

CHILDREN'S WELLBEING AND SCHOOLS BILL

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

A. INTRODUCTION

1. The Government has tabled amendments to the Children's Wellbeing and Schools Bill ("the Bill") for Lords Report stage. These introduce new delegated powers or amend existing delegated powers. This supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Children's Wellbeing and Schools Bill. It explains for each Lords Report stage amendment that confers new powers on the Government or amends existing powers, the nature of the powers and the reasons for the procedure selected.
2. Abbreviations
 - a. AA 2010: Academies Act 2010
 - b. CA 1989: Children Act 1989
 - c. CSA 2000: Care Standards Act 2000
 - d. EA 1996: Education Act 1996
 - e. EA 2005: Education Act 2005
 - f. EIA 2006: Education and Inspections Act 2006
 - g. HA 1996: Housing Act 1996
 - h. SSFA 1998: School Standards and Framework Act 1998

B. DELEGATED POWERS

Clause 4: Amendment to s.16LB – Power to make regulations in relation to the disclosure of consistent identifiers to designated persons

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

3. This amendment to s.16LB enables the Secretary of State to make regulations requiring or authorising the disclosure of the consistent identifier for children to designated persons so that those persons can comply with their duty to include the consistent identifier when they are processing information about a child. It also provides that a

disclosure authorised by the regulations does not breach any obligation of confidence owed by the person making the disclosure.

4. It is not yet known which identifier will be specified as the consistent identifier under s.16LB(1). The NHS number is currently being piloted by the Department, and a decision will only be taken about the consistent identifier for children once testing is complete and the benefits of a consistent identifier are shown. Depending on the identifier and how it is managed, it may be necessary to provide an express legal gateway to enable designated persons to access the consistent identifier for children so that they can comply with their duty under s.16LB(4).

Justification for the power

5. The power to make regulations in new s.16LB(1)(b) will enable a legal gateway to be provided for disclosure of the consistent identifier to designated persons, if necessary. This extends to ensuring that the disclosure of the consistent identifier in accordance with the regulations is not in breach of any confidence owed by the person making the disclosure.
6. The power will provide a means for establishing an appropriate legal basis for disclosure of the consistent identifier to designated persons, which will be necessary to enable those persons to comply with their duty to record the consistent identifier when processing information about a child. The Department therefore considers that it is appropriate to seek a delegated power to authorise or require the disclosure of the consistent identifier to designated persons for the purposes of enabling those persons to comply with their duty under s.16LB(4).

Justification for the procedure

7. The negative resolution procedure applies to the current power to specify the consistent identifier under s.16LB(1) and the power to designate persons under s.16LB(10). It follows that the same procedure should apply here as the power in s.16LB(1)(b) is limited by the scope of and linked to the exercise of the powers in s.16LB(1) and s.16LB(10). The Department considers that the negative resolution procedure will ensure an appropriate level of scrutiny given these limitations on the exercise of the power.

Clause 4: New section 16LAA – Power to prepare and publish information standards in relation to processing of information for the purposes of safeguarding or promoting the welfare of children

Power conferred on: Secretary of State

Power exercisable by: Statutory Guidance (information standards)

Parliamentary Procedure: None

Context and Purpose

8. New section 16LAA provides a power to the Secretary of State to issue information standards in relation to the processing of information for the purposes of safeguarding or promoting the welfare of children. An information standard may only apply to one or more of the persons referred to in s.16LA(4) (namely those in scope of the duty to share information in s.16LA(2)). A person to whom an information standard applies must have regard to the standard when processing information for the purposes of safeguarding or promoting the welfare of children.

Justification for the power

9. Information standards provide a standardised way for digital or technical details to be composed through common data rules that are publicly available. These allow users to create compatible and consistent products, processes and services, which supports better interoperability between different systems by use of common rules which will help facilitate the use of the consistent identifier. Information standards could cover the way in which names or dates of birth are recorded (for example) or data governance rules. From piloting, we expect that using data standards will be necessary for the consistent identifier to operate effectively so that we are able to realise the benefits.

Justification for the procedure

10. The Department's view is that statutory guidance containing technical, operational or practical details does not require parliamentary oversight. This is also already the case for most statutory guidance in children's social care, including key pieces of statutory guidance such as Keeping Children Safe in Education and Working Together to Safeguard Children. Development of information standards will involve user testing as well as engagement with relevant sector bodies, the Information Commissioner's Office, relevant technology providers, and relevant Government departments. This procedure will also enable the information standards to be regularly updated so that they can more easily adapt to changing technologies or processes.

Clause 4: New section 16LC – Power to issue a code of practice in relation to the discharge of duties under section 16LB (consistent identifiers)

Power conferred on: Secretary of State

Power exercisable by: Statutory Guidance (code of practice)

Parliamentary Procedure: None

Context and Purpose

11. New section 16LC provides a power to the Secretary of State to issue a code of practice for persons in scope of the consistent identifier duty in s.16LB (namely designated persons within the meaning of s.16LB(10) and service providers within the meaning of s.16LB(13)). Where a code of practice has been issued, those in scope must have regard to the code when discharging their duties under s.16LB.

Justification for the power

12. Whilst there is already provision requiring designated persons to have regard to guidance issued by the Secretary of State, the code of practice would sit alongside any such guidance to cover technical and practical matters relating to the consistent identifier, both in terms of accessing the consistent identifier, how it is stored, and how to use it to best effect. This would complement the guidance and allow the content to be updated on a more regular basis to reflect latest technical developments and any changes in processes.

Justification for the procedure

13. The Department's view is that statutory guidance containing technical, operational or practical details does not require parliamentary oversight. This procedure will also enable the code of practice to be regularly updated to reflect changes in technology or processes.
14. The code of practice will be informed by piloting and testing of the consistent identifier, which will involve user testing, as well as engagement with relevant sector bodies, the Information Commissioner's Office, and relevant Government departments.

Clause 11: Change to parliamentary procedure for regulation-making power amended in clause 11, use of accommodation for deprivation of liberty

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary Procedure: Affirmative (changing from negative)

Context and purpose (as set out in the original Delegated Powers Memorandum and summarised here)

15. As set out in the original DPM, this clause enables the family court under section 25 Children Act 1989 (CA 1989) to authorise the deprivation of liberty of a child in accommodation where the primary purpose of the accommodation is to provide care and treatment and where restrictions that amount to a deprivation of liberty ('relevant accommodation'), if required to keep the child safe, can also be imposed. The current provision made by s.25 CA 1989 is to authorise deprivation of liberty of children for certain welfare reasons in 'secure accommodation' which is designed for or has as its primary purpose deprivation of liberty.
16. As outlined in the original DPM, there are existing regulation-making powers for 'secure accommodation' which will be extended to also apply to children being kept in 'relevant accommodation' in England that is provided for care and treatment purposes. These powers are described in paragraph 38 of the Bill's original DPM.

Justification for the procedure

17. In the 21st Report of Session 2024-25, the Delegated Powers and Regulatory Reform Committee (DPRRC) recommended making the existing and extended regulation-making powers subject to the draft affirmative resolution procedure. The Department has accepted these recommendations and amended the parliamentary procedure for these powers, to make these powers in s.25 CA 1989, as amended by Clause 11, subject to the affirmative parliamentary procedure. This reflects the vulnerability of the children affected by regulations made under these powers and ensures full parliamentary scrutiny of them.

New clause: Temporary Accommodation Notifications

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

18. This new clause inserts section 213AA into the Housing Act 1996 (HA 1996), requiring local housing authorities to take reasonable steps to notify relevant bodies within subsections (6)(a) – (c) (general medical practice, health visitors and relevant educational institutions (as defined within subsection (8)) that a child using their service has been placed in temporary accommodation, where consent has been provided by the child's parent(s), or the child themselves if they are aged 16 or 17 and make an application for homelessness assistance themselves because they are living independently from their parents.

