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

Delegated powers in the Scottish Languages 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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Membership changes

1. The following changes to Committee membership occurred during the course of the Committee's scrutiny of the delegated powers in the Scottish Languages Bill:
 - on 26 March 2024, Tim Eagle MSP replaced Jeremy Balfour MSP.

Introduction

2. At its meetings on 5 March and 16 Aprilⁱ 2024, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the [Scottish Languages Bill](#) ("the Bill") at Stage 1.
3. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

ⁱ Alexander Stewart MSP substituted for Tim Eagle MSP

Overview of the Bill

4. This Bill was introduced by the Scottish Government on 29 November 2023. The lead committee is the Education, Children and Young People Committee.
5. The Scottish Government states in its policy memorandum that the purpose of the Bill is “to provide further support for Scotland’s indigenous languages: Gaelic and Scots”.

Delegated powers

6. The Bill confers eighteen powers to make subordinate legislation on the Scottish Ministers. The Scottish Government has prepared a [Delegated Powers Memorandum](#) (“DPM”) which sets out the reasons for taking the delegated powers in the Bill and the procedure chosen.
7. At its meeting on 5 March 2024, the Committee did not raise any queries in relation to the following delegated powers:
 - Section 4(3)(b): Areas of linguistic significance;
 - Section 6(2): [DE(1) Gaelic language standards;
 - Section 12(2): Power for Scottish Ministers to set standards relating to Gaelic education;
 - Section 18: Gaelic education delivery planning;
 - Section 22(2)(a): Assessment – Power to make different provision for different areas;
 - Section 33: Standards relating to Scots language education;
 - Section 36(1): Ancillary provision; and
 - Section 37(2): Commencement.
8. However, at that meeting, the Committee agreed to [write to](#) the Scottish Government to raise questions in relation to the following delegated powers:
 - Powers to issue guidance: Sections: 4(2), 7(2), 9(6), 13, 30 and 32(1);
 - Use and proportionality of directions in the Bill:
 1. Section 7(2): Power for Scottish Ministers to give directions to relevant public authorities;
 2. Section 9(6): Gaelic language plans;
 3. Section 12(5): Powers for Scottish Ministers to give directions in relation to standards for Gaelic Education; and
 4. Section 14(2): Directions to education authorities relating to Gaelic education.
9. The Scottish Government [responded](#) on 19 March 2024.
10. The Committee's consideration of the Scottish Government's response, and the other delegated powers contained in the Bill, are set out in the next section of the report.

Review of relevant powers - 16 April 2024

11. Following its meeting on 5 March 2024, the Committee wrote to the Scottish Government on some of the delegated powers in the Bill. The questions focused on the nature of the proposed guidance, and the proportionality and anticipated use of the proposed direction-issuing powers.
12. The Committee considered the Scottish Government's response in relation to those powers at its meeting on 16 April 2024. Its consideration of those powers is detailed below, with the Committee's views on the remaining delegated powers set out in the next section of the report.

Powers to issue guidance

Sections: 4(2), 7(2), 9(6), 13, 30 and 32(1)

Powers conferred on: the Scottish Ministers

Powers exercisable by: Guidance

Parliamentary procedure: None

Provisions

13. The powers to issue guidance are as follows:
 - Section 4(2) - Areas of linguistic significance: gives Scottish Ministers the power to give guidance to local authorities relating to their new function of designating areas of linguistic significance.
 - Section 7(2) - Power for Scottish Ministers to give guidance to relevant public authorities: confers a power on the Scottish Ministers to give guidance to relevant public authorities relating to their duties relating to the Gaelic language.
 - Section 9(6) - Gaelic language plans: confers power on the Scottish Ministers to give guidance to relevant public authorities relating to Gaelic language plans.
 - Section 13 - Guidance to public authorities relating to Gaelic education: confers power on the Scottish Ministers to give guidance to Scottish public authorities in relation to the provision of Gaelic education. This power is currently vested in Bòrd na Gàidhlig.
 - Section 30 - Power for Scottish Ministers to give guidance on Scots language: confers power on the Scottish Ministers to give guidance to relevant public authorities relating to promoting, facilitating, and supporting the use of the Scots language and developing and encouraging Scots culture.
 - Section 32(1) - Guidance on Scots language education: confers a power on the Scottish Ministers to give guidance to education authorities relating to Scots language education in schools.
 - In all instances, the persons to whom the guidance applies "must have regard

to” it.

