

Education (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Education (Scotland) Bill, introduced in the Scottish Parliament on 4 June 2024.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 49–FM);
 - a Policy Memorandum (SP Bill 49–PM);
 - a Delegated Powers Memorandum (SP Bill 49–DPM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 49–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

Note on interpretation etc.

5. The Bill's freestanding text (that is, its sections and schedules) is to be interpreted in accordance with the Interpretation and Legislative Reform (Scotland) Act 2010. Among other things, this provides default definitions for certain expressions (such as “financial year”, “person” and “writing”).

Crown application

6. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

statutory instrument unless the provision expressly exempts it. The freestanding text in this Bill applies to the Crown in the same way as it applies to everyone else. Schedule 4 of the Bill also amends a number of existing enactments, some of which do, and some of which do not, apply to the Crown. The Bill makes no change to the application of those enactments to the Crown.

Overview of the Bill

7. The Bill consists of 3 Parts.

- Part 1 establishes a new body, Qualifications Scotland. It sets the functions of that body; requires the establishment of a Strategic Advisory Council; provides for Qualifications Scotland to prepare and publish a learner charter and a teacher and practitioner charter; requires it to publish a corporate plan, annual report and accounts; and introduces schedule 1 which makes further administrative provision about Qualifications Scotland. Provision is also made about various committees of Qualifications Scotland but in particular about the Accreditation Committee, which is subject to its own provisions regarding reporting as well.
- Part 2 establishes a new office holder, His Majesty's Chief Inspector of Education in Scotland. It sets out the functions and powers of the Chief Inspector; makes provision for supporting roles; requires the establishment of an Advisory Council; requires the Chief Inspector to publish an inspection plan, reports on inspections and annual reports; requires educational establishments to cooperate with inspections; and makes provision about the enforcement measures that can follow a school-related inspection. It also introduces schedule 2, which makes further administrative provision about the office of Chief Inspector.
- Part 3 contains the general and miscellaneous provisions applying to the Bill, including the transitional provisions for the transfers of staff and property between the Scottish Qualifications Authority and Qualifications Scotland, and the dissolution of the Scottish Qualifications Authority. It further introduces schedule 3 which makes further provision about the transfers, and schedule 4 which modifies other enactments in consequence of the Bill.

Part 1: Qualifications Scotland

Establishment

Section 1 – Qualifications Scotland

8. This section establishes the body to be known as 'Qualifications Scotland'. The body's Gaelic name, 'Teisteanasan Alba', has equal legal status. As a body corporate, Qualifications Scotland has a legal personality separate from that of the people who comprise it.

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

9. This section also provides that Qualifications Scotland has the functions conferred on it under or by virtue of this Act and any other enactment, as well as introducing the schedule which makes further provision about the body's composition and other matters. See paragraphs 121 to 154 of these Notes for commentary on schedule 1.

Functions

Section 2 – The function of awarding qualifications

10. Section 2 provides for Qualifications Scotland's functions relating to qualifications. These functions are:

- devising qualifications (this includes the ability to develop different types of qualifications and awards – for example, school based qualifications such as National Qualifications and post-school qualifications such as Scottish Vocational Qualifications – and also includes the ability to devise and develop the subject-matters qualifications might cover),
- approving establishments suitable for presenting people for qualifications which are either devised or awarded by it, having regard to the matters set out in section 3(a) to (c) in relation to the quality assurance function (this includes ensuring places like schools, colleges, training providers and employers have the right systems set up and meet quality standards to deliver qualifications for learners),
- determining entitlement to the qualifications it devises or awards, and as part of it this awarding and recording the qualifications (for example, this enables Qualifications Scotland to set entry requirements to study for a certain qualification, as well as determining whether an individual undertaking a qualification has met all the requirements and to a certain level in order to be awarded the qualification or award),
- keeping the qualifications it devises under review and revising them,
- making arrangements for, assisting in and carrying out the assessment of persons undertaking education and training (for example, arranging any examination processes for Qualifications Scotland qualifications, or providing services to other organisations to support the development or delivery of assessment for other qualifications and awards).

11. These functions of devising qualifications and reviewing/revising them include the power to devise a programme of learning, determine what is required to attain the qualification and determine how the qualification is to be assessed.