19. The purpose of the measure is to ensure that schools and health services working with children are aware that a child has been placed in temporary accommodation, so they may consider any appropriate actions to help safeguard the child.

20. Subsection (7) allows the Secretary of State to add, by regulations, to the list of relevant bodies, that a local housing authority must take reasonable steps to notify, including a body in Scotland or Wales.

Justification for the power

21. It is vital that the right bodies are notified to be able to effectively support children in temporary accommodation. This power is necessary to ensure that the list of relevant bodies can be added to in future where it has been determined that such a body should be aware that a child is residing in temporary accommodation in order to further support and provide appropriate services to the child. This could be due to:

- i. changes to existing bodies over time including from public sector reorganisation,
- ii. creation of new bodies, and/or
- iii. changes to the rationale for an existing body not included in the clause at present meaning they should receive the notification in future.

22. Regarding 'i' and 'ii', this power will enable the government to ensure the right organisations to provide this support are notified both now and in the future. One such example is the reorganisation of health services; for example there may be new multi-disciplinary teams that will have more interaction with children (including those in temporary accommodation) than is presently the case, and it would be prudent to enable these to be added in the future to ensure the right services can provide effective support to all children. While we do not currently expect this, were any school or further education reorganisation to take place in future, we would need this power to add to the list of educational institutions.
23. Regarding 'ii' specifically, in future it may be deemed that temporary accommodation notifications should apply to new bodies established from reform programmes, for example the rollout of Family Hubs through the Families First Partnership, to further support children residing in temporary accommodation.
24. Regarding 'iii':
- Educational institutions have been included in this clause where, broadly, they have an existing duty to have regard to statutory guidance, 'Keeping Children Safe in Education' (KCSIE), to support bodies to meet existing requirements or guidance. If in future there are additions to education bodies that must have regard to KCSIE, for example privately funded further education, the government would need the power to update this clause.
 - The 'early years' (EY) education sector is currently not in scope of temporary accommodation notifications, because health visiting services in the 0 to 5 years old element of the health child programme will provide support and due to the challenge in implementation for local housing authorities to notify what is a diverse EY sector. In future, the case for EY providers being in scope may change, for example if the support provided by health visiting services to 0 to 5-year-olds changes.
 - Health visiting services and GP practices have been included as the two health services most likely to come into contact with children, enabling these services to take into account the child's living arrangements as part of planning their clinical care. It may be determined in the future that an alternative healthcare organisation has regular, meaningful contact with children where it would be beneficial for them to be aware of a child's temporary accommodation status to provide effective healthcare services. In this case, the government would need to have the power to update this clause accordingly.
 - Health and education bodies in Wales and Scotland will currently not receive temporary accommodation notification clauses through this clause. Housing is devolved to Wales and Scotland. Were either Devolved Government to legislate for temporary accommodation notifications in future, to avoid a situation where notifications are only not made with regard to children living in England but receiving healthcare or attending a school or further education in Wales or Scotland, relevant bodies in Wales and Scotland will need to be added to the scope of the provision.
25. The regulation making power does not empower the Secretary of State to place any new duties on bodies added to the scope of the provision. It will only add them to the list of

bodies that will be notified when a child using their services is placed in temporary accommodation. What they do with that notification is a matter for them, supported by any safeguarding guidance they are expected to pay regard to. In England, we anticipate issuing guidance on handling notifications for relevant bodies. Any bodies added in Wales or Scotland would be subject to applicable guidance or procedures in those jurisdictions. We consider that the regulation making power does not empower the Secretary of State to place disproportionate burdens on bodies added to the provision.

Justification for procedure selected

26. The negative procedure is consistent with the procedure within section 215 of the HA 1996 in relation to other regulations made under Part 7 of that Act (apart from those sections which expressly require the affirmative procedure). This power only permits the Secretary of State to add to the current list of relevant bodies where appropriate and does not permit the removal of the relevant bodies identified within subsections (6)(a) – (c). As explained above, the power does not permit the Secretary of State to place any new duties on bodies. Therefore we consider that the use of negative procedure provides an appropriate degree of scrutiny in Parliament with the option of debate should Parliament consider it necessary.

Clause 31(2): New section 434B(1)-(7) of the Education Act 1996 (EA 1996) – Regulations prescribing pilot scheme of mandatory meetings whereby parents seeking to withdraw their child from school for education otherwise than at school must attend meeting

Power conferred on: Secretary of State and Welsh Ministers

Power exercisable by: Regulations

Parliamentary Procedure: Affirmative

Context and Purpose

27. New section 434B(1) of the EA 1996 requires the appropriate national authority (i.e. Secretary of State or Welsh Ministers) to set out in regulations a pilot scheme providing that a parent must attend a meeting with the local authority if the parent intends to withdraw their child from school for the purpose of causing them to receive education otherwise than at school. Regulations must set out that the child must attend the meeting unless exceptional circumstances apply and that a representative of the school at which the child is a registered pupil must attend if the parent consents to this. Regulations must also provide that the proprietor of a school must not allow the child's name to be deleted from the school's register unless the proprietor receives notice from the local authority that the meeting has taken place in respect of the child.
28. The regulations must specify the local authorities in respect of which the pilot scheme will operate (no more than 30 per cent of local authorities in England or 30 per cent of local authorities in Wales as the case may be).
29. The regulations will specify the duration of the pilot scheme, which must be between two and five years.

30. The regulations may provide for exemptions from the pilot scheme for certain categories of children.
31. The regulations may make other provision necessary for the operation of the scheme.
32. The purpose of these meetings which the pilot scheme will introduce is for the local authority and the parent to discuss certain matters before the child is withdrawn from school. These are set out in subsection (1)(b) and will also be set out in the regulations. They include:
- the parents' duty under section 7 of the EA 1996 (to secure an efficient, full-time, suitable education for their child) and plans to meet this duty
 - the local authority's duties, including the duty under section 436G to provide support to home educating families on their Children Not in School registers
 - the parent's reasons for considering that the child should receive education otherwise than at school
 - any support needs the child may have and how these could be met
 - the safeguarding and welfare of the child
33. The meetings are intended to give parents and local authorities the ability to share information, answer questions, and signpost to relevant resources so that parents can make fully informed decisions before choosing to home educate and feel confident in their approach to their child's education ahead of the child being removed from the school roll. The meetings will also offer an opportunity for local authorities to identify any additional needs early to better support families, and to ensure that any wider factors affecting the child's wellbeing, including safeguarding considerations, are appropriately considered.

Justification for the power

34. This power is necessary to set up a pilot scheme providing for mandatory meetings. It is considered necessary to set up this pilot in regulations because the design and implementation of the pilot, including which local authorities should be within the pilot, involves a range of detailed, technical, and operational considerations that would not be appropriate for primary legislation. Regulations will also provide the Department with the opportunity to consult with appropriate stakeholders (such as parents whose children currently attend school but may wish to home educate) on the design of the scheme ahead of it coming into force. It may be the case that minor adjustments need to be made once the pilot is running based on feedback received from local authorities and schools that are involved in the meetings. It would not be possible to make changes efficiently without a delegated power.
35. A de-hybridising provision is contained at new section 434B(13). This has been included as the Department considers that it is otherwise possible for regulations made under this new power to be considered subject to the hybrid instruments procedure in the House of Lords. The measure could affect particular private interests in a manner different from

the private interests of other persons in the same category or class. The pilot scheme will affect the private interests of some parents of school-attending children more than others, as some will be subject to mandatory meetings while others will not for the duration of the pilot scheme (based on whether their child attends school in a pilot area).

36. The Department has disapplied the hybrid procedure by including a de-hybridising provision. It is considered that this is justified as the private interests of those otherwise protected by the hybrid instruments procedure will be adequately protected under provision in the bill. In particular, these regulations will be subject to the affirmative resolution procedure, so that Parliament will be able to debate them. Furthermore, subsection (11) requires the Secretary of State and Welsh Ministers to consult such persons as they consider appropriate before making regulations. The Department is satisfied that the consultation requirements related to the power provide the appropriate protection that would otherwise be given by the hybrid instruments procedure.

