

Children (Scotland) Bill

[As Amended at Stage 2]

Supplementary Delegated Powers Memorandum

Introduction

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.7.10 of the Parliament's Standing Orders to assist the Delegated Powers and Law Reform Committee in its consideration of the Children (Scotland) Bill. This memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2.
2. The contents of this memorandum do not form part of the Bill, and entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament. This supplementary memorandum should be read in conjunction with the Delegated Powers Memorandum published to accompany the Bill as introduced.
3. In this memorandum, "the 1995 Act" means the Children (Scotland) Act 1995.

Provisions Conferring Power to Make Subordinate Legislation Introduced or Amended at Stage 2

4. The following delegated powers were inserted into the Bill at Stage 2:
 - the power in new section 11A (new section 11ZC(1) of the 1995 Act) requiring the Scottish Ministers to make regulations in connection with the provision of legal aid for alternative methods of dispute resolution in relation to cases under section 11 of the 1995 Act
 - the power in new section 11A (new section 11ZC(5) of the 1995 Act) to allow the Scottish Ministers to modify the list of alternative

This document relates to the Children (Scotland) Bill (SP Bill 52A) as amended at Stage 2

methods of dispute resolution set out in new section 11ZC(4) of the 1995 Act

- the power in new section 11B (new section 11ZD of the 1995 Act) requiring the Scottish Ministers to make provision for a pilot scheme in connection with mediation information meetings for parties in cases under section 11 of the 1995 Act
- the power in section 16(2) (new section 11F(5) of the 1995 Act) enabling the Scottish Ministers to amend the list of persons who can investigate an alleged failure to obey an order under section 11 of the 1995 Act

5. The following delegated power, which was included in the Bill at introduction, was amended at Stage 2:

- the power in section 9(3) (new section 101C(1) of the 1995 Act) regarding the regulation of contact services.

6. The delegated powers provisions are listed below, by reference to the section of the Bill and any Act into which they are inserted, together with a short explanation of what each power allows.

Delegated Powers

Section 9(3) / 101C of the 1995 Act – power to make provision about the regulation of a contact service provided in relation to the requirements of a contact order

Power conferred on:	The Scottish Ministers
Power exercisable by:	Regulations made by Scottish statutory instrument
Parliamentary procedure:	Affirmative
New or amended power:	Amended

Provision

7. Section 9(3) of the Bill inserts new section 101C into the 1995 Act. New section 101C(1) confers power on the Scottish Ministers to make provision about the regulation of a contact service provided in relation to the requirements of a contact order. New section 101C(2) lists various matters

This document relates to the Children (Scotland) Bill (SP Bill 52A) as amended at Stage 2

which may be included in such regulations. This list was amended at Stage 2 so that the regulations may include provision about the registration of, and standards to be met in relation to, both contact service providers and contact centres. The list was also amended so that the regulations may include provision about the conditions on which a contact service provider may provide a contact service at a place that is not registered as a contact centre, including conditions about the minimum standards of accommodation at a place if it is to be used for that purpose.

Reason for Taking Power

8. The amendments to the power at Stage 2 have two purposes. Firstly, the amendments ensure that contact service providers and individual contact centres may be registered and de-registered independently of one another. This is intended to cater for the situation where, for example, a contact service provider operates multiple contact centres, and only one of those centres fails to meet the minimum standards which are set out in regulations. The amendments bring flexibility to the power by allowing provision to be made so that individual contact centres which do not meet the relevant regulatory standards may be de-registered without affecting other centres run by the same provider which do meet the relevant standards.

9. Secondly, the power would allow the regulations to include provision about the conditions on which a contact service provider may provide contact services at a place that is not registered as a contact centre. This amendment is intended to ensure that ad hoc or 'floating' contact services may be provided in rural or remote areas where there is no permanent contact centre while ensuring that any premises used in this way for contact services meet minimum standards of accommodation.

Choice of Procedure

10. The power in new section 101C(1) of the 1995 Act remains subject to the affirmative procedure. The Government considers that this continues to represent the appropriate level of Parliamentary scrutiny over the regulations.

This document relates to the Children (Scotland) Bill (SP Bill 52A) as amended at Stage 2

Section 11A / 11ZC(1) of the 1995 Act: Power to make provision for legal aid to be available to enable parties to participate in alternative methods of dispute resolution.

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

New or amended power: New

Provision

11. Section 11A inserts new section 11ZC into the 1995 Act. New section 11ZC(1) provides that the Scottish Ministers must by regulations make provision:

- making legal aid available to parties in dispute for the purpose of undertaking alternative methods of dispute resolution
- enabling the parties to secure appropriate legal advice to engage in alternative methods of dispute resolution before, or instead of, commencing court proceedings, or as directed by the court

12. Alternative methods of dispute resolution is defined to mean methods by which the parties involved in a family dispute may resolve that dispute without recourse to legal action through the court process.

