

## CHILDREN'S WELLBEING AND SCHOOLS BILL

### Supplementary Memorandum from the Department for Education to the Delegated Powers and Regulatory Reform Committee (for Lords Consideration of Commons Amendment round 1)

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#### A. INTRODUCTION

1. The Government has tabled further amendments to the Children's Wellbeing and Schools Bill for Lords Consideration of Commons Amendments round 1.
2. This supplementary memorandum has been prepared by the Department for Education ("the Department") for the Delegated Powers and Regulatory Reform Committee. It relates to the Government amendment in lieu proposed at Lords ping pong round 1 concerning allergy safety in schools, which introduces a new duty on state-funded schools to maintain, publish and review an allergy safety policy, and a regulation-making power enabling the Secretary of State to introduce further requirements relating to allergy management in schools.
3. Abbreviations
  - CFA 2014: Children and Families Act 2014
  - EA 1996: Education Act 1996

#### B. DELEGATED POWERS

##### **After Clause 28: Allergy Safety policy for pupils at schools**

4. This section inserts a new section 100A and 100B into the CFA 2014. It inserts a new sub-section (5ZA) into section 342 of the EA 1996. It inserts a new sub-section (3B) into section 94 of the Education and Skills Act 2008.

##### **New section 100A CFA: "Allergy safety policy for pupils at schools"**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations and existing power under s.100(2) CFA 2014 for Secretary of State to issue guidance*

*Parliamentary Procedure: Negative for regulations*

5. This clause inserts a new section 100A into the CFA 2014. It creates an explicit statutory duty on the appropriate authority of every school to which section 100 applies (maintained schools, academies, alternative provision academies and pupil referral units) to maintain, review, publicise and publish a written allergy safety policy. The clause sets

out the minimum requirements of that policy, how it must be maintained, and how it interacts with statutory guidance issued under section 100(2). It also provides that section 100A is to be read as part of the EA 1996.

6. Section 100A(3) enables the Secretary of State to make regulations regarding the matters that must be covered in the allergy safety policy. New section 100A(6) also imposes a statutory duty on the appropriate authority to have particular regard to the existing statutory guidance issued under section 100(2) of the 2014 Act. The operation of the new duty therefore relies directly on that guidance, which already has a statutory footing under section 100(2). This provision is included here for completeness, as it forms the first element of the Government amendment.

### Context and Purpose

7. New section 100A requires the “appropriate authority” (as defined in section 100(5) CFA 2014) to ensure that the arrangements made under section 100 include an allergy safety policy. The policy must cover the management of allergies affecting pupils, including pupils at risk of anaphylaxis, and must:
  - a. be reviewed at least annually;
  - b. be updated following each review;
  - c. be publicised within the school community;
  - d. be published on the school’s website.
8. The Secretary of State may make further provision by way of regulations regarding the matters which must be covered in an allergy safety policy.
9. In carrying out these duties, the appropriate authority is required under new section 100A(6) to have particular regard to statutory guidance issued under existing section 100(2) to the extent that such guidance relates to the management of allergies. This guidance is currently being updated in collaboration with expert allergy-safety stakeholders and will set out expectations on policies, staff training, emergency response and risk management.
10. This new duty strengthens the existing statutory framework in section 100 CFA 2014, which already requires schools to make arrangements to support pupils with medical conditions. The change ensures consistent, transparent, structured approaches to allergy management across all state-funded schools.

### Justification for the power

11. Section 100A(3) enables the Secretary of State to make provision about the matters that must be covered in the allergy safety policy. The justification for this power is broadly similar to the justifications for the powers created under the new section 100B as set out at paragraphs 21-23 below. i.e. that best practice in allergy management changes over time and a regulation making power allows the Government to reflect requirements for

those changes in the allergy safety policy in a timely manner, whilst ensuring that schools have a clear framework to follow.

12. The effectiveness of the new section 100A duty relies on schools having particular regard to the statutory guidance issued under section 100(2). That guidance provides the practical, clinically informed detail that underpins the duty; without it, the requirement to have an allergy safety policy would not operate in a clear or consistent way across the school system.
13. In particular, using statutory guidance under section 100(2) ensures that:
  - a. operational detail can evolve in line with clinical best practice;
  - b. policy can reflect developments such as new adrenaline delivery mechanisms (e.g. nasal sprays);
  - c. schools receive consistent, authoritative expectations without rigid statutory prescriptions.
14. Section 100A(6) and section 100A(3) introduce the necessary flexibility into the architecture of section 100A, allowing the detailed and clinically informed expectations to sit in statutory guidance rather than on the face of the Act.

#### Justification for the procedure

15. A negative procedure is considered appropriate for the same reasons as the powers created under the new section 100B and set out at paragraphs 24-25 below.
16. Section 100A(6) links the duty to existing statutory guidance under section 100(2) which already operates without parliamentary procedure. This is consistent with the current legal framework for supporting pupils with medical conditions and with the Department's established guidance based approach.

#### **New section 100B (CFA 2014) "Regulations about allergy safety"**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations*

*Parliamentary Procedure: Negative*

#### Context and Purpose

17. Section 100B provides a regulation-making power enabling the Secretary of State to impose additional duties on specified persons in connection with the management of allergies affecting pupils at schools within scope of section 100 CFA 2014.
18. Regulations may cover, among other things:

- a. the keeping of, and access to, emergency medication and medical devices on school premises or elsewhere while pupils are under the lawful control of school staff (e.g. off-site visits);
- b. procedures for identifying, managing and mitigating allergy-related risks;
- c. staff training requirements relating to allergy recognition and emergency response;
- d. incident recording and reporting;

19. Regulations may also require schools to designate a person responsible for specified allergy-management matters. Any person subject to such duties must have regard to statutory guidance.

