

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 Amendments round 3)

A. INTRODUCTION

1. The Government tabled further amendments to the Children's Wellbeing and Schools Bill ("the Bill") at Commons Consideration of Lords Amendments round 3 that 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 Bill. It explains for each amendment that confers new, or amends existing, delegated powers on the Government, the nature of the powers and, where necessary, the reasons for the parliamentary procedure.
2. Abbreviations:
"SSFA 1998" means School Standards and Framework Act 1998

B. DELEGATED POWERS

Clause 56(2): Amendment to new section 88IA of SSFA 1998 – Power to make regulations about the adjudicator's exercise of power to set a Published Admission Number

Power conferred on: the Secretary of State

Power exercisable by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

3. As outlined in the Bill's original Delegated Powers Memorandum, school admission authorities are required to decide and publish the number of pupils intended to be admitted to each main year of entry in a school, known as a published admission number (PAN). In certain circumstances, a school's determined PAN can be appealed to the independent Schools Adjudicator. Clause 56 (as in 'HL Bill 84') gives the adjudicator the power to decide the PAN where they uphold such objections.
4. This clause confers on the Secretary of State the power to make regulations setting out matters the adjudicator must or must not take into account when deciding a PAN and preventing the adjudicator from making a determination where it would have an effect

specified in the regulations. For example, not setting a PAN that causes a school to breach the infant class size limit, and requiring the adjudicator to consult the admission authority about the impact of the PAN on the school.

5. The amendment tabled by the government at Commons Consideration of Lords Amendments (CCLA) round 3 requires (on the face of the Bill) the adjudicator to consult with three named parties, and amends the regulation making power to enable the Secretary of State to specify, through regulations, additional persons whom the adjudicator must consult before deciding a PAN. It also retains the ability for the Secretary of State to make regulations setting out other matters which the adjudicator must or must not take into account when deciding a PAN, as provided for by the original power, in addition to putting on the face of the Bill a requirement to take into account the potential impact on the quality of education, and on the ability to give effect to parental preference, at the school and at other local schools within a relevant area.

Justification for the power

6. The justification for the power is set out in the original Delegated Powers Memorandum, which in summary is to enable the Secretary of State to ensure, by regulations, that operationally important matters are taken into account by the adjudicator when making their determination. This approach will ensure the regulations can be updated where necessary, for example to remain responsive where Ofsted or accountability measures change.
7. The justification for amending the regulation making power at CCLA round 3 is that, in coming to their decision, the adjudicator will need to consider a range of relevant views. For example, in the case of a school designated with a religious character, it will be important for the adjudicator to consider the views of the school's religious body. The amendment therefore makes clear that the Secretary of State will be able to require the adjudicator to consult with such parties where necessary. Specifying these parties in regulations will ensure that all parties are clear on the process and that relevant views are considered before the adjudicator takes a decision.

Justification for the procedure

8. Justification for the negative procedure remains the same as set out in the original Delegated Powers Memorandum. In summary, it is considered appropriate because an existing power in schedule 5 of the SSFA 1998 contains a power that deals with similar matters to the clause in this Bill, to make regulations relating to the adjudicator's decision-making procedure, which is subject to the negative procedure.