Committee consideration

14. The Committee asked the Scottish Government:

1. To clarify the nature of the guidance proposed under these sections, and in particular, whether the guidance is intended to assist or direct local authorities. In other words, is the guidance administrative or legislative in nature?

- If it is administrative, why is it considered necessary to place a duty on local authorities to have regard to it?
- If it is legislative, why it is not subject to any parliamentary procedure?

2. In relation to Section 4(2): whether, as drafted, the requirement to have regard to the guidance might be capable of changing a matter for local authorities’ discretion into something mandatory? For example, a situation in which a local authority is considering whether to designate an area of linguistic significance (a matter of discretion) and is minded not to, but strict adherence to guidance directs the local authority to designate.

3. In relation to Section 7(2): the combined effect of proposed new sections 2D and 2E is to subject relevant public authorities to a dual “must have regard to” requirement. In effect, they must have regard to guidance which directs them as to how they can fulfil the duty that they “must have regard to” the desirability of promoting Gaelic, and so forth when exercising their functions. Does the Scottish Government consider that this drafting approach makes it clear to public authorities what is required of them under section 2D?

4. In relation to Section 9(6): the Committee asks why this guidance is not subject to a publication requirement?

15. The Scottish Government responded as follows:

"1. The guidance proposed under each of the sections referred to above is intended to assist local authorities (in the case of provisions relating to Areas of Linguistic Significance) or public authorities (in the case of the other sections mentioned) in complying with their duties. The essential characteristic of guidance is that it is advisory rather than directory and does not impose legally binding duties. The guidance will therefore not be of legislative character and as such it would not be appropriate to attach parliamentary procedure to the powers to issue guidance. However, failure to comply with guidance may be relevant in determining whether an authority has complied with the duties created by the Bill. We consider it appropriate for authorities to be required have regard to the guidance when making a relevant decision, in order to consider how that guidance may be relevant to the exercise of their functions. There are many legislative examples of a duty to have regard to guidance.

2. The power to issue guidance under section 1B(11) (inserted by section 4(2)) will not convert the power to designate under inserted section 1B(1) into a duty to do so. As indicated above guidance is not something which must be complied with but something which a local authority must have regard to when making its

decision, along with other relevant factors. For example one of the routes to designation could be through an historical connection to Gaelic and guidance may helpfully signpost organisations such as Ainmean- Aite na h-Alba which has information on Scottish place names in Gaelic. Ainmean-Àite na h-Alba (AÀA) – Gaelic Place-names of Scotland (ainmean-aite.scot). Another route to designation could be through being an area in which there is significant activity relating to Gaelic language or Gaelic culture and the guidance could give examples of such activity and details of organisations involved in Gaelic activity

3. We agree with the description of the effect of the new proposed sections 2D and 2E as summarised above and do not consider that this raises an issue. Section 2D places a duty on relevant public authorities to consider their functions and consider how they exercise them and, in that context, to have regard to those things set out in sections 2D(a) and (b). As part of that process, where there is guidance under section 2E an authority must have regard to it. Consistent with the position set out above, such guidance is not something which must be complied with but is something which a public authority must have regard to along with other factors in making decisions. There are several other examples of this relationship between duties in legislation: see for example section 5(4) of the Heat Networks (Scotland) Act 2021 read with section 15 of that Act, and section 21 of the Consumer Scotland Act 2020 read with section 20 of that Act. We also draw your attention to what is currently section 8(9) of the Gaelic Language (Scotland) Act 2005 (which will become section 1(3A) by virtue of section 2(2)(c) of the Bill), which provides that advice from Bòrd na Gàidhlig is available to public authorities free of charge in relation to the application of the 2005 Act to them. This could inform a public authority about how the exercise of their functions interrelates to and impacts on Gaelic language and culture. Much of the work that Bòrd na Gàidhlig engages in around the development of Gaelic Language Plans at the current time is around providing a Gaelic perspective and awareness raising which then helps to inform decision makers about how their area of operation can incorporate or act positively or negative for the minority language.

4. A publication requirement has been included for guidance powers which are of general interest and application, and which relate to overarching duties. Publication has not been provided as a requirement for narrower more technical areas where publication may not be of wider interest (for example, because it relates to only a particular public authority or authorities) and therefore the publication requirement could add an unnecessary administrative burden and cost. Not all of the existing guidance making powers in the Gaelic Language (Scotland) Act 2005 require the guidance to be published: for example, guidance by Scottish Ministers to Bòrd na Gàidhlig under section 1(4). However, we will consider again whether a publication requirement would be appropriate here."