20. This regulation-making power forms the second, broader legislative concession developed for ping pong, reflecting the Department's policy that detailed clinical or operational requirements are better suited to secondary legislation rather than primary legislation.

#### Justification for the power

21. Stakeholders and parliamentarians have identified the need for:

- a. mandatory availability of spare adrenaline auto-injectors (AAIs);
- b. comprehensive, whole-school allergy-awareness training;
- c. consistent incident-reporting standards;
- d. clear allocation of responsibility within schools.

22. Medical best practice in allergy management changes over time — whether because of new clinical advice, new treatment methods such as emerging adrenaline devices, or updated national clinician guidance. It would not be sensible to lock highly technical, fast-moving requirements into primary legislation. Using statutory guidance, supported by a regulation-making power, allows us to keep expectations up to date with the latest medical evidence while still ensuring schools follow a clear, enforceable framework.

23. Section 100B mirrors precedent in other education and health legislation where operational, clinically informed requirements are imposed through regulations rather than primary legislation.

#### Justification for the procedure

24. The Department considers the negative procedure appropriate because:

- a. the power concerns operational matters relating to school management, not fundamental policy framework;
- b. the scope of future requirements will be shaped by statutory guidance and clinical practice, and must be flexible;

- c. comparable regulation-making powers relating to school policies, training, safeguarding practice (for example, the School Staffing (England) Regulations and the Education (Independent School Standards) Regulations 2014) commonly use the negative procedure.

25. While the regulation-making power may be used to impose mandatory duties, those duties are confined to matters concerning the management of allergies affecting pupils in the school in question, such as the operational duties expressly listed in subsection 100B(2). These include practical requirements such as arrangements for emergency medication, risk-management procedures, staff training and incident recording. The power cannot be used to introduce wider policy reforms. Its scope is therefore limited to technical, school-level operational detail, which is not of the scale or nature that would ordinarily require affirmative scrutiny.

### **New sub-section (5ZA) of section 342 of the Education Act 1996**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations*

*Parliamentary Procedure: Negative*

#### Context and Purpose

26. Section 342 of the EA 1996 governs the Secretary of State's power to approve non-maintained special schools to operate in England. Non-maintained special schools are schools specially organised to make special educational provision for pupils with special educational needs and are not a community or foundation special school or an academy school. The Secretary of State is empowered under section 342(2) and (4) to make regulations which set the requirements for a school to be approved and continue to be approved as a non-maintained special school. The current regulations made under these provisions are The Non-Maintained Special Schools (England) Regulations 2015.

27. The purpose of inserting a new sub-section (5ZA) is to extend the effect of new s100A and s100B to non-maintained special schools, such that they must comply with the corresponding or similar requirements as to allergy safety policies and any matters set out in regulations under s100B.

#### Justification for the power

28. The policy intention is that all schools should be subject to the requirements imposed by or under s100A and s100B. These requirements have very clear public safety benefits for children and it is important that as many children as possible receive their benefit, including those educated in non-maintained special schools. We wish to avoid a situation where children educated in non-maintained special schools are less well protected than those educated in the maintained/academies sector.

29. The power is non-discretionary and is in effect a duty for the Secretary of State to ensure that the corresponding or similar requirements imposed by or under s100A and s100B

apply to non-maintained special schools. There is some flexibility in that the requirements imposed on non-maintained special schools may be 'similar' to those imposed by or under s100A or s100B. This is to allow for differences in the way these institutions operate but the effect of any duties imposed by these regulations would need to be broadly the same as those imposed by or under s100A or s100B. We therefore rely on the justifications above for the requirements imposed by or under s100A and s100B generally.

#### Justification for the procedure

30. The procedure is negative as that is the existing procedure for regulations under s342(2) and (4). The Secretary of State is under a duty to make these regulations and as they must correspond or be similar to the requirements imposed by or under s100A and s100B, their content is reasonably certain and we do not consider that extended parliamentary consideration is necessary.

#### **New sub-section (3B) of section 94 of the Education and Skills Act 2008**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations*

*Parliamentary Procedure: Negative*

#### Context and Purpose

31. Section 94 of the Education and Skills Act 2008 requires the Secretary of State to set standards apply in relation to independent educational institutions. These are known as the Independent School Standards and are contained in The Education (Independent School Standards) Regulations 2014. Independent educational institutions are defined in s92 of the 2008 Act. Independent schools are independent educational institutions, of which academy schools are a type. The independent school standards may make different provision for different types of independent schools. Independent schools must meet these standards to be registered and may be removed from the register if found not to be meeting them.

32. The purpose of inserting a new sub-section (3B) is to extend the effect of new s100A and s100B to independent educational institutions, such that they must comply with corresponding or similar requirements as to allergy safety policies and any matters set out in regulations under s100B.

#### Justification for the power

33. The justification for extending the requirements of s100A and s100B to independent educational institutions is the same as extending them to non-maintained special schools: to ensure all school age pupils receive the benefit of s100A and s100B. We rely on the same justifications outlined above for s100A and s100B.

34. The power is non-discretionary and is in effect a duty for the Secretary of State to ensure that the requirements imposed by or under s100A and s100B apply to independent educational institutions. There is some flexibility in that the requirements imposed on independent educational institutions may be 'similar' to those imposed by or under s100A or s100B. This is to allow for differences in the way these institutions operate but the effect of any duties imposed by these regulations would need to be broadly the same as those imposed by or under s100A or s100B. We therefore rely on the justifications above for the requirements imposed by or under s100A and s100B generally.

Justification for procedure

35. The procedure is negative as that is the existing procedure for regulations under s94. The Secretary of State is under a duty to make these regulations and as they must correspond or be similar to the requirements imposed by or under s100A and s100B, their content is reasonably certain and we do not consider that extended parliamentary consideration is necessary.