INTRODUCTION

1. This document relates to the Scottish Qualifications Authority Bill introduced in the Scottish Parliament on 31 January 2002. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 47–EN.

POLICY OBJECTIVES OF THE BILL

Background

2. The extensive difficulties encountered by the Scottish Qualifications Authority (“the SQA”) in the delivery of the summer exams round in 2000 have been well documented. In response, three separate reviews into the root causes of those problems were carried out: the Education, Culture and Sport (ECS) Committee’s Exam Results Inquiry; the Enterprise and Lifelong Learning (ELL) Committee’s Inquiry into the Governance of the Scottish Qualifications Authority1; and A Review into Exam Results Issues Concerning the Scottish Qualifications Authority, carried out by Deloitte & Touche on behalf of the Scottish Executive. On the basis of those reports, in co-operation with education stakeholders, the SQA and the Executive implemented a number of changes to the management of the SQA and particularly the delivery of the diet, in time for the 2001 exams round.

3. On 15 August 2001, the Minister for Education, Europe and External Affairs announced to the Parliament in response to a Parliamentary Question (S1W-17524) that the Executive had begun an internal review of the options for the future status of the SQA. He explained that to avoid unnecessary disruption to the continuing work of the SQA, the review would be progressed swiftly with an announcement on the outcome in early autumn. On 13 September 2001, the Executive published a paper2 describing that review and its conclusions. These are summarised below:

- Scotland needs an effective and reliable awarding body that is independent of political interference and which delivers a rational and coherent awards system.

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Therefore, abolishing the SQA is not a credible option, nor is transfer of its functions to a core department of the Executive.

- The priorities that led to the creation of a single national awarding body – the promotion of parity of esteem between vocational and academic qualifications and the creation of a coherent and integrated national qualifications framework – remain key objectives, accepted by the majority of stakeholders. Accordingly, it would not be appropriate to break up the SQA.

4. The Executive considered a variety of alternatives and a discussion of the various issues around each of the options rejected is included later in this document. The review eventually focussed on two options in particular detail: Non-Departmental Public Body (NDPB) or Executive Agency. The review concluded that while agency status would provide more direct lines of accountability and responsibility to Ministers in respect of the SQA’s functions, it could bring attendant problems in terms of the impact on the independence of exams and encourage the view that these might be subject to political influence. Such a move would also lead to significant disruption, raising the possibility of that disruption adversely affecting delivery of future exams rounds. Neither of the Parliament’s Committee inquiries into the SQA recommended that the organisation’s governance model be altered radically. Indeed, the Enterprise and Lifelong Learning Committee specifically rejected agency status.

5. Effective management and improved communications will be key to successful delivery of the SQA’s functions. The pressures and concerns experienced by all those involved even in this year’s broadly successful process make it clear that a great deal remains to be done and that this work is best done against a background of stability. The inevitable disruption associated with any radical change of status would be an unacceptable distraction, which could put delivery of next year’s exams at risk. The Executive considers that such a risk is not justified when confidence in Scottish education as a whole is at stake. Accordingly, it is proposed that the SQA will retain its status as an Executive NDPB, and this will be accompanied by reform of the Board; effective stakeholder involvement; and measures to secure permanent improvements in the management and organisation of the SQA. This will involve both legislative and non-legislative change.

LEGISLATIVE PROPOSALS

The Board

6. The Education (Scotland) Act 1996 (c.43) (“the 1996 Act”) currently provides that the SQA must comprise between 16 and 25 members (including the chair and the chief executive). In its report, the ELL Committee commented that a board of this size was large and unwieldy and that a board of seven to nine, plus a chief executive, would be more appropriate and would allow more focus. This view has been widely accepted and the Executive agrees that it is right that a smaller board should be introduced and that the focus of the board should be on the governance and management of the SQA. The Executive also strongly believes that the success of the exams system requires the close participation of all stakeholders and that the right mechanism for this is a new Advisory Council. Its proposals on the Advisory Council are set out in more detail below.
7. The Executive’s objective is that the SQA will comprise between 8 and 10 members, including a chair and a chief executive.