Justification for the procedure

37. The Department considers that the regulations should be subject to the affirmative resolution procedure. The regulations will establish, for the first time, a pilot scheme under which parents wishing to educate their child otherwise than at school must attend a meeting with a local authority before their child's name can be deleted from the school roll. As this is a new procedural requirement for parents, schools, and local authorities, it is proportionate that Parliament has the opportunity to debate the detail of how the pilot scheme will operate in practice. As an additional layer of scrutiny, subsection (11) sets out that before these regulations can be made, the appropriate national authority must consult such persons as it considers appropriate.

Clause 31(2): New section 434B(8) of the EA 1996 – Power to make regulations to amend new section 434A or the pilot scheme for the purpose of ensuring that the pilot scheme can operate for children in 434A

Power conferred on: Secretary of State and Welsh Ministers

Power exercisable by: Regulations

Parliamentary Procedure: Affirmative

Context and purpose

38. New section 434B(8) gives the Secretary of State and Welsh Ministers the power to (further to consultation) amend new section 434A (the consent clause) for the purpose of ensuring that the pilot scheme can operate in relation to children falling within that section.
39. The power will also enable the mechanics of the pilot scheme to be amended (such as when the meetings should take place) so that it can operate for those within scope of 434A.

Justification for the power

40. This power is necessary so that the parents of children in scope of 434A can also be required to attend meetings where those children attend school in pilot areas. It may be that these children will be exempted from the pilot scheme in 434B if 434B and 434A do not happily coexist and not exempting these children would cause operational difficulties and risk both clauses not working effectively.
41. However, it is considered that mandatory meetings could be useful for those within scope of 434A in the same way as it could be useful for other families and therefore just exempting them from the pilot scheme would be the incorrect approach.
42. Further consultation will be undertaken on the implementation of 434A, and the operational details of how it will work in practice will be outlined in statutory guidance. As part of this, consideration will be given to the extent to which formal meetings, between parents of children in scope of 434A and local authorities, should form part of the consent process. Until this consultation and statutory guidance is finalised, it is difficult to predict exactly how the two systems will align and whether children in scope of 434A need to be exempted from the pilots to ensure they can operate effectively and whether 434A needs to be amended to enable these children to be included in the pilot scheme.
43. Although this is a Henry VIII power, it is narrow in scope; 434A will only be able to be amended to make mandatory meetings a requirement and the matters to be discussed will be as set out in 434B(1)(b).
44. It is noted that the mechanics of how the operation of the pilot scheme may be amended for 434A cases will be subject to consultation.

Justification for the procedure

45. The Department considers that the affirmative resolution procedure is appropriate for this power because it is a Henry VIII power and therefore a higher degree of parliamentary scrutiny is appropriate.

Clause 31(2): New section 434B(9)(a),(b), (d) of the EA 1996 – Power to make regulations to end pilot scheme; power to make regulations to extend mandatory meetings to all local authorities

Power conferred on: Secretary of State and Welsh Ministers

Power exercisable by: Regulations

Parliamentary Procedure: Affirmative always

Context and purpose

46. New section 434B(9) (a), (b) and (d) gives the Secretary of State and Welsh Ministers the power to make provision to (further to a consultation and after the pilot scheme has operated for at least two years):
- end the mandatory meetings pilot scheme or
 - end the pilot but extend the mandatory meeting scheme to all local authorities in England and/or Wales (exemptions will be able to be made for certain categories of children).

- Make provision for any arrangements necessary for the above provisions to work effectively.

Justification for the power

47. This power is necessary to enable the pilot scheme to come to an end and / or, extend the scheme across England or Wales if it is found to be beneficial. The purpose of the pilot is to test the effectiveness of requiring parents to attend mandatory meetings in a controlled number of local authorities for a defined period of time. The pilot will also test how these mandatory meetings work with other parts of the system – for example, the requirement for parents of some children to seek consent from the local authority before they can be removed from the school roll. It is therefore essential that the Department can respond flexibly to the findings. We cannot predetermine whether to discontinue or extend the pilot on the face of the Bill because the outcome of the pilot cannot be known in advance. Delegating this power ensures that the scheme can be adapted in a timely and evidence-based manner, without the need for further primary legislation.
48. The power is also appropriately constrained. It is subject to a consultation. Regulations may only be made after the pilot has operated for at least two years, ensuring that decisions are based on a meaningful period of implementation.

Justification for the procedure

49. The Department considers that the regulations should be subject to the affirmative resolution procedure to allow Parliament the opportunity to debate them. A decision to cease the scheme or to roll out mandatory meetings across the country will impact parents that decide to withdraw their children from school to home educate them and will also impact local authorities and schools. The exercise of the power would therefore benefit from the parliamentary scrutiny afforded by the affirmative resolution procedure.

Clause 31(2): New section 434B(9)(c) of the EA 1996 – Power to make regulations to amend new section 434A to require meetings

Power conferred on: Secretary of State and Welsh Ministers

Power exercisable by: Regulations

Parliamentary Procedure: Affirmative always

Context and purpose

50. New section 434B(9)(c) gives the Secretary of State and Welsh Ministers the power to (further to consultation) amend new section 434A (the consent clause) for the purpose of ensuring that mandatory meetings (as described above) can be extended on a non-pilot basis to children falling within that section, subject to any exemptions for descriptions of children as specified in the regulations.

Justification for the power

51. This power is necessary so that the parents of children in scope of 434A can be required to attend meetings as part of the consideration of consent, where the pilot scheme demonstrates that this was beneficial. As above, it is likely that these children will be

exempted from the roll out of the scheme in 434B because 434B and 434A do not happily coexist and not exempting these children would cause operational difficulties and risk both clauses not working effectively.

52. However, for the reasons set out above, just exempting this cohort from the mandatory meetings, even if the pilot demonstrates that they were beneficial, is considered inequitable and would detract from the aims of the policy.

53. Although this is a Henry VIII power, it is narrow in scope; 434A will only be able to be amended to make meetings a requirement and the matters to be discussed will be as set out in 434B(1)(b). It is considered inappropriate to amend the primary now, before there has been a pilot scheme in operation, the outcomes of which needs to be analysed.

54. It is noted that the mechanics of how the operation of the scheme will be amended for 434A cases will be subject to consultation.

Justification for the procedure

55. The Department considers that the affirmative resolution procedure is appropriate for this power because it is a Henry VIII power and therefore a higher degree of parliamentary scrutiny is appropriate.

Clause 32: Change to parliamentary procedure for powers to make regulations: i. on when a child is to be regarded as falling or not falling within eligibility for registration relating to children not in school, ii. to set a monetary penalty for failure to provide information, iii. to set the increase in the penalty if provided late, as inserted by new sections 436B(6) and 436E(9) of the EA 1996 and Schedule 31A paragraph 5, respectively

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Affirmative (changed from Affirmative first time and Negative thereafter)

Context and Purpose

56. The context and purpose and justification for the power remains as set out in the Bill's original Delegated Powers Memorandum.

Justification for the procedure

57. In the 21st Report of Session 2024-25, the Delegated Powers and Regulatory Reform Committee (DPRRC) remained of the view they outlined in the Home School Education Registration and Support Bill (a private members' bill from the current session) Report that these powers should be subject to the affirmative resolution procedure in respect of all exercises of the power.

58. With regard to eligibility for registration, the DPRRC noted the power as inserted by s436B(6) is significant and view the explanation for the first-time affirmative procedure provided in this bill's original Delegated Powers Memorandum as to be about the government's intention with regard to the exercise of the powers, not their actual scope.
59. With regard to monetary penalties, the DPRRC found that the rationale for first-time affirmative procedure given in the original Delegated Powers Memorandum was not persuasive and that given there are no limits on the face of the Bill on the size of possible percentage increases that may be specified in regulations, these powers should be subject to the affirmative procedure in all cases.
60. The Department has accepted these recommendations and amended the parliamentary procedure for these powers.