12. These functions may not be exercised in relation to degrees awarded by universities or other specified institutions.

Section 3 – The quality assurance function

13. Section 3 makes provision for Qualifications Scotland to satisfy itself as to the suitability of education and training establishments which have been approved for presenting people for qualifications devised or awarded by Qualifications Scotland. This includes satisfying itself as to the quality of the procedures adopted by those establishments to assess standards of attainment (in particular for people with additional support needs) and the quality of the internal arrangements for monitoring and controlling the effectiveness of those procedures.

Section 4 – The accreditation function

14. Section 4 provides for Qualifications Scotland to have the function of accrediting qualifications which meet requirements specified and published by it, and of satisfying itself as to the suitability of establishments providing accredited qualifications.

15. This function is to be carried out by the Accreditation Committee which must be established and maintained by Qualifications Scotland under paragraph 12 of schedule 1. For further information about the Accreditation Committee and the manner in which it will operate, see paragraphs 142 to 145 of these Notes.

16. This function is not to be exercised in relation to degrees.

Section 5 – The advisory function

17. Section 5 requires Qualifications Scotland to give the Scottish Ministers advice when they request it. The section also allows Qualifications Scotland to give Ministers such other advice as it thinks fit on any matter relating to its functions.

Section 6 – Working with, or recognition of, others

18. Section 6 allows Qualifications Scotland to provide services and act as agent for others. It requires Qualifications Scotland to have regard to the desirability of working in collaboration with others in respect of any matter to which its functions relate. It also allows Qualifications Scotland to confer fellowships or other awards on those who it considers have made an outstanding contribution to the advancement of education or training.

Section 7 – Duties when exercising functions

19. In exercising its functions, Qualifications Scotland must promote and advance education and training, and have regard to the needs and interests of persons using its services (for example, those seeking to attain its qualifications or education establishments presenting people for qualifications). This includes those who are receiving, or wish to receive, Gaelic learner education, Gaelic medium education, or the teaching of the Gaelic language in further education. Qualifications Scotland must also have regard to any advice provided to it by the Strategic Advisory Council, which is to be established by the Scottish Ministers under section 9 (see paragraphs 21 to 23 of these Notes).

Section 8 – Consultation with Strategic Advisory Council

20. Section 8 requires Qualifications Scotland to consult the Strategic Advisory Council (which is to be established by the Scottish Ministers by regulations under section 9) where it considers it appropriate to do so in the exercise of its functions. Qualifications Scotland must have regard to any guidance issued by the Scottish Ministers as to the fulfilment of this requirement.

Strategic Advisory Council

Section 9 – Strategic Advisory Council

21. Section 9 requires the Scottish Ministers to establish a Strategic Advisory Council, by regulations (subject to the negative procedure – see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010). The council will be established to consider matters relating to the functions and procedure of Qualifications Scotland and the qualifications devised or awarded by it, and to provide advice to Qualifications Scotland and the Scottish Ministers.

22. The regulations establishing the council may provide (among other things) for the appointment of its members, the terms of appointment of these people and other administrative and procedural matters relating to how the council is to operate.

23. The regulations must make provision for the appointment of co-conveners, one of whom is to be a member of Qualifications Scotland and one of whom is not to be such a member (though it would be possible for the regulations to make provision by virtue of subsection (2)(d) allowing the council to continue to function in the event of a temporary vacancy in these positions). The regulations must also make provision requiring the council to consult other persons who have an interest in the matter before providing advice, to consult Qualifications Scotland when appropriate to do so and to have regard to any guidance issued by the Scottish Ministers as to compliance with these requirements.

Charters

Section 10 – The learner charter

24. Section 10 requires Qualifications Scotland to prepare and publish a learner charter within 6 months of this section coming into force.

25. The charter must set out what persons undertaking a qualification devised or awarded by Qualifications Scotland should expect from Qualifications Scotland in the exercise of its functions. For example, these expectations could include: how and when Qualifications Scotland communicates with and involves learners; how Qualifications Scotland adapts processes to meet different learner needs or interests; or how it will remove barriers to accessing qualifications and awards for different learners. The learner charter may also include such other information as Qualifications Scotland considers appropriate.

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

26. Qualifications Scotland must consult such persons as it considers appropriate when preparing the learner charter. This must include individuals undertaking a qualification, persons whom Qualifications Scotland believes represent their interests, and the Scottish Ministers. Consultation may take place before this section comes into force.