16. In its response, the Scottish Government confirmed that the guidance proposed is intended to assist local and public authorities rather than direct them. The Scottish Government also acknowledges that legal consequences may flow from non-compliance ("failure to comply may be relevant in determining whether an authority has complied with the duties created by the Bill").
17. Making guidance subject to a "must have regard to" requirement places those to whom it applies under a statutory duty. Whilst this does not amount to an obligation to comply, if a person to whom such guidance was directed were to disregard it and

were challenged, they would need to be able to show that they had at least given adequate consideration to the guidance and that, if they decided not to follow it, they had justifiable reasons for not doing so. The guidance has statutory status and legal consequences flow from that.

18. The DPM describes much of the guidance which is anticipated under this Bill in terms which suggest that it is “pure guidance” (that is, guidance which simply assists but does not direct). For example, in relation to guidance under sections 4(2), and 7(2) the Scottish Government considers that guidance is an “appropriate method for signposting resources” and “highlighting examples”.
19. However, the requirement that those to whom it is directed must have regard to it gives that guidance a quasi-legislative character. Given that decisions taken by local and public authorities may be reviewable and that the guidance will likely have significant influence on their decision making, the Committee highlights these powers and the response from the Scottish Government to the lead committee for further consideration.
20. The Committee notes that it is not uncommon for guidance to be subject to a “must have regard to” requirement but whether that is appropriate will depend on the nature of the guidance to be issued. The Committee considers, on the basis of what is set out in the DPM, that the nature of the guidance here appears to be purely advisory and designed to assist and queries whether it is necessary to direct that those to whom it applies “must have regard to it”. It therefore draws this point to the attention of the lead committee.
21. The Committee notes the Scottish Government’s responses to questions 2, 3 and 4 and is content with the further information provided. On question 4, the Committee also notes that the Scottish Government intends to consider whether a publication requirement would be appropriate in relation to section 9(6).

22. The Committee notes that, whilst it is not uncommon for guidance to be subject to a “must have regard to requirement”, whether that is appropriate will depend on the circumstances and the nature of the guidance proposed. In this instance, it appears the nature of the guidance is to assist rather than direct. The Committee therefore draws all of the guidance-making powers to the attention of the lead committee to consider whether, in the circumstances, it is appropriate and necessary to give the guidance to be issued legal force by making it subject to a “must have regard to” requirement.

23. The Committee notes the Scottish Government’s responses to questions 2, 3 and 4 and is content with the further information provided. On question 4, the Committee also notes that the Scottish Government intends to reconsider this point as the Bill progresses.

Use and proportionality of directions in the Bill

Section 7(2): Power for Scottish Ministers to give directions to relevant public authorities

Power conferred on: the Scottish Ministers

Power exercisable by: Directions

Parliamentary procedure: None

Provision

24. Section 7(2) of the Bill confers a power on the Scottish Ministers to give directions to a relevant public authority relating to its duties relating to the Gaelic language. In advance of issuing any direction the Scottish Ministers must consult the relevant public authority.

Committee consideration

25. The Committee asked the Scottish Government:
1. Can the Scottish Government please provide some practical examples to illustrate how it envisages using this power.
 2. What consideration has the Scottish Government given to the proportionality of taking a direction-making power, given that a relevant public authority will already have to comply with its duties under section 2D to “have regard to the desirability of (a) promoting, facilitating and supporting the use of the Gaelic language, and (b) developing Gaelic culture”, and have regard to any guidance relating to that duty?
 3. Can the Scottish Government please clarify whether it will be open to a relevant public authority, under section 2D, to decide that it is not desirable, in the context of exercising one or more of its functions, to promote, facilitate and support the use of Gaelic or to develop and encourage Gaelic culture? In that event, would this power allow Scottish Ministers to compel a course of action to the contrary?
 4. The duty in section 2D on a relevant public authority is to “have regard to the desirability of (a) promoting, facilitating and supporting the use of the Gaelic language and (b) developing and encouraging Gaelic culture”. If section 2D does not compel a particular course of action, can the Scottish Government please explain how, in practical terms, it can use a direction-making power?
26. In relation to the first question, the Scottish Government notes that the power may be required where there is a need to rectify a situation as a matter of urgency. For example, where a public body operating with a bilingual Gaelic English logo or branding, when refreshing or redesigning that branding, omits the Gaelic element in error or oversight. In such cases, the Scottish Government considers that it may be of assistance to the public authority to have a direction in place to authorise and require the rectification at pace.
27. In relation to the second question, the Scottish Government considers the power to be proportionate and points out that this power is consistent with the existing direction-making power in the 2005 Act relating to the implementation of Gaelic language plans. On balance, considering that there is precedent for this approach and the fact that the Scottish Government has provided an example of what a “limited intervention” may be in practice, the Committee is therefore content with the response.