Clause 32: Change to parliamentary procedure for powers to make regulations: i. on the form, publication and making of changes to the register and ii. on information Local Authorities must provide to the Secretary of State or Welsh ministers upon direction, as inserted by new sections 436C(4) and 436F(1) of the EA 1996 respectively.

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Affirmative (changed from Affirmative first time and Negative thereafter)

Context and Purpose

61. The context and purpose and justification for the powers remain as set out in the Bill's original Delegated Powers Memorandum.

Justification for the procedure

62. It is considered that for consistency with the rest of the delegated powers in clause 32 and to afford full parliamentary scrutiny to the regulations every time they are changed, these powers should also be subject to the affirmative procedure.

Clause 32: New section 436C(1)(e) of the EA 1996 – Power to make regulations to specify an amount of time, above which the requirement for the register to contain information about a registered child's education, provided by persons other than the child's parent, will apply.

Power conferred on: Secretary of State and Welsh Ministers

Power exercisable by: Regulations

Parliamentary Procedure: Affirmative

Context and Purpose

63. Section 436C(1)(e) requires a register to contain certain information about individuals and organisations (other than a parent) which provide education to a registered child. The information to be provided is the name and address of the provider, a description of the type of provider, the postal address where that education is provided and an estimate of the total amount of time the child spends receiving that education with and without active involvement of their parent.
64. The power will ensure that the requirement for the register to contain information provided by persons other than the child's parent, will only apply in relation to education that exceeds an amount of time that is to be specified in regulations.
65. The amount of time will be prescribed by reference to a number of hours in, or a proportion of, a week or other period or by reference to a proportion of the time a child spends receiving education; or in any other way.

Justification for the power

66. The power is necessary to ensure that the information that a parent is required to provide for the register is limited to education from a provider which exceeds a certain amount of time. This will reduce the administrative burden in situations where a child receives education for short periods of time from several different providers and allows a proportionate threshold to be set. It may be necessary for the threshold to be adjusted from time to time to respond to feedback as to whether the threshold is set at the correct level or whether, for example, too few providers are in scope and Local Authorities are not getting sufficient information to carry out their duties.

Justification for the procedure

67. The Department considers that the regulations should be subject to the affirmative resolution procedure each time. This will allow Parliament the opportunity to debate the of the threshold that should trigger the requirement for the relevant information on providers of this education to be given for the registers.
68. The Department considers that any changes to those subsequently excluded from scope of the duty could have a significant impact on the effectiveness of the duty in terms of identifying out-of-school education providers which are in-scope of the provider duty (see 436E).
69. For example, if the threshold was substantially increased that could result in parents being required to provide less information about providers of out-of-school education and significantly increase those out of scope potentially reducing the effectiveness of the duty as a tool to support local authorities to identify out-of-school education providers that are providing education to eligible children in their area. In turn, this could result in local authorities missing opportunities to identify children who are eligible to be on their Children Not in School registers but are not. It will also mean that Local Authorities have less information about a child's overall education and so less able to conclude that education is suitable. It could also impact on local authorities' ability to fulfil the new requirement under 436I(3)(a) to consider all the settings where the child is being

educated (and where the child lives) as part of their decision on whether education is suitable. The less information that local authorities have on the providers that the child is attending from the outset, the more information they will have to try and find out to assist with this decision. This could result in children spending longer periods of time in unsuitable education. On the other hand, if the threshold was reduced too significantly this could result in parents being required to provide more information about providers of out-of-school education, including those which do not fall into scope of the provider duty. Not only would this represent an increased burden on parents in terms of providing the information, but it would also likely increase the data collection burden on local authorities. Local authorities would also have more information to sift through to find that which is most useful to them in supporting them to fulfil their education and safeguarding duties towards children not in school in their areas.

70. The Department considers that use of the power would therefore benefit from the parliamentary scrutiny afforded by the affirmative procedure.

Clause 35: New section 436U of the EA 1996 (regulations made under section 550ZC(7) of the EA 1996) – Guidance on registration, consent and mandatory meetings

Power conferred on: Secretary of State and Welsh Ministers

Power exercisable by: Regulations

Parliamentary Procedure: Negative

Context and purpose

71. Please see paragraph 168 of the original DPM dated 17th December 2024.

Justification for the power

72. Please see paragraph 169 of the original DPM dated 17th December 2024.

73. There has been a slight amendment to this new subsection and no change to the justifications. The clause gives the Secretary of State and Welsh Ministers the power to give guidance to local authorities about the exercise of their functions related to the registration of children under new sections 436B to 436P. It now also allows the Secretary of State and Welsh Ministers to issue guidance under new sections 434A and 434B in relation to parents of certain children needing local authority consent before the child can be withdrawn from school and the mandatory meetings pilot scheme. Furthermore, they will be able to issue guidance under regulations made under any of the aforementioned sections. This power is necessary to support local authorities in the implementation and maintenance of the consent mechanism and mandatory meeting pilot scheme. Statutory guidance will assist local authorities to have consistent approaches in their new duties.

Justification for the procedure

74. Please see paragraphs 170-171 of the original DPM dated 17th December 2024.

As with guidance relating to registration, the Department considers that the absence of parliamentary scrutiny is justified as guidance will support and explain the duties on local authorities. Specifically, guidance will deal with practicalities and recommendations when it comes to considering the consent mechanism and will similarly explain operational practicalities in relation to the mandatory meetings pilot scheme. The guidance will not create any new legal obligations and will only describe the law and offer advice about related matters. As set out in the original DPM, it is the Department's intention to consult with local authorities and other interested parties prior to issuing this guidance and to consult as needed afterwards on any substantive changes.

Clause 40(2): Amendments to s.98(3), and a new section 98(3A), of ESA 2008 – Duties to make regulations related to the buildings that will be made available for student use and regulation-making powers to prescribe types of special educational need

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary Procedure: Negative

Context and purpose

75. A number of amendments have been made to clause 40 which contains provisions about material changes – certain changes related to an independent educational institution that require prior approval from the Secretary of State. Amongst other things, two amendments mean that provisions related to delegated powers in clause 40(2) have been affected.
76. One amendment narrows the duty. The previous drafting amended section 98(3) of the ESA 2008 to impose an obligation on the Secretary of State to make regulations that require applications for the registration of independent educational institutions to include the address and description of buildings occupied and made available for student use (within the meaning of new section 101(2B)). With the amendment, the duty becomes a narrower one, to make such regulations requiring the address of buildings made available for student use (within the meaning of new section 98(3ZA)) to be provided on an application to register.
77. The change to the duty principally arises because changes to how and what buildings are used at the registered address, or at another address which is notified pursuant to an application to register (and where buildings are to be made available for student use), are no longer covered by the material change regime. Therefore, it is now unnecessary to have, as “baseline” information, a description of buildings at these addresses.
78. Regarding the second amendment, new section 101(2)(i), in clause 40(5), was amended to make it a material change for a special institution to change the type or types of special educational needs for which the institution is specially organised to make special educational provision for. This is as opposed to changing the type or types of such needs it makes special educational provision for, which is what section 101(2)(i) previously covered. The emphasis is now not about what special educational provision an institution actually provides, but about what such provision it is specifically set up to provide, and therefore has particular systems or arrangements in place for. This better captures the original policy intent.

79. The change to 101(2)(i) affects the regulation-making power in new section 98(3A) (see clause 40(2)(b)). Under this power, the power remains a power to prescribe the type(s) of special educational needs that are pertinent for a material change under new section 101(2)(i) to take place. However, given what constitutes a material change has altered, the power will need to be used for a slightly different purpose – i.e. defining the type(s) of special educational needs which are relevant to determining whether a change in which of those needs, an institution is specially organised for, is a material change.