Section 11 – The teacher and practitioner charter

27. Section 11 requires Qualifications Scotland to prepare and publish a teacher and practitioner charter within 6 months of this section coming into force.

28. The charter must set out what persons providing teaching or training in respect of a qualification devised or awarded by Qualifications Scotland should expect from Qualifications Scotland in the exercise of its functions. For example, these expectations could include: how and when Qualifications Scotland communicates with and involves teachers and other practitioners; what Qualifications Scotland will do to act on teacher and other practitioners' concerns with qualifications or assessments; or how teachers and other practitioners are better supported in delivering learning and teaching for Qualifications Scotland qualifications. The teacher and practitioner charter may also include such other information as Qualifications Scotland considers appropriate.

29. Qualifications Scotland must consult such persons as it considers appropriate when preparing the teacher and practitioner charter. This must include persons providing teaching or training for a Qualifications Scotland qualification, persons whom Qualifications Scotland believes represent their interests, and the Scottish Ministers. Consultation may take place before this section comes into force.

Section 12 – Reviewing and revising the charters

30. Qualifications Scotland must review each of the charters within 5 years of their respective publication dates, and then within 5 years of each subsequent review relating to that charter. Qualifications Scotland may revise a charter following a review of that charter, and must publish any revised version as soon as reasonably practicable. As any revised charter will still be “the charter”, the rules about their content (as set out in sections 10 and 11 respectively) will apply automatically. The requirements for consultation on the charters which are set out in sections 10 and 11 are applied to any review of the charters.

Section 13 – Other charters

31. Qualifications Scotland must, from time to time, consider whether to prepare and publish charters for persons using its services, other than those covered by the learner charter and the teacher and practitioner charter (provided for in sections 10 and 11 respectively).

Accountability of Qualifications Scotland

Section 14 – Corporate plan of Qualifications Scotland

32. Section 14 makes provision about Qualifications Scotland’s corporate plan. This must be prepared by Qualifications Scotland as soon as reasonably practicable after this section comes into force.

33. The corporate plan must set out the main objectives of Qualifications Scotland, the outcomes which will be used to assess whether those objectives have been achieved, a general description of its planned activities, and what it intends to do to meet the requirements set out in section 7 and the expectations set out in its charters. The charters which must be covered for this purpose will include the learner charter under section 10 and the teacher and practitioner charter under section 11, as well as any other charters produced (e.g. under section 13). The corporate plan may also include such other material as Qualifications Scotland considers appropriate. However, the corporate plan need not include details of objectives and activities which relate to the activities of the Accreditation Committee, because it is required to prepare its own corporate plan under section 19.

34. Once a plan has been prepared, it is to be submitted to the Scottish Ministers. Ministers can approve the plan without any modifications, approve it with modifications (following consultation with Qualifications Scotland), or reject it. If it is rejected, Qualifications Scotland must submit a modified plan as soon as reasonably practicable. The same options for responding are available to the Scottish Ministers in respect of a modified plan.

35. As soon as reasonably practicable following approval of the corporate plan, Qualifications Scotland must publish it and the Scottish Ministers must lay a copy of it before the Scottish Parliament.

36. Once a corporate plan is approved, it remains in force until such time it is superseded by a new corporate plan. Qualifications Scotland can opt to prepare a new corporate plan at any time, or they can be compelled to do so by the Scottish Ministers. In each case, because a new corporate plan is still a corporate plan, its content must satisfy the requirements of subsection (2) and it must be published and laid before the Scottish Parliament under subsection (6). Further, by virtue of subsection (8), the same rules about approval apply as applied to the first corporate plan.

Section 15 – Annual report of Qualifications Scotland

37. This section places an obligation on Qualifications Scotland to report after each financial year on its activities during that year. The phrase “financial year” is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 as a year ending with 31 March. Qualifications Scotland must publish this report and share a copy with the Scottish Ministers as soon as reasonably practicable after the end of each financial year. Following receipt of this, the Scottish Ministers must lay a copy of the report before the Scottish Parliament.