8. The Executive intends that all board members, including the chair but excluding the chief executive, will be appointed by the Scottish Ministers: this is consistent with the recommendation in the ELL Committee’s report. The chief executive will continue to be appointed by the SQA with the approval of Ministers. The SQA should continue to be able to co-opt members to its committees. The Bill provides for members of the current board (other than the chief executive) to cease to hold office and for 7 to 9 new appointments, including a chair, to be made. This would allow members of the existing board to be appointed to the new board. This approach is required to facilitate the reduction in the number of board members, the introduction of remuneration for board members, and the new requirement that all board members be appointed by Ministers. This approach has been agreed with the Commissioner for Public Appointments. Appointments to the SQA board will continue to be regulated by the Commissioner for Public Appointments as set out in the Code of Practice for Ministerial Appointments to Public Bodies, or by guidance issued by any future Scottish Commissioner for Public Appointments.

9. The provision in Schedule 1 to the 1996 Act limiting appointments to the SQA to a maximum four-year term will be removed. The Bill therefore repeals that provision. Instead, future appointments will be made in accordance with the guidance issued by the Commissioner for Public Appointments (or by the Scottish Commissioner for Public Appointments if such a position is created). This currently states that appointments may extend for a maximum of five years, with the possibility of two consecutive appointments, totalling a maximum of ten years in post.

10. The 1996 Act currently provides for the SQA to pay remuneration and provide a pension, allowance or gratuity, plus compensation for loss of office, to the chair; and to pay travel and related allowances to all members. In its report, the ELL Committee recommended that there should be remuneration for all board members. The Executive intends that all members, including the chair, should be entitled to remuneration and travel and related allowances at levels to be set by the Scottish Ministers, and that they should not be entitled to a pension, other allowance or gratuity or compensation for loss of office.

11. The ELL Committee also recommended that consideration should be given to requiring board members to put the interests of the SQA ahead of any other interests. While the current legislation sets out arrangements for dealing with conflicts of interest, the Executive recognises the wider public concern about transparent and accountable standards for members of public bodies and, through the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), is putting in place a clear framework of behaviour for members of NDPBs. This framework will provide for a tailored Code of Conduct for members of the SQA. The Code – prepared under that Act – will address the ELL Committee’s concerns about members’ interests and provide wide public assurance; no further provisions are necessary in this Bill. Paragraph 3 of Schedule 1 to the 1996 Act currently requires Ministers to satisfy themselves that members of the SQA have no interests likely to affect prejudicially their performance of their duties. As the 2000 Act and the Code address these issues, these provisions are no longer necessary, and the Bill repeals them.
12. In line with the reduction in board members, the Executive intends to reduce the quorum for a meeting of the SQA board from nine to five members.

**Proceedings of the Board**

13. The Executive proposes to introduce a number of other changes that will complement the new board arrangements. It considers that the effective governance of the SQA requires good quality and frequent communication and discussion at board level. This was a particular issue for the SQA board in the run up to summer 2000 and one of the recommendations of the subsequent ELL Committee report was that the board should meet monthly. The Executive recognises the need for reasonable flexibility and wishes to avoid tying the SQA into a pattern of meetings that may become inappropriate in the future. However, it considers this issue to be sufficiently important that the Bill confers a power to make regulations on issues relating to the proceedings of the board, such as the frequency of board meetings. This power would enable the Scottish Ministers, if necessary, to set out requirements for the proceedings of the board in regulations if the board was seen to be failing to manage its own proceedings effectively. Any such regulations would be subject to annulment in pursuance of a resolution of the Scottish Parliament.

14. The Executive believes that another component of effective communication must be good links between the Executive and the board. The Executive recognises the on-going value of such dialogue while the SQA continues its progress towards full and effective delivery of exams and qualifications. In terms of both the immediate future and in order to provide the Scottish Ministers with necessary assurance over the longer term the Bill confers power on the Scottish Ministers to make regulations for a representative of the Scottish Ministers to participate in board meetings. That representative would provide a direct channel for the Scottish Ministers’ views to be passed to the SQA board and for the board’s views to be relayed to the Scottish Ministers. The nature of that participation may be subject to change over time and so, again, it is more appropriate to deal with this issue under the power to make regulations already described, which will provide a better opportunity to make arrangements that fit the circumstances. Such regulations would be subject to annulment in pursuance of a resolution of the Scottish Parliament.

