

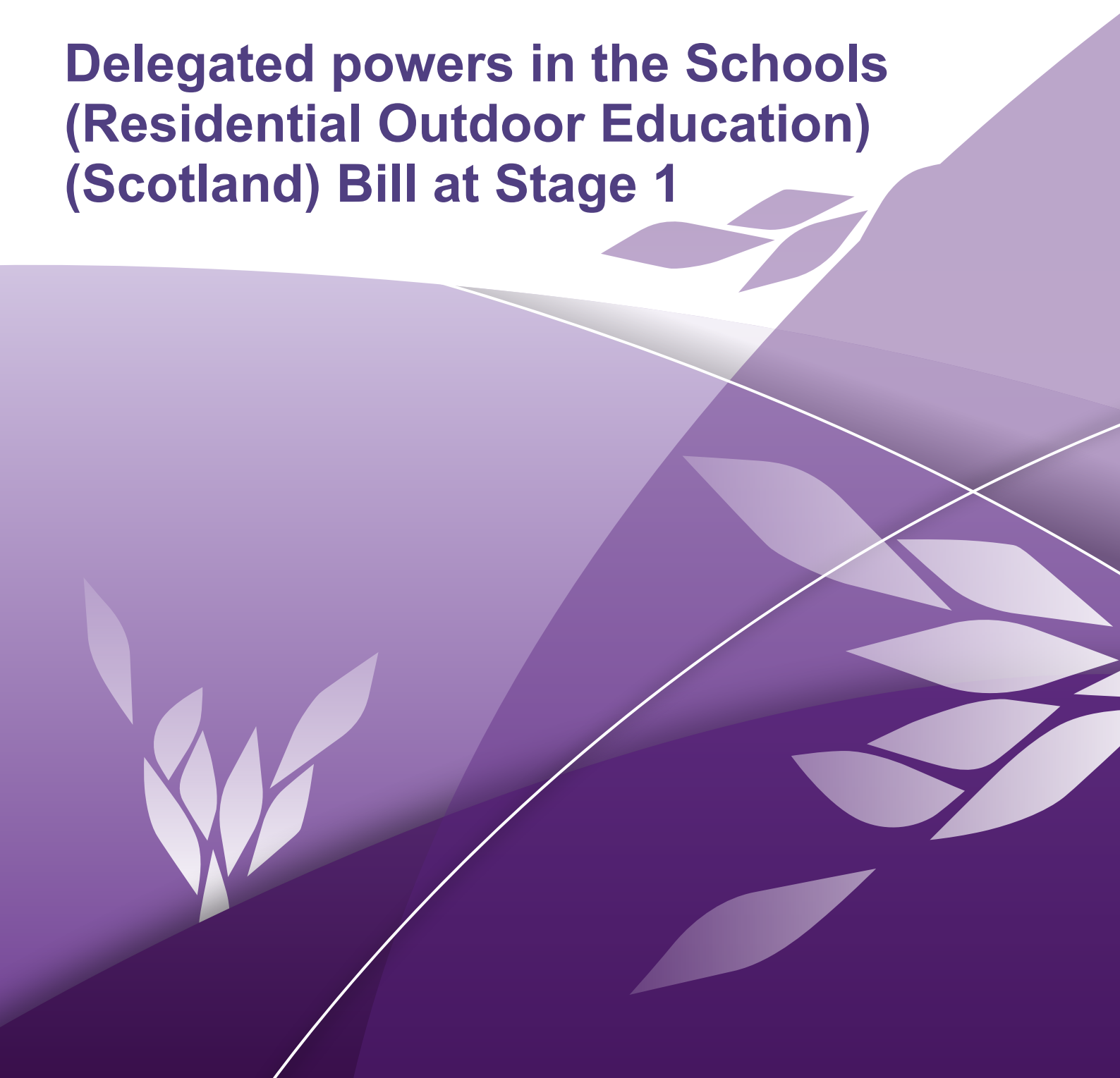


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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Delegated powers in the Schools (Residential Outdoor Education) (Scotland) Bill at Stage 1



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.

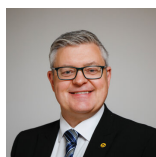


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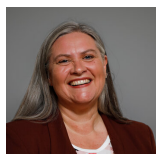
Bill Kidd
Scottish National Party



Jeremy Balfour
Scottish Conservative
and Unionist Party



Daniel Johnson
Scottish Labour



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Scottish Conservative
and Unionist Party

Introduction

1. At its meeting on 29 October 2024ⁱ, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the [Schools \(Residential Outdoor Education\) \(Scotland\) Bill](#) ("the Bill") at Stage 1.
2. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

ⁱ Rona MacKay MSP substituted for Bill Kidd MSP at this meeting.