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

38. The report must include a statement of what Qualifications Scotland has done during that year to meet the requirements set out in section 7 and the expectations set out in its charters. The charters which must be covered for this purpose will include the learner charter under section 10 and the teacher and practitioner charter under section 11, as well as any other charters produced (e.g. under section 13). The report need not include details of activities carried out by the Accreditation Committee, because it is required to report separately under section 20. Otherwise, the content and form of the report is a matter for Qualifications Scotland.

Section 16 – Accounts and audit of Qualifications Scotland

39. This section requires Qualifications Scotland to keep accounts, and to prepare a statement of account for each financial year and send a copy to the Scottish Ministers. The Scottish Ministers must then submit them to the Auditor General for Scotland for audit.

40. As Qualifications Scotland's accounts are required, by statute, to be sent to the Auditor General for Scotland for auditing, sections 21 and 22 of the Public Finance and Accountability (Scotland) Act 2000 then apply. Amongst other things, those sections provide for the accounts, and the auditor's report on them, to be laid before the Scottish Parliament and published (see section 22(5) of that Act). In addition, the principal accountable officer for the Scottish Administration can designate someone to be the body's accountable officer (see section 15(3) of that Act), and the Auditor General for Scotland can look into whether the body has been using its resources appropriately (see section 23 of that Act).

Section 17 – Scottish Ministers' power to direct Qualifications Scotland

41. This section requires Qualifications Scotland to comply with any direction issued to it by the Scottish Ministers. This could, for example, relate to the exercising of Qualifications Scotland's core functions or it could relate to a more administrative matter such as how the body is to keep its accounting records.

42. Directions given by the Scottish Ministers to Qualifications Scotland must be in writing and published as soon as reasonably practicable after being given. A direction may be varied or revoked by a subsequent direction. There is, however, an obligation on the Scottish Ministers to consult Qualifications Scotland before issuing a direction, unless that direction is merely revoking an earlier direction.

43. In general, Qualifications Scotland will be able to respond to a direction issued by the Scottish Ministers by, where appropriate, passing on a corresponding direction to its committees and the committee must then comply with it under paragraph 9(4) of schedule 1. However, under paragraph 12(3)(a) of schedule 1, this does not include its Accreditation Committee. There is therefore a separate power for the Scottish Ministers to direct the Accreditation Committee (see section 21).

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

Section 18 – Provision of information by Qualifications Scotland

44. This section requires Qualifications Scotland to provide the Scottish Ministers with such information as they reasonably request relating to the exercise of Qualifications Scotland's functions. This allows Ministers to be provided with information they require without needing to issue a direction in order to obtain it.

Accountability of the Accreditation Committee

Section 19 – Corporate plan of the Accreditation Committee

45. Section 19 requires the Accreditation Committee of Qualifications Scotland (established by paragraph 12 of schedule 1) to prepare and publish its own corporate plan, separate from that prepared by Qualifications Scotland, as soon as reasonably practicable after this section comes into force.

46. The corporate plan must set out how the committee intends to exercise the function under section 4 as well as its function of providing advice to Ministers (see paragraph 12(2) of schedule 1), for which it is responsible, and may include such other material as it considers appropriate. The committee may prepare a new corporate plan at any time and must publish any such new plan. The provision regarding the content of the plan also applies automatically to any new plan.

Section 20 – Annual report of the Accreditation Committee

47. This section places an obligation on the Accreditation Committee to report after each financial year on its activities during that year, separate from the report prepared by Qualifications Scotland. As noted above, the phrase "financial year" is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 as a year ending with 31 March. The committee must publish this report and share a copy with the Scottish Ministers as soon as reasonably practicable after the end of each financial year. Following receipt of this, the Scottish Ministers must lay a copy of the report before the Scottish Parliament. The form and content of the report is to be decided by the committee.

Section 21 – Scottish Ministers' power to direct the Accreditation Committee

48. This section requires the Accreditation Committee to comply with any direction issued to it by the Scottish Ministers. This could, for example, relate to the exercising of the committee's function or it could relate to a more administrative matter such as how the body is to keep its records. While the Scottish Ministers will therefore be able to direct the Accreditation Committee under this section, Qualifications Scotland itself will not be able to do so (see paragraph 12(3)(a) of schedule 1).

49. Directions given by the Scottish Ministers to the committee must be in writing and published as soon as reasonably practicable after being given. A direction may be varied or revoked by a subsequent direction. There is, however, an obligation on the

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

Scottish Ministers to consult the committee before issuing a direction, unless that direction is merely revoking an earlier direction.