**Advisory Council**

15. The new, smaller, SQA board is intended to focus on governance and management issues. To complement this, the Bill sets out the framework for establishing a new Advisory Council. The Advisory Council’s primary role will be to create a strong mechanism for stakeholders to participate in, and offer advice on, relevant SQA and qualification issues. The SQA board and the Advisory Council will need to build a strong working relationship which, while recognising their differences, fosters trust and respect of each others’ views. The importance of such a relationship is underlined by placing a statutory duty on the SQA and the Advisory Council to consult each other on all relevant matters.

16. Consultation on the draft Bill elicited a range of opinion on the Advisory Council’s remit and relationship with the SQA board and the Scottish Ministers. While respondents agreed that the Advisory Council should advise on the SQA’s own functions, there was widespread caution about any extension of this remit. In response to these comments, the Executive proposes that
the Advisory Council will have a remit to provide advice on the SQA’s functions as laid down in the 1996 Act, and to consider issues such as standards and assessment in relation to the SQA’s own qualifications and awards. Subsection (1)(c) of section 3 of the Bill gives Ministers the power to request advice on any issues related to the SQA’s qualifications, awards, functions and procedures. Ministers intend to work with the Advisory Council and the SQA to develop an annual work plan for the Advisory Council, which will set out its priorities for the year ahead. For example, it is the Executive’s intention that once the Council has been established, one of the first issues it will be asked to consider and provide advice on will be how to ensure wider understanding of standards in SQA qualifications and awards.

17. The Executive’s objective is that the composition of the Advisory Council should reflect the interests of a wide range of stakeholders with an interest in qualifications, assessment and other education issues related to the SQA’s functions. It should deliver benefits to the stakeholders who will gain an insight into a broader range of issues and be able to offer advice that takes account of both the specific issues in question and the wider context. Consultation would not be restricted to the Advisory Council and the Executive would continue to consult widely other people with an interest in particular issues as appropriate. Subsection (1) of section 4 of the Bill imposes a duty on the Advisory Council to consult others with an interest in the matters it considers or provides advice on, and to take account of their views. This is intended to ensure that the Council acts as an effective forum for the discussion of stakeholders’ views. The Executive intends that the Council’s focus should be on the contribution and involvement of stakeholders in the delivery of qualifications. The Executive frequently consults such stakeholders and proposes that the remit of the Council should enable it to provide advice to the Scottish Ministers on the full range of the SQA’s functions. Subsection (1) of section 3 makes provision for the Council to provide advice to the SQA or Scottish Ministers when requested to do so, and also allows the Council to provide advice to SQA or the Scottish Ministers on any matters relating to the SQA’s qualifications, awards, functions and procedures it thinks appropriate.

18. The wide variance in views concerning the remit of the Advisory Council highlights the need for flexibility and provides a clear argument in favour of establishing the Council by regulations, thereby allowing changes to the Council’s role and operations in response to changing circumstances. These regulations would be subject to annulment in pursuance of a resolution of the Scottish Parliament. Any such regulations will set out details such as the procedure for the appointment of members and a convener to the Advisory Council, and the procedure of the Council. The Scottish Ministers would also be able to use the regulations to make any other additional provision in respect of the Advisory Council that they considered appropriate. This regulation-making power offers more flexibility to amend the detail of the arrangements for the Advisory Council if that becomes appropriate at a future time.

19. Subsection (3) of section 3 of the Bill imposes a requirement that the convener of the Advisory Council must be a member of the SQA board. This is intended to provide a strong link between the board and the Advisory Council, ensuring that each body takes full account of the views of the other. The alternative possibility, that the convener of the Advisory Council should be appointed and then subsequently attend the SQA board on an ex officio basis, their presence on the board resting on their position as convener of the Council, was also considered. However, such an arrangement could threaten the establishment of a sense of corporate responsibility amongst the board members, by encouraging members to act as representatives of particular
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interests, rather than focus on the governance of the SQA, thus eroding the board’s effectiveness. This problem was identified during the ELL Committee’s inquiry into the SQA’s governance in the run-up to the 2000 exams round, and it will be important for the future success of the organisation that the board’s corporate effectiveness is maintained.

OTHER PROPOSALS

20. The paragraphs above outline the Executive’s legislative proposals for the reform of the SQA. These will be complemented by the introduction of a number of other, non-legislative, changes.

