

EDUCATION (GUIDANCE ABOUT COSTS OF SCHOOL UNIFORMS) BILL
MEMORANDUM FROM THE DEPARTMENT FOR EDUCATION TO THE
DELEGATED POWERS AND REGULATORY REFORM COMMITTEE

INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Education (Guidance about Costs of School Uniforms) Bill. The Bill was brought from the House of Commons and introduced in the House of Lords on 12 March 2021. This memorandum identifies the provisions of the Bill which confer delegated powers to issue statutory guidance. It explains why the power has been taken and the nature of, and reason for, the procedure selected.
2. We will share a draft of the statutory guidance before the Bill reaches its Committee Stage in the House of Lords.

PURPOSE AND EFFECT OF THE BILL

3. A 2015 Department for Education survey found that nearly one-fifth of parents and carers reported that they had suffered financial hardship as a result of purchasing their child's school uniform. The Government first committed to putting the cost aspects of the current non-statutory uniform guidance on a statutory footing in 2015, as part of the 'A Better Deal' Plan¹, to ensure that families get best value for money for school uniforms. It has been the Government's consistent and public position to take this forward ever since.
4. Decisions on individual schools' uniform policies, including how the uniform is supplied, are a matter for schools. The current non-statutory guidance² published by the Department is designed to support schools when making these decisions. The existing non-statutory guidance includes a section on cost considerations which advises schools to give high priority to cost considerations and sets out a number of recommendations in support of this. It also covers a number of other

¹ <https://www.gov.uk/government/publications/a-better-deal-boosting-competition-to-bring-down-bills-for-families-and-firms>

² <https://www.gov.uk/government/publications/school-uniform>

issues relating to uniform such as equalities considerations. In keeping with the original commitment, the scope of the Bill is focused on issuing statutory guidance on cost, rather than on all the content covered by the Department's current non-statutory guidance.

5. Clause 1(1) of the Bill confers a duty on the Secretary of State to issue statutory guidance to the appropriate authorities of relevant schools in England about the cost aspects of school uniform policies to which they must have regard when developing and implementing a school uniform policy for the school. Under clause 1(4), the Secretary of State may amend the guidance from time to time.
6. 'Relevant school' is defined in clause 1(5) as: a) an Academy school; b) an alternative provision Academy; c) a maintained school (within the meaning given by section 437(8) of the Education Act 1996); d) a non-maintained special school (within the meaning given by section 337A of that Act); and e) a pupil referral unit not established in a hospital.
7. 'Appropriate authority' is defined in clause 1(6) and means a) in relation to an Academy school, an alternative provision Academy or a non-maintained special school, the proprietor; b) in relation to a maintained school, the governing body and c) in relation to a pupil referral unit, the local authority.
8. The Bill extends to England and Wales and applies to England only. It will come into force two months after receiving Royal Assent.

DELEGATED POWERS

8. Clause 1(1) confers a duty on the Secretary of State to issue statutory guidance.

Clause 1(1): Guidance about the costs of school uniforms: England

Duty conferred on: Secretary of State

Duty exercisable by: Statutory guidance

Parliamentary procedure: None

Context and purpose

9. Clause 1(1) of the Bill confers a duty on the Secretary of State to issue statutory guidance to the appropriate authorities of relevant schools in England about the costs aspects of school uniform policies.
10. The purpose of the statutory guidance is to provide practical advice to schools and other responsible authorities on the development and implementation of their school uniform policies in relation to the issue of cost.

Justification for taking the power

11. The matters which will be dealt with via the guidance are targeted and operational in nature and it would not be appropriate to include those sorts of details either on the face of the Bill or in a statutory instrument. The Department intends to include the following issues in the guidance: cost considerations when creating or reviewing a uniform policy including minimising the use of branded items, regular competitive tendering for uniform suppliers, provision of second-hand uniform and other support, providing information to parents about uniform requirements, complaints and pupil non-compliance.
12. Statutory guidance provides a level of flexibility and responsiveness so that, over time, it can be amended, improved and updated to keep pace with events and operational good practice. Further, by making provision in guidance, it allows us to set out content in a way which is clear and accessible for the intended audience – i.e. school leaders, and other interested parties, such as parents, local authorities and uniform suppliers (who are unlikely to be legally qualified). This would be more difficult if provision were to be made of the face of the Bill or

by statutory instrument. Finally, by imposing a 'have regard' duty on appropriate authorities under clause 1(3), it does not impose a particular course of action.

13. In adopting this approach, the Department has taken steps to ensure that the duty in clause 1(1) is narrowly drafted. It only allows for the Secretary of State to issue guidance about 'the costs aspects of school uniform policies' which clause 1(2) defines as 'aspects of school uniform policies that the Secretary of State considers relevant to the costs of school uniforms'. This is very limited. The current non-statutory guidance on school uniform is considerably wider but it is only the costs aspects which the Department has decided to put on a statutory footing.

Justification for the procedure

14. The Department does not consider it appropriate to subject the statutory guidance to parliamentary procedure.
15. The new statutory cost guidance will be based on the cost aspects of the current non-statutory guidance and will be drafted with engagement of representatives of schools, parents and key stakeholders including the Children's Society and the Schoolwear Association. It will also take into account the points made by members and peers throughout the progression of the Bill through Parliament. The Minister has committed in the House that similar engagement will be undertaken for any future revisions to the statutory guidance.
16. The Department produces a large amount of detailed and technical statutory guidance to support schools and the wider education sector. Parliament has already determined that that guidance should not be subject to Parliamentary scrutiny and the approach taken here is consistent with that position. For example, neither the Home to school travel and transport guidance (issued under sections 508A(7) and 508D(1) of the Education Act 1996) or the Sex and Relationship Education guidance (provided for under sections 80A(1) of the Education Act 2002 and 403(1A) of the Education Act 1996) are subject to Parliamentary scrutiny.

17. The statutory guidance is not equivalent to a Code of Practice. Education Codes of Practice (such as the School Admissions Code and the Special Educational Needs and Disability (SEND) Code) are broad and extremely detailed texts which outline all the central requirements for an area and have many aspects which are controversial and may require debate and amendment. These Codes are subject to Parliamentary scrutiny. By contrast, the school uniform guidance is a very limited document covering one aspect of school uniform which will sit alongside and complement the non-statutory guidance. This sets it apart from the much more comprehensive remit of the Department's Codes of Practice.
18. The duty in section 571 of the Education Act 1996 for the statutory guidance to be published in such manner as the Secretary of State sees fit will ensure it remains accessible to those who need to refer to it.