Justification for the power

80. The Department's justification for the slightly altered provisions here remains broadly the same as in its memorandum to the DPRRC on the Children's Wellbeing and Schools Bill moving to the House of Lords. Given the changes here only slightly alter the provisions, the Department's justification for the power set out in the previous DPM still applies.

Justification for the procedure

81. The parliamentary procedure (negative) and justification for that procedure remains broadly the same as in the memorandum to the DPRRC on the Children's Wellbeing and Schools Bill moving to the House of Lords.

New clause: New section 122A(1)(a) of the Education and Inspections Act 2006 (EIA 2006) – Power to make regulations prescribing the intervals at which the Chief Inspector must conduct inspections of Academy proprietors

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

82. New section 122A(1)(a) of the EIA 2006 gives the Secretary of State the power to make regulations prescribing the intervals at which His Majesty's Chief Inspector of Education, Children's Services, and Skills (Chief Inspector) must inspect every proprietor of an Academy in England (Academy proprietor) under new section 122A of the EIA 2006.

83. New section 122A(1) of the EIA 2006 places a duty on the Chief Inspector to:

- a. conduct inspections of every Academy proprietor, at such intervals as may be prescribed in regulations made by the Secretary of State (s 122A(1)(a)), and
- b. prepare a written report on completion of each inspection (s 122A(1)(b)).

Justification for the power

84. The power mirrors the powers in section 5(1)(a) of the Education Act 2005 (EA 2005) and in section 125(2) of the EIA 2006 for the Secretary of State to prescribe in regulations the intervals at which the Chief Inspector is required to inspect schools and

further education (FE) institutions in England respectively. The power in section 5(1)(a) of the EA 2005 has been exercised by regulations 3 to 3B of the Education (School Inspection) (England) Regulations 2005 (S.I. 2005/2038).

85. This power is necessary to enable the Secretary of State to prescribe intervals within which the Chief Inspector is required to inspect Academy proprietors under section 122A of the EIA 2006. This will provide sufficient flexibility for those prescribed intervals to be changed, or to prescribe different inspection intervals in different cases, in relevant circumstances. For the reasons below, it is appropriate for these inspection intervals to be prescribed in regulations, rather than being provided on the face of the Act in section 122A.
86. As the Academy proprietor inspection system develops alongside school and FE inspections, flexibility as to the intervals at which the Chief Inspector must inspect Academy proprietors is needed to ensure that how school and Academy proprietor inspections are conducted, and how they interact with each other, remains efficient and effective.
87. For example, as the new Academy proprietor inspection regime matures, it may be appropriate over time to adjust the intervals at which Academy proprietors are inspected to align more effectively with intervals at which the Chief Inspector must inspect the individual academies an Academy proprietor operates under section 5 of the EA 2005 and section 125 of the EIA 2005. This will avoid unnecessary duplication across inspection systems, so Academy proprietors are inspected at appropriate intervals which avoid being overly burdensome whilst ensuring the standards and performance of Academy proprietors are effectively monitored.

Justification for the procedure

88. The Department considers that requiring regulations to be made by the affirmative resolution procedure would necessitate a disproportionate use of Parliamentary time. This power is procedural in nature and is limited in scope to prescribing the maximum interval at which the Chief Inspector must inspect Academy proprietors under new section 122A of the EIA 2006. The Department intends to engage with the academy sector and the Chief Inspector prior to exercising this power to ensure that the power is exercised in a way which effectively balances the need to ensure Academy proprietors are effectively monitored and held accountable against the burden of inspections to the Chief Inspector and the academy sector.
89. This power mirrors the powers in section 5(1)(a) of the EA 2005 and in section 125(2) of the EIA 2006 for the Secretary of State to prescribe in regulations the intervals at which the Chief Inspector is required to inspect schools and FE institutions in England. Regulations made under section 5(1)(a) of the EA 2005 and section 125(2) of the EIA 2006 are subject to the negative procedure.

New clause: New section 122A(2) of the EIA 2006 – Power to make regulations providing that the new section 122A(1)(a) of the EIA 2006 does not apply to specified categories of Academy proprietor in specified circumstances

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary Procedure: Affirmative

Context and Purpose

90. New section 122A(2) of the EIA 2006 gives the Secretary of State the power to make regulations specifying certain classes of Academy proprietor to which the new duty in new section 122A(1) of the EIA 2006 does not apply to in specified circumstances.
91. The Chief Inspector must inspect every Academy proprietor other than those exempted by regulations made under section 122A(2).
92. New section 122A(3) of the EIA 2006 provides that an Academy proprietor in relation to which section 122A(1) does not apply by virtue of regulations made under section 122A(2) is known as an “exempt proprietor”.

Justification for the power

93. The power in new section 122A(2) mirrors the powers in section 5(4A) of the EA 2005 and in section 125(1A) of the EIA 2006 for the Secretary of State to prescribe in regulations categories of school and FE institution to which the Chief Inspector’s inspection duties in section 5(1) of the EA 2005 and in section 125(1) of the EIA 2006 do not apply in specified circumstances. Both comparator powers have previously been exercised, see the Education (Exemption from School Inspection) (England) Regulations 2012 (S.I. 2012/1293) and the Further Education Institutions (Exemption from Inspection) (England) Regulations 2012 (S.I. 2012/2576). Both sets of those regulations were revoked by the Education (Exemption from School and Further Education Institutions Inspections) (England) (Amendment) Regulations 2020 (S.I. 2020/1258).
94. This power is necessary as there may be circumstances in which it is unnecessary or inappropriate for the Chief Inspector to have to inspect certain categories of Academy proprietor at prescribed intervals in certain circumstances. New section 122A(1) applies to all Academy proprietors. As a matter of Departmental policy, all Academy proprietors are charitable companies limited by guarantee, which meet the definition of “qualifying Academy proprietor” in section 12 of the Academies Act 2010 (AA 2010). However, section 1(1) of the AA 2010 permits the Secretary of State to enter into Academy arrangements with any person, so it is feasible that at some point in the future an Academy trust is a person other than a “qualifying Academy proprietor”.
95. Even though currently all Academy trusts in England have the same legal identity (a charitable company limited by guarantee), operationally there are two different types of Academy proprietor:

- a. single Academy trusts ("SAT"): These are Academy proprietors which operate only one Academy;
- b. multi Academy trusts ("MAT"): These are Academy proprietors which operate more than one Academy;

96. There are also numerous different types of Academy within the sector. Whilst a SAT will only operate a single Academy, a MAT may operate more than one type of Academy. The types of Academy within the sector include:

- a. Academy schools (defined in section 1A of the AA 2010);
- b. 16-19 Academies (defined in section 1B of the AA 2010);
- c. Alternative provision Academies (defined in section 1C of the AA 2010);
- d. Academy schools which have been designated by the Secretary of State as having a religious character in accordance with section 69(3) and section 124B(1) of the School Standards and Framework Act 1998 (SSFA 1998);
- e. 16-19 Academies which have been designated by the Secretary of State as having a religious character in accordance with section 8A of the AA 2010;
- f. Single-sex Academies (Academies which the Secretary of State has approved to be single sex);
- g. University technical colleges;
- h. Studio schools;
- i. Secure 16-19 Academies.

97. Given the diversity of types of Academy proprietor and Academies, the sector's ongoing evolution, and the maturing nature of the new Academy proprietor inspection regime, it is necessary for the Secretary of State to have the flexibility to prescribe in regulations categories of Academy proprietor that new section 122A(1) does not apply to, and the circumstances in which it does not apply. For example, it may be appropriate to:

- a. exempt Academy proprietors where a notice of termination has been given in relation to all Academy arrangements to which the trust is a party and therefore no useful purpose would be served by routine inspection,
- b. exempt newly created Academy proprietors, or Academy proprietors that have very recently expanded substantially, because there may be little evidence available to inspectors, and therefore it would not be beneficial or proportionate to routine inspect,
- c. exempt single academy trusts from inspection, because school level inspection already provides sufficient assurance and additional, routine, proprietor-level inspection would add limited value.

