



Rt Hon Bridget Phillipson MP
Secretary of State for Education
Department for Education

sec-of-state.ps@education.gov.uk

10 October 2024

Dear Bridget,

I am writing to seek your agreement in principle to the drafting of an Order under section 104 of the Scotland Act 1998 (“the 1998 Act”) to make provision in consequence of the Education (Scotland) Bill (“the Bill”), once passed. The section 104 Order will be taken forward in the UK Parliament by the Scotland Office and is subject to affirmative resolution procedure.

The Bill is in two substantive parts. Part 1 establishes a new qualifications body, to be known as Qualifications Scotland, to replace the Scottish Qualifications Authority (SQA). It will be set up as a Non-departmental Public Body (NDPB), including appropriate governance arrangements and statutory functions. As an operationally independent organisation, the provisions set out the framework for how Qualifications Scotland will be able to operate. The practical detail is being developed in parallel as part of the corporate and operational design of the new body.

Part 2 establishes the office of His Majesty’s Chief Inspector of Education in Scotland. The statutory functions will be conferred on the Chief Inspector. The Chief Inspector will lead a new independent education inspectorate, to take forward the education inspection functions that currently sit within Education Scotland (an Executive Agency of the Scottish Ministers). The Bill sets out the governance arrangements and statutory functions necessary in relation to the full range of educational establishments and services currently inspected, from early learning and childcare to adult learning.

A section 104 Order under the 1998 Act is used to make consequential amendments to reserved legislation, which are considered expedient or necessary, in consequence of an Act of the Scottish Parliament. A section 104 Order under the 1998 Act has been identified as the most appropriate legislative vehicle to take forward the consequential amendments that are required in consequence to the Bill.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

With regard to the Bill, this Order is required to make a number of consequential amendments to reserved legislation, including the law of England, Wales and Northern Ireland. Most of these amendments would simply update statutory references to the SQA with references to Qualifications Scotland (and, in the case of the House of Commons Disqualification Act 1975, the reference to the SQA's Advisory Council too).

The section 104 Order is also required to specify the office of His Majesty's Chief Inspector of Education in Scotland as an office-holder in the Scottish Administration for the purposes of section 126(6) of the Scotland Act 1998.

We are creating this office in response to the recommendations provided to the Scottish Government by Professor Kenneth Muir in his report, *Putting Learners at the Centre: Towards a Future Vision for Scottish Education*. The objective is to create an education inspectorate which operates independently of Ministers, while retaining widely supported features of the current setup, including that inspectors are civil servants appointed to their office by His Majesty. This approach aligns with the model adopted for the successful operation of other HM inspectorates in Scotland.

I understand that Scottish Government officials and officials in UK Department of Education, Welsh Government and the Northern Ireland Executive are in the process of agreeing the policy for the provisions to be included in this Order, and that the drafting of the Order has begun. My officials have liaised with Scotland Office officials regarding the proposed Order, and these officials are coordinating plans for the timely delivery of this work. It would, therefore, be very helpful to have confirmation by 1 November that you are content in principle for this Order to be taken forward.

Final Ministerial agreement for the section 104 Order to be laid in draft in the UK Parliament will be sought in the usual manner, when the draft Order is ready to begin its Parliamentary scrutiny.

I am copying this letter to Ian Murray MP, Secretary of State for Scotland, Lynne Neagle MS, Cabinet Secretary for Education, Welsh Government, Gordon Lyons MLA, Minister for Communities, Northern Ireland Executive and the Convener of the Scottish Parliament's Education, Children and Young People Committee

Yours sincerely,

JENNY GILRUTH MSP

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE™
We invest in people Silver