Funding and powers

Section 22 – Financial assistance

50. This section enables the Scottish Ministers to give financial support, of various kinds, to Qualifications Scotland. Conditions may be attached if desired, including the requirement for interest to be paid.

Section 23 – Funding and use of resources

51. This section sets out the powers Qualifications Scotland has to use its funding and resources and the limitations on these powers.

52. In particular, Qualifications Scotland can charge for providing a service, though this is subject to the satisfaction of any criteria set by the Scottish Ministers. In addition, the Scottish Ministers may set an upper limit in terms of the value of a contract, beyond which Ministerial authorisation is required to enter into a contract.

Section 24 – General powers

53. This section provides that Qualifications Scotland may do anything necessary or expedient for, or otherwise conducive to, the performance of its functions. This will in practical terms be subject to any constraints found elsewhere in legislation (for example, section 23(2) of the Bill sets some limits upon the powers which Qualifications Scotland has).

Supporting provisions

Section 25 – Publication of documents

54. This section applies when Qualifications Scotland is publishing a document under this Part of the Bill. It requires Qualifications Scotland to have regard to the importance of communicating in the way that best meets the needs of children and young people (including those with additional support needs), users of Gaelic and other users of Qualifications Scotland's services. For example, this section would require Qualifications Scotland to consider publishing the learner charter in an accessible format and translating it into Gaelic.

Part 2: His Majesty's Chief Inspector of Education in Scotland

Establishment

Section 26 – His Majesty's Chief Inspector of Education in Scotland

55. Subsection (1) of section 26 establishes the office of His Majesty's Chief Inspector of Education in Scotland and provides for its Gaelic name. The Gaelic name, 'Àrd-Neach-sgrùdaidh an Rìgh airson Foghlam ann an Alba', has equal legal status.

56. Subsection (2) introduces schedule 2 which makes detailed provision for the status and terms of appointment of the Chief Inspector, as well as various matters of an administrative nature relating to the office of Chief Inspector. See paragraphs 155 to 163 of these Notes for commentary on that schedule.

Section 27 – Deputy Chief Inspector of Education in Scotland

57. Section 27 requires the Chief Inspector to appoint a deputy from among the Inspectors who are appointed under section 28. This appointment is subject to the approval of the Scottish Ministers.

58. There is further provision made in relation to deputising for the Chief Inspector at paragraphs 6 and 7 of schedule 2 (see paragraphs 161 and 162 of these Notes).

Section 28 – His Majesty's Inspectors of Education in Scotland

59. Section 28 provides for the appointment by the King of His Majesty's Inspectors of Education in Scotland. Inspectors will be appointed by His Majesty by Order in Council on the recommendation of the Scottish Ministers.

60. Under subsection (2), the Scottish Ministers are to determine the number of Inspectors to be appointed by His Majesty. Subsection (3) provides that the Inspectors hold and vacate office at His Majesty's pleasure, and otherwise in accordance with terms and conditions determined by the Scottish Ministers. Under subsection (4), a defect in the appointment process for an Inspector does not call into question the validity of anything done by that person.

61. Subsection (5) provides for inspectors appointed under the Education (Scotland) Act 1980 (see sections 66 and 135 of that Act) to be treated as if appointed under this section, so that existing inspectors will automatically become Inspectors under the provisions of this Act.

Section 29 – Assistance with inspections

62. Subsection (1) allows the Chief Inspector to appoint suitable persons to assist in the carrying out of inspections.

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

63. The remuneration, allowances and other terms and conditions applicable to such persons are to be determined by the Chief Inspector, with the approval of the Scottish Ministers.

Functions

Section 30 – The inspection function

64. Section 30 provides that the Chief Inspector is to secure the inspection of relevant educational establishments, as defined in section 31, subject to the detailed provision made in this section.

65. Inspections of relevant educational establishments – other than excepted establishments – are to be carried out at the intervals the Chief Inspector considers appropriate. The terms “relevant educational establishment” and “excepted establishment” are both defined in section 31 (see paragraphs 68 to 72 of these Notes). The Scottish Ministers may, under subsection (4), make regulations specifying the intervals at which these inspections must be carried out, though such regulations may only be made after consultation with the Chief Inspector, the Advisory Council established under section 35 and such others as the Scottish Ministers consider appropriate. Any such regulations would be subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010). Excepted establishments are to be inspected only on a request from Ministers.