98. As the Academy proprietor inspection system develops alongside school and further education inspections, flexibility is furthermore needed as to which categories of

Academy proprietor new section 122A(1) applies to in particular circumstances. This will help ensure that the way school and Academy proprietor inspections are conducted, and how they interact with each other, is efficient and effective. This flexibility to prescribe exempt trusts over time is important in ensuring inspection is deployed in proportionate ways, maintaining the effectiveness of the system of the sector's diverse needs.

99. Exempted Academy proprietors can still be inspected under new section 122D of the EIA 2006 and new section 122E of the EIA 2006 gives the Chief Inspector the power to treat an inspection under section new 122D as it were an inspection under new section 122A of the EIA 2006 where appropriate.

Justification for the procedure

100. The Department considers it appropriate that regulations made under new section 122A(2) should be subject to the affirmative resolution procedure. This will ensure an appropriate level of scrutiny when exempting categories of Academy proprietor from routine inspection under new section 122A of the EIA 2006.
101. There is precedent for this approach. This power mirrors the powers in section 5(4A) of the EA 2005 and in section 125(1A) of the EIA 2006 for the Secretary of State to prescribe in regulations categories of school and FE institution to which the Chief Inspector's inspection duties in section 5(1) of the EA 2005 and in section 125(1) of the EIA 2006 do not apply in specified circumstances. Pursuant to section 121(2B) of the EA 2005 and section 182(3)(aa) of the EIA 2006, regulations other than the first set of regulations made under section 5(4A) of the EA 2005 and section 125(1A) of the EIA 2006 are subject to the affirmative procedure.
102. Although the first set of regulations made under section 5(4A) EA 2005 and section 125(1A) EIA 2006 were subject to the negative procedure, this was because the Department published draft regulations to be made under those provisions during the passage of the Education Bill 2011, which inserted section 5(4A) into the EA 2005 and section 125(1A) into the EIA 2006.

New clause: New section 122A(4)(a) of the EIA 2006 – Power to make regulations specifying persons whose views the Chief Inspector must have regard to when conducting an inspection of an Academy proprietor under new s.122A of the EIA 2006

Power conferred on: Secretary of State
Power exercisable by: Regulations
Parliamentary Procedure: Negative

Context and Purpose

103. New section 122A(4)(a) of the EIA 2006 gives the Secretary of State the power to make regulations specifying persons whose views the Chief Inspector must have regard to when conducting an inspection of an Academy proprietor under new section 122A of the EIA 2006.

104. New section 122A(4) of the EIA 2006 provides that, when conducting an inspection under new section 122A of the EIA 2006, the Chief Inspector must have regard to the views about the matters listed in new section 122B(2) of the EIA 2006 which are expressed to the Chief Inspector by:

- a. such persons as may be specified in regulations made by the Secretary of State (new section 122A(4)(a)), and
- b. such other persons as the Chief Inspector considers appropriate (new section 122A(4)(b)).

Justification for the power

105. Academy proprietors are themselves diverse (in size, specialism etc) and operate in diverse local contexts. This means they collaborate with different stakeholders, bodies, and local partners in fulfilling their responsibilities. It is important that this collaboration is fully taken into account through trust inspection, because it has a bearing on the provision that is available across an area for all children and young people. This power, allowing the Secretary of State to specify whose views the Chief Inspector must have regard to when conducting an inspection of an Academy proprietor under new section 122A of the EIA 2006, helps ensure that the views of the right individuals and bodies are taken into account. For example, trusts operating a large number of special schools may need relevant local SEND bodies to be included, those providing certain kinds of SEND provision will need to work closely with health providers, and for those with a religious character there will be religious organisations that are relevant. Delegated powers are necessary in allowing for this complexity in the sector to be provided for.

106. A regulation-making power is required rather than specifying an exhaustive list of such persons on the face of the Act because the list of relevant parties cannot be fixed in primary legislation without risking the system becoming outdated and ineffective. While section 7 of the EA 2005 prescribes certain persons for school inspection, the Academy sector is incredibly diverse with Academy proprietors operating a diverse collection of different Academy types across a range of different geographies. Moreover, the sector is relatively nascent and will continue to evolve, meaning a static list would not be appropriate. As the Academy proprietor inspection system matures and becomes more integrated with other accountability mechanisms, the list of relevant parties may need to change to reflect developments in policy and practice. This regulation-making power is therefore necessary to ensure the system can keep pace with these changes and remain responsive and effective.

Justification for the procedure

107. The Department considers that requiring regulations to be made by the affirmative resolution procedure would necessitate a disproportionate use of Parliamentary time. The power is procedural in nature and is limited in scope to prescribing persons whose views the Chief Inspector must consider when conducting an inspection under new section 122A of the EIA 2006. The power does not restrict the Chief Inspector's ability to consider the views of any other person when conducting an inspection under new section 122A, and does not place a duty on any person to provide their views to the Chief Inspector. The Department intends to engage with the Academy sector and the Chief Inspector prior to exercising this power to ensure that the power is exercised in a way which effectively balances the need to ensure Academy proprietors are effectively monitored and held accountable against the burden of inspections to the Chief Inspector and the Academy sector.

New clause: New section 122B(2)(f) of the EIA 2006 – Power to make regulations specifying matters the Chief Inspector must report on when conducting an inspection of an Academy proprietor under new section 122A of the EIA 2006.

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary Procedure: Affirmative

Context and Purpose

108. New section 122B(2)(f) of the EIA 2006 gives the Secretary of State the power to make regulations specifying matters the Chief Inspector must report on when conducting an inspection of an Academy proprietor under new section 122A of the EIA 2006.

109. New section 122B(1) of the EIA 2006 provides that it is the general duty of the Chief Inspector, when preparing a report under section 122A(1)(b), to report on the quality and effectiveness of an Academy proprietor's leadership, management and governance in connection with its role as an Academy proprietor.

110. New section 122B(2) of the EIA 2006 specifies particular matters which the Chief Inspector's report under section 122A(1)(b) must cover. This includes, at new section 122B(2)(f), such matters as may be specified in regulations made by the Secretary of State.

Justification for the power

111. This power is necessary for the Secretary of State to be able to prescribe in regulations matters additional to those specified in new section 122B(2)(a) to (e) of the EIA 2006 that the Chief Inspector's report under section 122A(1)(b) must cover. Without this flexibility, the mandatory content of an inspection report (and as a result the mandatory scope of the inspection) would be fixed in primary legislation and would be unable to respond to changing priorities or sector developments.

112. The Academy sector is diverse and continues to evolve rapidly. Academy proprietors vary significantly in size, structure, and the types of academies they operate. This diversity, combined with the maturing nature of the Academy proprietor inspection system, means that a rigid list of reporting areas in primary legislation would quickly become outdated and unfit for the sector. This regulation-making power is necessary to allow the inspection system to remain responsive and proportionate, and so it can work across different kinds of Academy proprietors. A fixed, one-size-fits-all approach in primary legislation would not work effectively across the sector.

113. Although section 5 of the EA 2005 does not contain an equivalent power for the Secretary of State to prescribe matters the Chief Inspector must report on and consider when conducting a school inspection under section 5 of the EA 2005 (the matters which the Chief Inspector must report on and consider are specified in sections 5(5) to (5B) of the EA 2005), a necessary distinction can be made to the new Academy proprietor inspection regime.

114. When the EA 2005 was made, the school education system in England was well established and developed, with an already established system of school inspections. By contrast, the Academy sector has recently undergone considerable growth and change.

