



Lord Nash

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Baroness Fookes
Delegated Powers and Regulatory Reform Committee
House of Lords
London
SW1A 0PW

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Delegated Powers and Regulatory Reform Committee, 21st Report – Children and Social Work Bill

Dear Baroness Fookes,

I am writing in response to the above report and the Committee's consideration of the Government's amendments 12 and 13 to the Children and Social Work Bill. I am extremely grateful for the Committee's swift work in considering these amendments so soon after they were brought from the Commons.

The Committee has made two similar recommendations in relation to each of amendments 12 (Education relating to relationships and sex – 'RSE') and 13 (Other Personal, Social, Health, and Economic Education – 'PSHE'). It recommends that regulations under both new clauses should in all cases be subject to affirmative scrutiny, and that guidance under those clauses should also be subject to parliamentary scrutiny (the affirmative procedure for guidance with respect to matters covered by amendment 12; the negative procedure for guidance covered by amendment 13).

Procedure for making regulations

The Education Acts of 1996 and 2002 and the Education (Independent School Standards) Regulations 2014 set out schools' current duties in relation to the teaching of sex education and PSHE. The policy statement¹ accompanying amendments 12 and 13 envisages that substantial amendments will be made to this existing framework in order to make it mandatory for schools to teach Relationships

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/595828/170301_Policy_statement_PSHEv2.pdf

Education (Primary), Relationships and Sex Education (Secondary) and, subject to the outcome of a thorough consideration of the matter, PSHE (all schools).

In making these amendments, the Government took the view that it would be important for Parliament to scrutinise those substantial changes to the existing legislative framework through the application of the affirmative procedure. The Government further envisaged the possibility of regulations which would not amend primary or secondary legislation but make supporting provision as to the discharge of the new duties – in particular providing further detail of the guidance requirements set out in both amendments 12 and 13. Such provision would deal with operational questions as to the manner in which subjects are taught and as such the negative procedure was considered proportionate.

However, I can reassure the Committee that in practice the affirmative procedure will apply to all the regulations which we will be making to establish the new regime. This is because it is the Government's intention to bring forward a comprehensive set of regulations that would amend existing legislation, set out the new duties on schools and provide for any additional supporting measures.

Guidance

It is Government policy that guidance should not be used to circumvent the usual way of regulating a matter. If the policy is to create rules that must be followed, the Government accepts that this should be achieved using regulations subject to parliamentary scrutiny and not guidance. The purpose of guidance is to aid policy implementation by supplementing legal rules.

There is vast range of statutory guidance issued each year and it is important that guidance can be updated rapidly to keep pace with events. There is, of course, nothing to prevent Parliament from scrutinising guidance at any time should it so choose. It is my intention to consult fully on any guidance to be issued under these amendments and I will be very happy to provide copies of draft guidance to both Houses at that point.

I trust the Committee and wider members of the House find this response helpful.

Yours sincerely,



LORD NASH