21. The Executive intends to continue to focus on the SQA’s delivery of its core functions. The Executive will continue to carefully monitor the SQA’s performance, and will work closely with the SQA to improve the organisation’s effectiveness and ensure continued successful delivery in future years. To assist in that process, the SQA’s Management Statement and Financial Memorandum will be re-drafted. This will:
   • set out the respective roles and responsibilities of the SQA and the Executive;
   • set clear priorities and objectives for the work of the SQA;
   • require the SQA to provide the Scottish Ministers with an annual plan setting out its plans for delivering each year’s exams and other objectives.

22. The new board will also be tasked with reviewing, in conjunction with the Executive, the effectiveness of the SQA’s delivery of functions and systems of financial management and control.

ALTERNATIVE APPROACHES

23. The purpose of the review of the status of the SQA discussed at paragraph 4 above was to identify the most appropriate future arrangements to enable the SQA to consolidate and build on the standards that were demonstrated in 2001. Six possible alternatives were identified:
   • Abolition
   • Privatisation
   • Contracting out and market testing of individual functions
   • Rationalisation or transfer of functions
   • Conversion to agency status
   • Retention as Executive NDPB

24. A fuller discussion of the issues around each option was published in the Scottish Executive consultation paper on the Bill, Scottish Qualifications – Delivering Success. However, a summary of the conclusions reached about each of the five options eventually rejected is included here for reference.
Abolition
25. Since the functions the SQA currently carries out are still considered to be required, abolition was not considered to be a viable option.

Privatisation
26. Privatisation might well offer a viable model for delivering the SQA’s functions. However, any benefits of privatisation would have to be set against the drawback that Ministerial control would be extremely limited in the event that problems similar to those experienced recently arose again in future. Partial privatisation may be viable in future, but this may be more effectively carried out under contracting out or market testing processes.

Contracting out and market testing individual functions
27. Contracting out of all the functions of the SQA is unlikely to prove a viable option in the short term, and was therefore rejected for the purposes of this review. In the longer term, further contracting out or market testing of individual areas of operations by SQA would merit further consideration regardless of the organisational status of the SQA. Clearly, it would be essential that any such contracts were properly specified and managed.

Rationalisation or transfer of functions
28. There are no other existing Scottish NDPBs, agencies or other areas of the public sector providing similar or complementary services and therefore no scope for the rationalisation or transfer of the SQA’s functions.

Agency Status
29. The SQA, as a NDPB, has in broad terms delivered the 2001 exams round successfully. However, this achievement has been accompanied by the application of significant additional resources and continuous monitoring by the Executive. As evidenced by the Deloitte & Touche report, the difficulties experienced by the SQA in the 2000 exams round were not directly caused by its NDPB status – they were caused by serious managerial and organisational weaknesses.

30. The type of functions carried out by the SQA determined its original NDPB status. The need for these functions has not diminished and neither has the need for the level of independence offered by an NDPB, operating as it does at arm’s length from government. However, because of that distance, the NDPB model does tend to make rapid and effective intervention difficult for the Scottish Ministers when operational matters are not being handled satisfactorily.

31. Transferring the functions of the SQA to an Executive Agency would allow more direct Ministerial influence and control over the organisation. This might provide earlier warning of potential problems and more direct intervention to prevent a major crisis from occurring. Since SQA staff would become Executive staff it would also make it easier to move staff from other areas of the Executive into the Agency to fill key staffing gaps. However, the closer link to the Scottish Ministers might be perceived as problematic, appearing to allow political interference in assessment and certification. In practice, these problems might be avoided through appropriate provisions in an Agency framework document, although such provisions would be non-statutory.
It should also be noted that there was a clear preference for NDPB status when the SQA was established in order to make the distance from Ministers explicit.

32. While statutory provisions to transfer the SQA’s functions to an Executive Agency would be relatively simple – existing functions would simply transfer to the Scottish Ministers - in practical terms, the transition to agency status could be significantly disruptive to the organisation. Recent practical experience of this type of transfer of functions indicates that there could be further serious disruption of operations and staff morale problems. There could also be further losses of expertise. In particular, the need to transfer staff onto terms and conditions of service closer to those of the Executive would pose a serious administrative challenge, as well as adding to morale issues.