28. In its response to the third question, the Scottish Government explains that this duty is a procedural one which cannot mandate any particular result. To illustrate, it explains that a public authority could not decide that it was never going to consider the desirability of promoting Gaelic language but could find that in a particular instance, other factors outweighed the desirability of promoting Gaelic language and justified exercising the function in a way which did not promote Gaelic language. The Scottish Government also states that the use of this power will not displace a public authority's discretion to choose a particular course of action. On balance, the Committee is therefore content with the explanation provided.
29. In relation to the final question, the Scottish Government explained that in practical terms, this power could be used to direct the authority to consider particular matters, such as where a tourist or culture strategy is being commissioned relative to an area where Gaelic is spoken that regard is had to facilitating or supporting the use of the Gaelic language as that strategy is implemented. It is further noted that the intention would be to use the power for specific and targeted action which relates to how the duty in the newly inserted section 2D is fulfilled. The Committee is therefore content with the response.

30. The Committee notes the Scottish Government's response and is content with the delegation of the direction-issuing power.

Section 9(6): Gaelic language plans

Power conferred on: the Scottish Ministers

Power exercisable by: Directions

Parliamentary procedure: None

Provision

31. Section 9(6) of the Bill inserts a new section 7A into the 2005 Act, which provides that, where a relevant public authority is required to prepare a Gaelic language plan, the Scottish Ministers may give a direction to that authority relating to the application of the standards and requirements specified in regulations made under section 2C(1) to the preparation of that plan.

Committee consideration

32. The Committee asked the Scottish Government:
1. Why does the Scottish Government consider that a direction-making power is proportionate in the circumstances, given that a relevant public authority will require to have regard to any guidance issued under section 7A of the 2005 Act and apply any standards and requirements specified in regulations made by Scottish Ministers under section 2C of the 2005 Act?
 2. Can the Scottish Government please provide some practical examples of the circumstances in which it envisages this power will be used and examples of the type of directions which it has in mind?

3. It would appear that the direction-making power is intended be used to supplement, clarify or amplify the law which is to be contained in the regulations. Does the Scottish Government anticipate that it will not be clear on the face of the regulations what standards or requirements must be met by relevant authorities? If not, why is this power necessary?
33. In response to the first question, the Scottish Government notes that there is precedent for this approach in the 2005 Act and that it is proportionate to ensure that Scottish Ministers have powers to require action across all elements of the language planning structure provided throughout the Bill.
34. The Scottish Government responds to questions two and three together, acknowledging that the circumstances in which this power could be used may be quite remote and limited. It has stated that it will consider streamlining the range of direction-making powers as the Bill proceeds. In relation to the final question, the Scottish Government explains that it is not intended that the power be used to supplement, clarity or amplify the law.
35. The Committee stresses that delegated powers should only be taken where necessary and fully justified. From the Scottish Government's response, the Committee considers there is some doubt as to the necessity of taking this power. The Committee therefore notes that the Scottish Government intends to consider this matter further.
- 36. The Committee notes that the Scottish Government intends to consider this matter further and highlights its response to the lead committee.**

Section 12(5): Powers for Scottish Ministers to give directions in relation to standards for Gaelic Education

Power conferred on: the Scottish Ministers

Power exercisable by: Directions

Parliamentary procedure: None

Provision

37. Section 12(5) confers power on Scottish Ministers to give directions to education authorities regarding the application of the standards and requirements relating to Gaelic education which are to be specified in regulations made under new section 6B of 2016 Act. An education authority must comply with any such direction. Directions will not be subject to any parliamentary procedure and do not require to be published.