66. The Scottish Ministers may also require the Chief Inspector to inspect a particular educational establishment (including an excepted establishment), a type of educational establishment (for example, grant-aided schools), or a sample of a type of educational establishment. The last of these would allow the Chief Inspector to, for example, require inspection of a sample of educational establishments with a view to assessing how well recovery from COVID-19 is progressing.

67. An inspection is secured by the Chief Inspector directing an Inspector or a person appointed to assist with inspections under section 29 to carry out the inspection, by the Chief Inspector carrying out the inspection personally, or by any combination of the foregoing people carrying out the inspection.

Section 31 – Meaning of “relevant educational establishment” and “excepted establishment”

68. This section sets out the meaning of “relevant educational establishment” which will, other than excepted establishments (also defined in this section), be subject to inspection at the discretion of the Chief Inspector under section 30. Excepted establishments are subject to inspection under section 30 too, but only at the request of the Scottish Ministers.

69. The Scottish Ministers may amend either or both of these definitions by regulations under subsection (6), after consultation with the Chief Inspector, the

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

Advisory Council and any others the Scottish Ministers consider it appropriate to consult. Any such regulations would be subject to the affirmative procedure.

70. The definition of “relevant educational establishment” includes schools and other places where school education is provided (such as prisons and secure care), school accommodation, further education establishments such as colleges, and higher education institutions providing teacher training. It also includes education authorities (defined by section 135(1) of the Education (Scotland) Act 1980 as meaning local authorities). Subsection (2) clarifies that a reference to an establishment which is an organisation includes a reference to its premises.

71. Subsection (3) provides higher education institutions are only subject to inspection in relation to the teacher training they provide and not in relation to their operations more generally. In addition, residential accommodation is only to be inspected in regard to the adequate safeguarding and promotion of welfare (because the accommodation will not be where the education is provided). Finally, education authorities are only to be inspected in regard to the provision of school education (because local authorities have many other functions which are not relevant to these inspections).

72. As noted above, the section also sets out the meaning of “excepted establishments” – those which the Scottish Ministers may order inspection of, but which are not to be inspected at the Chief Inspector’s instance. In brief, these are places where fundable further education is provided by a post-16 education body or where teacher training is provided. The former is already subject to review and assessment by the Scottish Funding Council (see section 13 of the Further and Higher Education (Scotland) Act 2005), and higher education institutions are similarly subject to separate quality assurance processes. As such, it is considered that there would be a risk of double inspection if the Chief Inspector took on this role.

Section 32 – The voluntary arrangements function

73. This section allows the Chief Inspector to provide inspections or advice in relation to the provision of education by private arrangement. For example, an establishment providing both further and higher education might want to ask the Chief Inspector to inspect the higher education elements which do not fall under section 30. Alternatively, an establishment might want/need to enter into an arrangement with the Chief Inspector in order to contract for the provision of recognised ‘educational oversight’ for the purposes of UK Visas and Immigration sponsor status for some of its students. The Chief Inspector may recover the expenses of carrying out the inspections or providing the advice.

Section 33 – The advisory function

74. Section 33 requires the Chief Inspector to give the Scottish Ministers advice when they request it, and allows the Chief Inspector to give such other advice as the Chief Inspector thinks fit, on any matter relating to the Chief Inspector’s functions.

Section 34 – Duty when exercising functions

75. In exercising the functions of the Chief Inspector, the Chief Inspector must have regard to the needs and interests of persons at relevant educational establishments (as defined in section 31) who are receiving, or wish to receive, Gaelic learner education, Gaelic medium education, or the teaching of the Gaelic language in further education.

Advisory Council

Section 35 – Advisory Council

76. This section requires the Chief Inspector to establish and maintain an Advisory Council, the function of which will be to advise the Chief Inspector in relation to the exercise of the Chief Inspector's functions (either on its own initiative or at the request of the Chief Inspector).

77. The Chief Inspector is to appoint members having regard to the desirability of the Advisory Council being representative of the interests of persons likely to be affected by the Chief Inspector's functions.