The quickly evolving nature of the Academy sector means that the inspection system must be capable of reflecting changing priorities for accountability. This power is necessary to allow the Secretary of State to adapt the scope of what inspections should cover over time as the Academy proprietor inspection system matures. For example, a changing emphasis on how Academy proprietors are working with local partners to ensure inclusive education may bring about changing expectations in Academy proprietors over time which must be reflected in the inspection framework.

115. Additionally, as the relationship between individual Academy and Academy proprietor inspections develops over time, there will likely be a need to adjust the scope of Academy proprietor inspections to avoid duplication and additional burdens. This power allows for this refinement of Academy proprietor inspections as the system matures, to ensure it is proportionate to need.

Justification for the procedure

116. The Department considers that regulations made under this power should be subject to the affirmative procedure. This will ensure an appropriate level of scrutiny when prescribing matters which must be covered in the Chief Inspectors report of an inspection of an Academy proprietor conducted under new section 122A of the EIA 2006.
117. The power will enable the Secretary of State to prescribe additional matters to those provided in subsection (2) of new section 122B of the EIA 2006 which must be covered in the Chief Inspector's report of an inspection under new section 122A of the EIA 2006. The matters which must be covered by the Chief Inspector's report are fundamental to the nature and scope of Academy proprietor inspections. The matters on which the Chief Inspector is required to report will also affect the public more generally, by determining what information is available to them about the performance of Academy proprietors in their area. It is therefore appropriate for this power to be subject to the affirmative procedure to provide Parliament with appropriate scrutiny of any new mandatory matters the Chief Inspector's report must cover.
118. The Department will engage with the academy sector and the Chief Inspector before exercising this power to ensure its impact is effective and proportionate. However, because of the significance of the power we believe it is appropriate that Parliament has a greater role in scrutinising regulations made under it.

New clause: New section 122F(4) of the EIA 2006 – Power to make regulations specifying matters which the Chief Inspector's framework under new section 122F(1) of the EIA 2006 must cover

Power conferred on: Secretary of State
Power exercisable by: Regulations
Parliamentary Procedure: Affirmative

Context and Purpose

119. New section 122F(4) of the EIA 2006 gives the Secretary of State the power to make regulations specifying matters which the Chief Inspector's framework for inspections under new sections 122A and 122D of the EIA 2006 must cover.
120. New section 122F(1) of the EIA 2006 requires the Chief Inspector to devise a common set of principles applicable to all inspections under new Chapter 2A of the EIA

2006, or two or more common sets of principles each of which is applicable to a particular description of such inspections.

121. Pursuant to new section 122F(2) of the EIA 2006, a set of principles devised under new section 122F(1) of the EIA 2006 is referred to as a “framework” for the purposes of new section 122F.
122. New section 122F(4) provides that a framework must cover such matters as may be specified in regulations made by the Secretary of State.

Justification for the power

123. This power is necessary to enable the Secretary of State to specify in regulations matters that the Chief Inspector’s inspection framework must cover. While new section 122F requires the Chief Inspector to devise a framework of principles for Academy proprietor inspections, the scope and emphasis of that framework will need to evolve over time to reflect changes in policy priorities, sector practice, and accountability requirements. Prescribing these matters on the face of the Act risks creating a rigid inflexible system that cannot adapt to these changes and, therefore, quickly becomes unfit for purpose.
124. The Academy sector is diverse and continues to evolve rapidly, with trusts varying significantly in size, structure, and their operation. This diversity means that the Academy proprietor inspection framework must be capable of addressing different contexts and emerging priorities. For example, a changing emphasis on how Academy proprietors are working with local partners to ensure inclusive education may bring about new expectations in Academy proprietors over time which must be reflected in the Chief Inspector’s inspection framework.
125. This regulation-making power allows the Secretary of State to ensure that the Chief Inspector’s Academy proprietor inspection framework remains relevant and proportionate without requiring further primary legislation. This is essential to allow the system to keep pace with sector changes and to refine the scope of trust inspections as the relationship between school and trust inspection develops, avoiding duplication and unnecessary burdens.

Justification for the procedure

126. The Department considers that regulations made under this power should be subject to the affirmative procedure. This will ensure an appropriate level of scrutiny when prescribing matters which must be included in the Chief Inspectors inspection framework under new section 122F of the EIA 2006.
127. The Chief Inspector’s framework is fundamental to how the Chief Inspector will inspect Academy proprietors under new Chapter 2A of Part 8 of the EIA 2006. This power will enable the Secretary of State to prescribe in regulations mandatory matters which the Chief Inspector’s framework applicable to all inspections under new Chapter 2A of Part 8 of the EIA 2006 will cover. Whilst it is for the Chief Inspector to devise the principles applicable to inspections, the power to set matters the principles must cover would determine the mandatory scope of those principles. This could have a significant impact on the way inspections are conducted by requiring the Chief Inspector to consider how they assess or approach particular factors when conducting inspections. This is a

substantive power and we consider it appropriate for Parliament to have a greater role in scrutinising regulations made under it.

New clause: New section 122F(8) of the EIA 2006 – Requirement for the Chief Inspector to have regard to guidance issued by the Secretary of State when devising or revising a framework for inspection under section 122F of the EIA 2006.

Power conferred on: Secretary of State

Power exercisable by: Statutory Guidance

Parliamentary Procedure: None

Context and Purpose

128. New section 122F(8) of the EIA 2006 requires the Chief Inspector to have regard to any guidance given by the Secretary of State from time to time when the Chief Inspector devises or revises a framework for Academy proprietor inspections in accordance with new section 122F(1) or (6) of the EIA 2006.
129. New section 122F(1) of the EIA 2006 requires the Chief Inspector to devise a common set of principles applicable to all inspections under new Chapter 2A of the EIA 2006, or two or more common sets of principles each of which is applicable to a particular description of such inspections.
130. New section 122F(6) of the EIA 2006 permits the Chief Inspector to revise the framework at any time.

Justification for the power

131. This requirement is necessary to provide flexibility in shaping the Chief Inspector's inspection framework for Academy proprietors as the Academy proprietor inspection system develops. The Academy sector is diverse and continues to evolve rapidly, meaning the scope of the inspection framework may need to change to reflect new priorities and expectations. Prescribing detailed matters that the Chief Inspector must have regard to on the face of the Act would risk creating a rigid system that cannot adapt quickly to these changes. It would therefore not be appropriate to exhaustively specify guidance or matters which the Chief Inspector must have regard to in primary legislation because the content, scope, and title of guidance may change over time as policy priorities, and the Academy proprietor inspection regime, evolve. For example, guidance on the expectations of Academy proprietors may be updated or replaced, and the inspection framework must remain aligned with most current forms of guidance and expectations.
132. A regulation-making power to specify such guidance is essential because it provides the necessary flexibility for the inspection regime to remain effective without requiring further primary legislation each time guidance changes (as it likely will). A static list on the face of the Act would quickly become outdated and risk undermining the coherence of the Chief Inspector's inspection framework. This could have the subsequent effect of undermining the sector benefits Academy proprietor inspections intend to deliver for the Academy sector and public.
133. Allowing the Secretary of State to issue guidance that the Chief Inspector must have regard to therefore ensures that the inspection framework remains aligned with the

Department's policy objectives and expectations of Academy proprietors without requiring further primary legislation, unless the Chief Inspector has good reasons for departing from such guidance. It will also ensure that the Academy proprietor inspection regime can remain flexible and relevant to the Academy sector and the public as the sector and the inspection regime mature and evolve over time. This approach is proportionate because the guidance does not override the Chief Inspector's statutory duties or independence. Rather, it requires the Chief Inspector to consider the guidance in drafting the inspection framework, allowing for departure where the Chief Inspector has good reason for doing so.