Committee consideration

38. The Committee asked the Scottish Government why it is considered necessary to take a direction-making power, given the various layers of guidance and regulations which education authorities will already require to comply with.
39. In its response the Scottish Government explains that there could be particular

instances where there are a number of ways in which the standards and requirements for Gaelic education set out in regulations could be applied but where it is imperative that a particular course of action is taken. The Scottish Government provides the following example:

” Where, for example, an authority has been providing GME primary education for a number of years and has pupils from its authority area who are reaching the age when they will transition to secondary school yet the authority has not planned for secondary provision and continuity for those pupils, a direction making power may be a helpful intervention to ensure that the necessary actions are taken in time to make arrangements for the impacted pupils to continue their learning through their chosen medium. A direction in this circumstance could relate to a standard to consider whether posts are Gaelic desirable or Gaelic essential or could relate to a standard on workforce planning to understand the capability of existing workforce in relation to language.

40. On balance, the Committee is satisfied with the Scottish Government's response and with the example provided.

41. The Committee notes the Scottish Government's response and is content with the delegation of the direction-issuing power.

Section 14(2): Directions to education authorities relating to Gaelic education

Power conferred on: the Scottish Ministers

Power exercisable by: Directions

Parliamentary procedure: None

Provision

42. This section confers powers on the Scottish Ministers to give directions to education authorities about the performance of their functions relating to Gaelic learner education and Gaelic medium education, and their functions relating to the teaching of the Gaelic language in its provision of further education. An education authority must comply with a direction given to it.

Committee consideration

43. The Committee asked the Scottish Government why it is considered necessary to take a direction-making power, given the various layers of guidance and regulations which education authorities will already require to comply with. It also asked why the Scottish Government envisages that an education authority would require a direction to authorise a particular course of action.

44. The Scottish Government acknowledges that the circumstances in which this power could be used are quite remote and limited, and will consider whether it is necessary. It has said that it will consider streamlining the range of direction-making powers as the Bill progresses.

45. The Scottish Government has provided an example in which an authority provides information and advertising about education available in its area through letters or social media campaigns. A direction could be used to ensure that Gaelic Medium Education options available are appropriately highlighted. However, it acknowledges that this could instead be covered by clear standard or guidance.
 46. The Committee stresses that delegated powers should only be taken where necessary, and fully justified. From the Scottish Government's response, the Committee considers there is some doubt as to the necessity of taking this power.
 47. The Committee notes that the Scottish Government intends to consider this matter further.
48. **The Committee notes that the Scottish Government intends to consider this matter further and highlight its response to the lead committee.**

Review of relevant powers - 5 March 2024

49. At its meeting on 5 March, the Committee was content with the delegated powers, as detailed below.

Section 4(3)(b): Areas of linguistic significance

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

50. Section 3(7) of the 2005 Act provides that the Scottish Ministers may, by regulations, make further provision in relation to the content of Gaelic Language Plans. The amendment introduced by section 4(3)(b) provides that such regulations may make provision about the required content of Gaelic language plans in respect of areas of linguistic significance.

Committee consideration

51. This is a minor adjustment to an existing power to reflect the new provisions elsewhere in the Bill regarding areas of linguistic significance. The applicable procedure (negative) is unchanged.

- 52. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Section 6(2): Gaelic language standards

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

53. Section 6(2) inserts a new section 2C into the 2005 Act, which gives Scottish Ministers the power to make regulations to specify standards and requirements relating to promoting, facilitating, and supporting the use of the Gaelic language which are to apply to relevant public authorities in exercising their functions. Regulations under section 2C may make provision about how functions are to be exercised in areas of linguistic significance and otherwise make different provision for different areas (including different parts of the area in which the authority exercises its functions).
54. Regulations made under this power are subject to the affirmative procedure and the Scottish Ministers must consult interested parties before laying a draft before the

Scottish Parliament.

Committee consideration

55. The Scottish Government considers that this power is required so that the standards and requirements can keep pace with academic research and practice concerning minority language planning and revitalisation. It argues that flexibility is required to allow a range of measures to be introduced for different bodies, different circumstances and different areas, as appropriate.
56. Given that the exercise of this power will have an impact on the statutory functions of public authorities, the Committee considers that the higher level of scrutiny afforded by the affirmative procedure is appropriate.