33. Both of these organisational models are options for delivery of the SQA’s functions. However, an NDPB provides a delivery vehicle that best meets the Executive’s policy objectives in relation to the accrediting and awarding of qualifications below degree level for the following reasons:

- A NDPB more clearly meets the requirement for independence in delivering the accrediting and awarding functions.
- Were the SQA’s functions to be transferred to an Executive Agency the existing management and operational problems would still have to be addressed. Change of status in itself does not guarantee a resolution to these problems.
- Setting up an Agency would lead to significant disruption among staff at the SQA with the possibility of that disruption adversely affecting delivery of the 2002 exams round.
- Although it is clear the SQA has significant operational and management problems, these have been independently identified and remedial action is continuing to address them. Some progress on these issues is evident in the successful delivery of this year’s exams round.

34. Overall, the Executive considered the maintenance of the SQA’s independence and the potential risk to the stability of the organisation implied by a transfer to Agency status to be persuasive arguments against any such transfer. It was therefore decided to retain the SQA as an NDPB, while introducing a measure of reform to the organisation’s governance and management arrangements.

CONSULTATION

35. In order to make rapid progress in amendments to the SQA’s governance regime, and so avoid possible risk to the 2002 exams rounds, the consultation period was reduced to six weeks, rather than twelve as would normally be the case. The consultation therefore ran from 12 October to 23 November 2001. Consultation documents were circulated widely to all education and other organisations that might have an interest in these areas, in line with Executive guidelines on the conduct of consultation exercises. In addition, recipients of the consultation document were invited to attend seminars to discuss the key proposals included in the draft Bill. Two briefings were also held for SQA staff. A full report on the consultation and the responses...
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received has been provided to the Scottish Parliament Information Centre, and copies of the report and the responses themselves, can be viewed by contacting the Scottish Executive Library Information Service.

36. The responses indicated broad consensus on the need to reduce the size of the board, respondents agreeing that a smaller board focussed on strategic issues would provide more effective governance of the SQA. There was similar consensus on the consequent need to introduce an Advisory Council to represent stakeholder interests. The form and remit of the Advisory Council generated a range of opinion and suggestions. These tended to highlight the need to ensure that the Advisory Council was able to represent all SQA stakeholders, while expressing concerns that the Advisory Council would have to be carefully managed to ensure its effectiveness. The Executive concurs with both of these points, and intends to work with the SQA and the Council to produce an annual work plan for the Council. The Bill has also been amended to place a duty on the Council to consult stakeholders.

37. Proposals to make provision for regulation-making powers to deal with board proceedings and representation of the Scottish Ministers at board meetings generated a mixed response. There was overall support for provision to regulate the frequency of board meetings if necessary, to ensure that the board was being sufficiently active in governing the organisation. However, there was less consensus on the desirability of provision to regulate for representation of the Scottish Ministers at meetings. Many respondents welcomed the more effective communication between the board and the Scottish Ministers that this would bring, but a small minority expressed concern that such a presence might erode the independence of the board. The Executive recognises these concern but is satisfied that its proposals provide a proper balance between ensuring that the board’s proceedings are effective and allowing the board to put in place its own arrangements.

EFFECTS ON EQUAL OPPORTUNITIES

38. The Bill will have no negative impact on the Executive’s commitment to promote equal opportunities in public appointments. Appointments to the board will be carried out in line with the Code of Practice issued by the Commissioner for Public Appointments. The principles of equal opportunity and diversity are inherent within the appointments process. Similarly, the remuneration and allowances payable to the board will be set in line with existing policies intended to ensure openness, equality and greater accessibility. Appointments to the new Advisory Council will be laid down by regulation after the coming into force of these proposals, but would again be carried out in accordance with existing guidance on public appointments. The various terms and conditions and procedures of the Advisory Council are also to be set out in regulations subsequent to the coming into force of this legislation. The Executive will ensure that those regulations are prepared in line with existing policies on equal opportunities.

EFFECTS ON HUMAN RIGHTS

39. The Bill will have no impact on human rights.
EFFECTS ON ISLAND COMMUNITIES

40. The Bill will have no particular impact on island communities.

EFFECTS ON LOCAL GOVERNMENT

41. The Bill will have no negative impact on local government. Local authorities are amongst the largest users of the SQA’s services – improvements in the SQA’s governance and management should contribute to provision of a better service to local authorities and other users.

EFFECTS ON SUSTAINABLE DEVELOPMENT

42. The Bill will have no negative impact on sustainable development. Any subsequent regulations setting out the procedures of the board and Advisory Council will take account of the Executive’s policies on sustainable development.
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SCOTTISH QUALIFICATIONS AUTHORITY BILL

POLICY MEMORANDUM

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