Overview of the Bill

3. This is a Members' Bill which was introduced by Liz Smith MSP (“the Member in Charge”) on 20 June 2024. The lead committee is the Education, Children and Young People Committee.
4. The [Policy Memorandum](#) explains the policy objective of the Bill is that “all pupils should have the opportunity to attend residential outdoor education during their school career” and that “the level of provision of residential outdoor education has continued to decline and the Member considers that, to protect the continuation of this valuable opportunity for young people, it is necessary to legislate to ensure that it is a requirement that education authorities must offer residential outdoor education at least once in a pupil’s school career”.

Delegated powers

5. The Bill confers 1 power to make subordinate legislation and 1 power to issue guidance. Both powers are conferred on the Scottish Ministers.
6. The Member has prepared a [Delegated Powers Memorandum](#) (“DPM”) which sets out the reasons for taking the delegated powers in the Bill and for the procedure chosen.

Review of relevant powers

Section 1: guidance on residential outdoor education

Power conferred on: the Scottish Ministers

Power exercisable by: guidance

Parliamentary procedure: none

Provision

7. Section 1 of the Bill adds new sections 6A to 6C to the [Education \(Scotland\) Act 1980](#). New section 6A is the key provision in the delivery of the Member's intended outcome. It requires that education authorities and managers of grant-aided schools must "provide or secure the provision of one course of residential outdoor education to each pupil" at schools which they manage.
8. New section 6B requires the Scottish Ministers to prepare and publish guidance to educational authorities and the managers of grant-aided schools about their duties under the Bill. Those authorities and managers must have regard to the guidance.
9. The guidance must be issued within 3 months of the coming into force of section 6B. It must include provision about the matters listed in section 6B(4):
 - the nature and content of residential outdoor education;
 - the standard to which residential outdoor education must be provided;
 - how education authorities and the managers of grant-aided schools should assess whether residential outdoor education is suitable to a pupil's age, ability, aptitude and any additional support needs;
 - the costs that it would be reasonable for education authorities and the managers of grant-aided schools to incur in providing or securing the provision of residential outdoor education;
 - the voluntary nature of participation by pupils in residential outdoor education;
 - the year groups of pupils within primary and secondary education to whom the residential outdoor education is to be provided;
 - the manner in which education authorities and the managers of grant-aided schools should engage with any inspections under the Education (Scotland) Act 1980 in relation to their duties under section 6A of the Bill; and
 - the extent to which educational authorities and the managers of grant-aided schools should consider providing or securing the provision of residential outdoor education in Gaelic.
10. Before issuing any guidance there is an obligation on the Scottish Ministers to consult:

- each education authority;
- the managers of each grant-aided school;
- such parents of pupils in respect of whom the duties under section 6A of the Bill apply as the Scottish Ministers think appropriate,
- such persons involved in the operation of premises or other facilities used to provide residential outdoor education, or organisations representing such persons, as the Scottish Ministers think appropriate;
- such other voluntary organisations as the Scottish Ministers think appropriate; and
- any other persons that the Scottish Ministers think appropriate.

Committee consideration

11. The Member in Charge explains in the DPM that she considers it prudent to leave the details about how residential outdoor education is to be delivered to the Scottish Ministers. This is because the Scottish Ministers can react and respond to practical experience and to consult those who will be responsible for the provision of residential outdoor education. The Member in Charge also identifies that the Scottish Ministers can ensure that the new duty fits in with existing education frameworks, such as [Getting it Right for Every Child](#).
12. The Committee considers the power to issue guidance is narrow in scope. It is prescriptive as to the contents that must be included. It includes a significant consultation requirement before the Scottish Ministers can issue the guidance. Although education authorities and managers of grant-aided schools require to have regard to the guidance, it is the Committee's view that the specific nature of the guidance is such that it appears appropriate that no further scrutiny by Parliament is necessary.

13. **The Committee finds the power acceptable in principle, and is content that it is not subject to any future procedure in the Parliament.**

Section 3: Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative procedure if adding to, replacing or omitting any part of the text of an Act, otherwise negative procedure

Provision

14. Section 3 makes standard ancillary provision, giving the Scottish Ministers the power to make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to the Act flowing from the Bill.

15. By virtue of subsection (2), regulations made under section 3 may modify any enactment, including the Act flowing from the Bill.
16. Section 3(3) provides that the affirmative procedure will apply where regulations made under section 3 amend primary legislation, and that otherwise the negative procedure will apply.

Committee consideration

17. The power to make standalone ancillary provision by regulations is common in modern primary legislation. The power is limited to the extent that it can only be used if the Scottish Ministers consider it appropriate for the purposes of, in connection with, or for giving full effect to the Bill or any provision made under it.
18. The power allows issues of an ancillary nature which may arise to be dealt with effectively by the Scottish Ministers. Without such a power, any changes would require to be made by primary legislation, which we consider would not be an effective use of either the Parliament's time or the Scottish Government's resources.

19. **The Committee is content with the power to make ancillary provision in regulations under section 3 of the Bill. The Committee is also content that the affirmative procedure applies to any provision which modifies primary legislation and that otherwise the negative procedure applies.**