78. Under subsection (4), the Chief Inspector must have regard to any advice provided by the Advisory Council, and provide the Advisory Council with an explanation of the action (if any) to be taken and the reasons for that in any cases where the Chief Inspector decides not to follow that advice.

Accountability

Section 36 – Inspection plan

79. The Chief Inspector is required to, as soon as reasonably practicable after this section comes into force, publish an inspection plan and lay it before the Scottish Parliament.

80. The inspection plan must set out details of inspections to be carried out during the period to which the plan applies (other than in relation to excepted establishments, where inspections happen only upon request by the Scottish Ministers). The detail which must be covered by the plan includes information about the frequency with which the Chief Inspector intends to instigate inspections, the approximate number of institutions to be inspected as a result, the different models of inspection (which might include, for example, abbreviated and full inspections, and scheduled and unscheduled), as well as the standards against which all establishments (including any excepted establishments) are to be assessed.

81. The Chief Inspector must consult the Scottish Ministers, the Advisory Council and such other persons as the Chief Inspector considers appropriate in preparing the plan.

82. The Chief Inspector must keep the plan under review and may publish and lay before the Parliament a new inspection plan at any time. The rules about what an

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

inspection plan must contain will apply automatically to any new inspection plan, as will the requirements as to consultation. Subsection (5) also allows the Scottish Ministers to make regulations (subject to the affirmative procedure) specifying how frequently the inspection plan must be reviewed, subject to consulting with the Chief Inspector, the Advisory Council and such other persons as the Scottish Ministers consider appropriate.

Section 37 – Reports on inspections

83. This section requires the Chief Inspector to prepare and publish a report on the findings of each inspection. Where the report is one that relates to an inspection which the Chief Inspector was required to carry out under a Ministerial request, a copy of the report must be passed to the Scottish Ministers. The Chief Inspector is empowered to lay a copy of any report on an inspection before the Scottish Parliament but is not required to do so (given the expected volume and the fact that they are published anyway).

84. It is for the Chief Inspector to determine the form and content of any report. Among other things, this flexibility as to content will allow the Chief Inspector to take account of other existing obligations (such as data protection) and good practice when considering the level of detail that it is appropriate to include in each case, balancing the public interest in the outcomes of inspections with privacy considerations.

Section 38 – Annual report

85. Section 38 requires the Chief Inspector to prepare an annual report on the Chief Inspector's activities during the financial year. This must include a summary of any advice provided by the Advisory Council and the Chief Inspector's response (for example, actions in response) and may include any other content determined by the Chief Inspector. The report must be published, sent to the Scottish Ministers, and laid before the Scottish Parliament as soon as practicable after the end of each financial year.

Section 39 – Report on performance of the Scottish education system

86. This section requires the Chief Inspector to prepare, publish and lay before the Scottish Parliament a report assessing the performance of the Scottish education system, as far as it relates to the Chief Inspector's functions. A copy of this report must also be sent to the Scottish Ministers. The report must be prepared annually, as soon as reasonably practicable after the end of each reporting period (being each period of 1 year beginning with the date this section comes into force). The form of the report is to be decided by the Chief Inspector, and it may form part of another document: for example, it could be included as part of the annual report to be prepared under section 38.

Section 40 – Other reports

87. This section allows the Chief Inspector to prepare and publish a report about any other matter relating to the Chief Inspector's functions as the Chief Inspector considers appropriate. A copy of any such report must be sent to the Scottish Ministers.

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

88. The Chief Inspector is also authorised to lay a copy of any report that is produced voluntarily before the Scottish Parliament if the Chief Inspector considers it appropriate to do so. This will allow the Chief Inspector to draw any issues of particular concern or importance to the attention of the Parliament.

Section 41 – Protection from actions of defamation

89. This section provides for statements made in a report published by the Chief Inspector to have absolute privilege (meaning they cannot form the basis of an action of defamation by any person referred to in those statements).

90. What is meant by a “statement” is “words, pictures, visual images, gestures or any other method of signifying meaning”. This definition is set out in section 36(b) of the Defamation and Malicious Publication (Scotland) Act 2021.

Powers

Section 42 – General powers

91. This section provides that the Chief Inspector has the power to do anything necessary, expedient or conducive to the performance of the Chief Inspector’s functions. This will in practical terms be subject to any constraints found elsewhere in legislation (for example, the Chief Inspector is required under section 27 to obtain Ministerial approval to the appointment of an Inspector as the Deputy Chief Inspector).