Justification for the procedure

134. The Department does not consider it is necessary or appropriate for the statutory guidance issued under new section 122F(8) of the EIA 2006 to be subject to any parliamentary procedure. Any guidance published by the Secretary of State will not impose new duties on the Chief Inspector, rather the Chief Inspector will have to have regard to such published guidance, although may depart from that guidance with good reason. The Department intends to engage with the Academy sector and the Chief Inspector before issuing any guidance under new section 122F(8).
135. New section 122F(8) is complementary to the existing duty in section 119(3)(b) of the EIA 2006, which requires the Chief Inspector to have regard to such aspects of government policy as the Secretary of State may direct when exercising his functions, and ensures that the Chief Inspector must have specific regard to guidance issued under new section 122F(8) when devising or revising the Academy proprietor inspection framework.
136. It is important that the Chief Inspector considers government policy when creating an Academy proprietor inspection framework. A requirement to have regard to guidance will provide essential flexibility and responsiveness, allowing the inspection framework to adapt and evolve as the new Academy proprietor inspection regime matures. This may include through iterative feedback from the Academy sector over time. Subjecting any guidance issued under new section 122F(8) to Parliamentary scrutiny would undermine that flexibility and responsiveness. Where it is intended that the Chief Inspector's inspection framework must contain certain matters, these matters will be prescribed in regulations made by the Secretary of State under new section 122F(4) of the EIA 2006, which will be subject to the affirmative Parliamentary procedure.

New clause: New section 122H(2)(b) of the EIA 2006 – Power to specify the period in which an Academy proprietor must provide any comments to the Chief Inspector on a draft inspection report sent to it under new section 122H(2)(a) of the EIA 2006

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

137. New section 122H(2)(b) of the EIA 2006 gives the Secretary of State the power to make regulations prescribing the period within which an Academy proprietor must provide comments to the Chief Inspector on a draft report of an inspection report under

new section 122A of the EIA 2006 in the circumstances where new section 122H(1) apply.

138. New section 122H(1) of the EIA 2006 provides that subsections (2) and (4) of new section 122H apply, if on completion of an inspection under new section 122A of the EIA 2006, the Chief Inspector is of the opinion that:

- a. the persons responsible for leading, managing and governing an Academy proprietor are failing to lead, manage or govern the Academy proprietor to an acceptable standard (new section 122H(1)(a)), or
- b. an Academy proprietor is failing to lead, manage or govern an Academy of which it is the proprietor to an acceptable standard (new section 122H(1)(b)).

139. New section 122H(2) of the EIA 2006 provides that, where new section 122H(1) applies, the Chief Inspector must:

- a. send a draft copy of the report of the inspection under new section 122A to the relevant Academy proprietor (new section 122H(2)(a)), and
- b. consider any comments on the draft that are made by the Academy proprietor within such period as may be specified in regulations made by the Secretary of State (s.122H(2)(b)).

140. If, after complying with new section 122H(2) of the EIA 2006, the Chief Inspector is of the opinion that the case falls within paragraph (a) or (b) of new section 122H(1), the Chief Inspector must notify the Secretary of State and the relevant Academy proprietor and must state that opinion in his report of the section 122A inspection.

Justification for the power

141. This power mirrors the power in section 13(2)(b) of the EA 2005, which requires the Chief Inspector to consider any comments made by the proprietor of a school on a draft inspection report sent to the proprietor under section 13(2)(a) of the EA 2005 within a period prescribed by the Secretary of State in regulations. Taking this regulation-making power is therefore consistent with the established legislative practice for such inspection provision. The power in section 13(2)(b) of the EA 2005 has been exercised by regulation 5 of the Education (School Inspection) (England) Regulations 2005 (S.I. 2005/2038).

142. It would not be appropriate to fix the timeframe on the face of the Act because the appropriate period may need to change over time. The scope and complexity of Academy proprietor inspections will evolve as the inspection regime matures, and the amount of time needed for trustees of proprietors – who perform their role on a voluntary basis – to provide meaningful comments may vary as the system evolves. Prescribing the period in regulations provides the necessary flexibility to adjust the timeframe in response to changes in the inspection system, or iterative sector feedback following implementation.

143. For example, there may be future changes to the inspection regime to alter the matters on which the Chief Inspector must report when conducting an inspection under new section 122A of the EIA 2006. A longer period to consider comments may therefore

be appropriate, or conversely, if processes become more streamlined, a shorter period may suffice. A regulation-making power for this detail therefore allows the system to remain effective and adaptable.

Justification for the procedure

144. The Department considers that requiring regulations to be made by the affirmative resolution procedure would necessitate a disproportionate use of Parliamentary time. The power is narrow and procedural in nature, being limited to prescribing the period within which an Academy proprietor must provide comments on a draft inspection report to the Chief Inspector. It does not involve matters of significant policy.
145. The Department intends to engage with the Academy sector and the Chief Inspector prior to exercising this power to ensure that the period set strikes an appropriate balance between enabling Academy proprietors sufficient time to respond and avoiding undue delay in the Chief Inspectors final reporting.
146. This power mirrors the power in section 13(2)(b) of the EA 2005, which requires the Chief Inspector to consider any comments made by the proprietor of a school on a draft inspection report sent to the proprietor under section 13(2)(a) of the EA 2005 within a period prescribed by the Secretary of State in regulations. Regulations made under section 13(2)(b) of the EA 2005 are subject to the negative procedure.

New clause: Power to make consequential provision: Wales

Power conferred on: Welsh Ministers

Power exercisable by: Regulations

Parliamentary Procedure: the Senedd annulment procedure, or 'negative procedure', except for regulations made using this power that amend, repeal or revoke provision made by or under an Act of Measure of Senedd Cymru, or an Act, which are subject to the Senedd approval procedure, or affirmative procedure.

Context and Purpose

147. This power permits Welsh Ministers to make provision that is consequential on the following four Bill measures in relation to matters that are within the legislative competence of Senedd Cymru:
- a. Clause 11. Use of accommodation for deprivation of liberty.
 - b. Clause 12 subsection 5 (as amended at Report stage). Service of documents under Part 2 of the Care Standards Act 2000 (CSA 2000).
 - c. Clause 20. Ill-treatment or wilful neglect of children aged 16 and 17.
 - d. Clauses 31 to 36. Children not in school.

Justification for the power

148. This power is necessary to ensure that Welsh Ministers can make consequential amendments regarding areas within their devolved competence arising from this Bill. The power is contained in that such regulations may contain only provision which would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd.

Justification for the procedure

149. This procedure ensures appropriate oversight and scrutiny by changes made through regulations to primary legislation consequential of the provisions in this Bill are subject to the Senedd having to approve a draft of the subordinate legislation. Changes to secondary legislation are by their nature less far-reaching and as such it is considered appropriate that they are subject to negative procedure. Whilst the subordinate legislation would be laid before the Senedd it would only be annulled if there were objections made.

New clause: Power to make consequential provision: Scotland

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary Procedure: negative procedure except that regulations made under this section that amend, repeal or revoke provision made by or under an Act of the Scottish Parliament, or an Act, are subject to the affirmative procedure

Context and Purpose

150. This power permits Scottish Ministers to make provision that is consequential on clause 11 of this Bill, use of accommodation for deprivation of liberty, in relation to matters that are within the legislative competence of the Scottish Parliament.

Justification for the power

151. This power is necessary to ensure that Scottish Ministers can make consequential amendments regarding areas within their devolved competence arising from this Bill. The power is contained in that such regulations may contain only provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Scottish Parliament.

Justification for the procedure

152. This procedure ensures appropriate oversight and scrutiny by requiring changes made through regulations to primary legislation consequential of the provisions in this Bill to be subject to agreement by the Scottish Parliament following a recommendation by the lead Committee, following engagement with the Delegated Powers and Law Reform (DPLR) Committee. Changes to secondary legislation are by their nature less far-reaching and as such it is considered appropriate that they are subject to negative procedure. While the regulations would also be reviewed by the lead Committee and the Delegated Powers and Law Reform (DPLR) Committee, it would only be annulled if Parliament votes to do so following a recommendation by the lead Committee to cancel it.