish primary legislation in relation to existing powers as that would be a matter for the Scottish Parliament. It is appropriate that the same procedures are applied to the slightly amended powers. The procedure that applies to all the powers, except the power in s.75 of the 1995 Act and s.132(5) of the 2011 Act, is affirmative. The procedure for powers under s.75 of the 1995 Act and s.132(5) of the 2011 Act is negative.

Clause 26(2): New sections 18 and 18A of the Children and Young Persons Act 1933 – Power to make regulations in relation to child employment

Power conferred on: The appropriate national authority, which means the Secretary of State in relation to England, and Welsh Ministers in relation to Wales

Power exercisable by: Regulations

Parliamentary Procedure: Negative

NB – the relevant power conferred on Scottish Ministers are outlined below, from page 5.

8. Clause 26 of the Bill as introduced amends the Children and Young Persons Act 1933 (CYPA 1933) to make provision in relation to children who are employed to work in England. The Government has tabled an amendment to the Bill to replace that clause with a new clause, which will apply in relation to England and Wales.

9. The nature and scope of the power is the same as the power which is conferred on the Secretary of State in relation to England by the current clause 26. The remainder of this section recaps the context and purpose, justification and procedure for this power, which is the same as that set out in the DPM as considered by the Delegated Powers and Regulatory Reform Committee.

Context and purpose

10. Part II of the CYPA 1933 makes provision for the employment of children in England and Wales. Section 18(1) sets out age limits and restrictions on the hours that children can work and the type of work they can do. Local authorities have the power to make byelaws under s.18(2). Local authority byelaws may, to a limited extent, relax some of the restrictions in s.18(1), prohibit the employment of a child in any specified occupation and make provision in relation to child employment permits.
11. This new power replaces the power conferred on local authorities to make byelaws with a power for the appropriate national authority to make regulations in relation to child employment, and is in substantially similar terms. Appropriate national authority means the Secretary of State in relation to England and Welsh Ministers in relation to Wales.
12. Regulations made under the new power may:
- a) Prohibit the employment of a child to do work of a specified description (18(1)(c)).
 - b) Make provision in relation to child employment permits, including providing exceptions, making provision in relation to the application process, granting, suspending or revoking permits, appeals against a decision to reject an application or revoke a permit and record keeping (18(3), (4) and (5)).
 - c) Authorise the employment of 13-year-old children in specified descriptions of light work (18(2)).
 - d) Specify the number of hours in each day, or in each week, and the times of a day at which a child may be employed (subject to the restrictions in the CYPA 1933) (18(6)(a)).
 - e) Specify the intervals to be allowed to children for meals and breaks when in employment (subject to the restrictions in the CYPA 1933) (18(6)(b)).
 - f) Make provision about entitlement to leave (18(6)(c)).
 - g) Specify other conditions to be met in relation to the employment of children (18(6)(d)).
13. New section 18A makes further provision in relation to regulations made under section 18.

Justification for the power

14. This power is needed for two main reasons: i. to ensure that the regulation of child employment keeps pace with social change, for example where there are changes to the type of work that children should be permitted to do , ii.to make detailed provision for a permitting scheme is more appropriately dealt with in regulations. Each are explained further in paragraphs 16 to 18.
15. A power to prohibit the employment of a child to do work of a specified description is needed to ensure that the legislation keeps pace with social change. As the types of work people do changes, it may be necessary to add new types of work to the list of prohibited employment if that work is unsuitable for children. Conversely if the way in which work is carried out changes such that new processes mean certain types of work

become suitable for children, previous restrictions may need to be removed. This will ensure that children can take up suitable employment, whilst ensuring that their health, development and education are not adversely affected. Any changes to the list of prohibited employment will be subject to the overall safeguards in the CYPA 1933, including that children are only permitted to do light work, as defined in that act.

16. The power to further restrict the hours that children may work and to prescribe any other conditions that must be observed in relation to their employment is limited in scope as it is subject to the overarching safeguards in the CYPA 1933. It is intended to mirror the current arrangements and to ensure that additional safeguards can be put in place to safeguard children if needed.
17. A power to make provision in relation to a permitting scheme is necessary to ensure that the detailed arrangements for the scheme can be set out in secondary legislation. The regulations will deal with the technical implementation of the policy and will make detailed provision in relation to matters such as the application process, the information that must be contained in the application and the form and content of the permit, which are more suited to secondary legislation. It is also necessary to have enough flexibility to make minor changes to the application process in light of practical experience once the policy is implemented.

Justification for the procedure

18. Any regulations made under this new provision will be subject to the negative resolution procedure.
19. The Department considers that this will ensure an appropriate level of scrutiny whilst also give enough flexibility to enable changes to be made quickly where needed. For example, it may be necessary to add a new type of work or job to the list of prohibited employment where evidence comes to light that it may be detrimental to a child's welfare to do that type of work.
20. This approach is also consistent with the approach taken in relation to the licencing of children who take part in public performances and paid sport and modelling. The Children (Performances and Activities) (England) Regulations 2014 ("the English Regulations"), The Child (Performances & Activities) (Wales) Regulations 2015 ("the Welsh Regulations") and The Children (Performances and Activities) (Scotland) Regulations 2014 ("the Scottish Regulations") set out the licensing requirements which apply to children taking part in these activities. They also set restrictions in relation to the time a child may spend rehearsing or performing and the breaks they should receive etc. The English, Scottish and Welsh Regulations were all made following the negative resolution procedure.

New Clause (Employment of children in Scotland): New sections 28 and 28A of the Children and Young Persons (Scotland) Act 1937 – Power to make regulations in relation to child employment

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations

Parliamentary Procedure: Negative

Context and purpose

21. This clause makes equivalent provision for Scotland to that made for England and Wales by new clause 26.

Justification for the power

22. The Department considers that the power is necessary for the same reasons as set out in paragraphs 15 to 18 above. As set out above, the nature and scope of the power is the same as the power which is conferred on the Secretary of State in relation to England by the current clause 26. Justification for this power has already been set out in the published delegated powers memorandum as considered by the Delegated Powers and Regulatory Reform Committee.

Justification for the procedure

23. Any regulations made under this new provision will be subject to the negative resolution procedure. The Department considers that this is the appropriate procedure for the reasons set out in paragraphs 19-21 above. As set out above, the procedure for the power is the same as the power which is conferred on the Secretary of State in relation to England by the current clause 26. Justification for the procedure has already been set out in the published delegated powers memorandum as considered by the Delegated Powers and Regulatory Reform Committee.