57. The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure

Section 12(2): Power for Scottish Ministers to set standards relating to Gaelic education

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

58. Section 12(2) of the Bill inserts a new section 6B into the 2016 Act, which confers a power on the Scottish Ministers to make regulations to prescribe the standards and requirements to which an education authority must conform in discharging its functions in relation to Gaelic learner education, Gaelic medium education and teaching of Gaelic in its provision of further education.
59. In preparing regulations, the Scottish Ministers must consult the various interested parties listed in subsection (4). Regulations may make different provisions for different purposes and different areas (including different parts of an education authority's area).
60. Regulations made under new section 6B will be subject to the negative procedure.

Committee consideration

61. The DPM states that this power is modelled on section 2 of the Education (Scotland) Act 1980 which provides the Scottish Ministers the power to make regulations prescribing the standards and requirements to which every education authority shall conform in discharging their functions under that Act. The Scottish Government considers it appropriate to keep a consistent level of Parliamentary scrutiny for regulations in relation to Gaelic education.
62. The DPM states further that the use of the negative procedure will allow for flexibility for adjustments to take place whilst providing scrutiny by the Scottish Parliament. The Committee agrees that the negative procedure gives Parliament a

sufficient level of oversight and is content with the explanation as to why the power has been taken.

63. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.

Section 18: Gaelic education delivery planning

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Negative

Provision

64. Section 18 modifies section 3 of the 2005 Act which sets out the requirements for Gaelic language plans. Where the authority preparing the plan is an education authority, the plan must set out the authority's plan for the provision of Gaelic education, and the authority must consult interested persons on those elements of the plan. This power is subject to the negative procedure.

Committee consideration

65. This is an adjustment to an existing power to make it clear that it enables provision to be made about the content of Gaelic language plans where the relevant public authority is an education authority. The applicable procedure (negative) is unchanged.

66. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.

Section 22(2)(a): Assessment – Power to make different provision for different areas

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Provision

67. Section 9(7) of the 2016 Act gives Scottish Ministers the power to vary the number of children which will trigger the requirement for a full assessment of Gaelic medium primary education provision. Section 22(2)(a) of the Bill modifies this power so that it can apply to different areas within an education authority's area.

Committee consideration

68. This is a modification of an existing power which allows it to be used with a greater degree of flexibility. The applicable procedure (affirmative) is unchanged.

69. The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.

Section 33: Standards relating to Scots language education

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Negative

Provision

70. Section 33 gives the Scottish Ministers power to make regulations to prescribe the standards and requirements to which an education authority must conform in discharging its functions in relation to Scots language education in the schools under its management. Regulations may make different provision for different purposes and different areas (including different parts of an education authority's area).

71. Regulations made under section 33 will be subject to the negative procedure.

Committee consideration

72. As with section 12 of the Bill (power to set standards for Gaelic education), this power is modelled on section 2 of the Education (Scotland) Act 1980, which provides the Scottish Ministers with a power to make regulations prescribing the standards and requirements to which every education authority must conform in discharging their functions under that Act. The Committee is therefore content with the Scottish Government's explanation as to why the power has been taken and that it is subject to the negative procedure.

73. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.

Section 36(1): Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative if textually amending primary legislation, otherwise negative procedure

Provision

74. Section 36(1) provides that the Scottish Ministers may, by way of regulations, make incidental, supplementary, consequential, transitional, transitory or savings provisions as they consider appropriate for the purposes of, in connection with, or for giving full effect to the Bill or any provision made under it. Such regulations may make different provision for different purposes and different areas. Any such

regulations may also modify primary legislation.

75. The affirmative procedure will apply where regulations amend primary legislation, otherwise the negative procedure will apply.

Committee consideration

76. This is a standard ancillary power.

- 77. The Committee finds the power acceptable in principle and is content with the specified parliamentary procedures which are dependent on whether or not the power is exercised to amend primary legislation.**

Section 37(2): Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Laid, no procedure

Provision

78. Section 37(2) is a standard commencement provision, which allows the Scottish Ministers bring the Bill into force on such day as they appoint (except for the final provisions in Part 3 of the Bill (sections 36, 37 and 38) which come into force on the day after Royal Assent).
79. Section 37(3) provides that the regulations may include transitional, transitory or savings provisions and may make different provisions, and may make different purposes and different areas (including different parts of the area of an education authority).
80. In accordance with normal practice, the commencement regulations will be laid before the Parliament, but will not be subject to any further procedure.

Committee consideration

81. This is a standard commencement power.

- 82. The Committee finds the power acceptable in principle and is content that it is not subject to any Parliamentary procedure.**