13. A draft of the regulations must be laid before the Parliament no later than 6 months after Royal Assent.

Reason for Taking Power

14. The power provides for legal aid to be available to parties in dispute for the purpose of undertaking, and securing legal advice to engage in, alternative methods of dispute resolution. The aim of the power is to promote the use of alternative dispute resolution in family disputes.

This document relates to the Children (Scotland) Bill (SP Bill 52A) as amended at Stage 2

Choice of Procedure

15. The affirmative procedure is considered appropriate as there may be significant public interest in the way in which these regulations are to be applied and the impact on legal aid provision.

Section 11A / 11ZC(5) of the 1995 Act: Power to modify the list of alternative methods of dispute resolution set out in new section 11ZC(4).

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

New or amended power: New

Provision

16. Section 11A inserts new section 11ZC into the 1995 Act which, as discussed above, provides for legal aid for alternative methods of dispute resolution. Section 11ZC(4) lists (non-exhaustively) the methods of alternative dispute resolution to which legal aid is to be available. They are:

- mediation
- arbitration
- collaborative law
- family group conferencing

17. New section 11ZC(5) allows the Scottish Ministers by regulations to modify the list of alternative methods of dispute resolution for the time being set out in subsection (4). (The text of the Bill refers to the list being in subsection (3), but the Government believes this to be a typo.)

Reason for Taking Power

18. This power gives the flexibility to allow the list of alternative methods of dispute resolution to be kept up to date and to reflect any new methods in respect of which the Scottish Ministers consider that legal aid should be made available, without the need for primary legislation on each occasion.

This document relates to the Children (Scotland) Bill (SP Bill 52A) as amended at Stage 2

Choice of Procedure

19. The affirmative procedure is considered appropriate for the exercise of this power as it permits the modification of primary legislation. There may also be significant public interest in the way in which these regulations may impact on legal aid provision.

Section 11B / 11ZD(1) of the 1995 Act: Power to make provision for a pilot scheme to enable the court to require parties to attend a mediation information meeting.

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

New or amended power: New

Provision

20. Section 11B inserts new section 11ZD into the 1995 Act. Section 11ZD(1) requires the Scottish Ministers, by regulations, to make provision for a pilot scheme for the purpose of enabling the court, before an order is made under section 11 of the 1995 Act, to require the parties in dispute to attend a mediation information meeting on the options available to resolve the dispute, except where the dispute involves domestic abuse.

21. Section 11ZD(2) allows the Scottish Ministers in the regulations to provide for judicial discretion to allow the parties in dispute not to attend a mediation information meeting where reasonable mitigating factors have been given.

22. A draft of the regulations must be laid before the Parliament no later than 6 months after Royal Assent.

Reason for Taking Power

23. Taking the power gives the Scottish Ministers flexibility to develop the parameters of the pilot scheme in subordinate legislation, including where, when and for how long the pilot should run as well as whether any further exclusions or exceptions would be appropriate. The Scottish Ministers would

This document relates to the Children (Scotland) Bill (SP Bill 52A) as amended at Stage 2

need to discuss the detailed operational arrangements for the pilot scheme with the Scottish Courts and Tribunals Service as well as with the bodies providing the mediation meetings to which the pilot relates.

Choice of Procedure

24. The affirmative procedure is considered appropriate to give a high level of scrutiny to the detail of a pilot scheme of this nature.

Section 16(2) / 11F(5) of the 1995 Act – Power to modify new section 11F(3) of the 1995 Act to add, vary or remove a description of person who can investigate an actual or alleged failure to obey an order.

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

New or amended power: New

Provision

25. Section 16(2) inserts new section 11F into the 1995 Act, which is concerned with the court's duty to investigate a failure to obey an order under section 11 of the 1995 Act. New section 11F(3) provides that the court may appoint a child welfare reporter to investigate and report to the court on the person's failure (or alleged failure). New section 11F(5) provides that the Scottish Ministers may by regulations modify section 11F(3), to add, vary or remove a description of person.

Reason for Taking Power

26. This power ensures that if the Scottish Ministers consider it appropriate, other persons may be appointed to investigate an actual or alleged failure to obey an order, in addition to or instead of this being carried out by a child welfare reporter. This flexibility is necessary as it may in future be considered appropriate to appoint other categories of persons to investigate a person's failure (or alleged failure) to obey an order.

This document relates to the Children (Scotland) Bill (SP Bill 52A) as amended at Stage 2

27. This also reflects a similar provision in section 15(6), which gives the Scottish Ministers the power to modify the list of persons who can explain decisions to the child.

Choice of Procedure

28. The affirmative procedure is considered appropriate to give a high level of scrutiny to the detail of changes to primary legislation. The use of the affirmative procedure also mirrors the affirmative procedure required to modify the list of persons who can explain decisions to the child under section 15(6).

This document relates to the Children (Scotland) Bill (SP Bill 52A) as amended at Stage 2

Children (Scotland) Bill

Supplementary Delegated Powers Memorandum

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.scottish.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at: www.scottish.parliament.scot/documents