Cooperation with inspections

Section 43 – Powers of entry and inspection

92. This section provides a person tasked with carrying out an inspection (whether the Chief Inspector, another Inspector, or a person asked to assist with an inspection) with the authority to enter any relevant educational establishment in order to be able to fulfil that function.

93. This power must be exercised at a reasonable hour and only allows entry to a dwelling-house with the permission of the Scottish Ministers (this could be relevant to, for example, an inspection of residential accommodation where a student is living in a placement arranged to secure their attendance at a school). This power does not authorise entry by force.

94. A person exercising this power of entry must produce evidence of their identity and authority if asked to do so. They may also take onto the premises such other persons as they require in order to carry out the inspection.

Section 44 – Duty to provide assistance

95. This section requires the managers of a relevant educational establishment (as defined in section 31) which is being inspected to provide assistance and co-operation

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

to the persons carrying out the inspection, in particular making available any relevant documents and taking all reasonable steps to secure access to places where education is provided by arrangement with the establishment to those in attendance at the establishment. For example, where a school uses private property owned by someone else for its pupils' sporting activities, this might include entering into suitable contractual arrangements which allow for the provision of access for inspections, and making the necessary practical arrangements.

Section 45 – Offences

96. Section 45 provides that failing to comply with the duty to provide assistance in section 44 without reasonable excuse is an offence. Intentionally obstructing an Inspector or other person carrying out an inspection under this Part is also an offence. The penalty for these offences is a fine not exceeding level 4 on the standard scale (£2,500 as at the date of introduction of this Bill).

Enforcement following school-related inspections

Section 46 – Necessary improvements: referral to Scottish Ministers

97. This section and the two that follow make provision for the situation where a certain inspection (of a public school, a grant-aided school or an education authority) results in a finding that improvement is needed, it does not appear to the Chief Inspector that the necessary steps are being taken to react to that finding, and the Chief Inspector considers that the failure is a sufficiently serious one to justify the issuing of an enforcement direction.

98. The provisions simply restate and relocate the current law as found in section 66B to 66D of the Education (Scotland) Act 1980 and sections 10A to 10C of the Standards in Scotland's Schools etc. Act 2000, but with the Chief Inspector now taking on the role previously held by the Sovereign's inspectors of schools.

99. Where the situation referred to in paragraph 97 above arises, section 46 imposes an obligation on the Chief Inspector to make a referral to the Scottish Ministers. A referral must be in writing, set out the failure concerned, and include recommendations as to the action that should be taken by the person with responsibility for the institution concerned. The Chief Inspector must notify that person that a referral to the Scottish Ministers has been made.

Section 47 – Preliminary notice of enforcement action

100. This section allows the Scottish Ministers to respond to a referral made under section 46. If the Scottish Ministers consider that the person with responsibility for the institution concerned is failing or has failed to take satisfactory action to improve a matter and consider that an enforcement direction is justified, they may issue a preliminary notice. This serves to notify the relevant person that the use of an enforcement direction is being considered and requires that person to give the Scottish Ministers a written response either explaining why they think that they have not failed to

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

take satisfactory action, or accepting that there is a failure and giving reasons (if any) as to why they consider that an enforcement direction should not be given despite the failure.

Section 48 – Enforcement direction

101. This section allows the Scottish Ministers to issue an enforcement direction following the service of a preliminary notice under section 47, if they have received a written response to the notice or the specified time period in the notice has expired. Such a direction may be issued where Ministers continue to consider that the person concerned is failing or has failed to take satisfactory action to address the matter and that, having regard to the seriousness of the failure, the use of an enforcement direction would be justified. The action that is then taken where this test is met may be the issuing of an enforcement direction, or it could be (instead or as well) the giving of recommendations.

102. An enforcement direction is a written direction requiring the taking of steps set out in the direction to address the failure. It can place conditions on the carrying out of functions by the person concerned. It will specify a time period for compliance (or in the case of more than one course of action, may specify more than one time period). It must be complied with.

103. An enforcement direction can be varied by the giving of a further direction (without the need for another preliminary notice) and can also be revoked. Before giving, varying or revoking such a direction, the Scottish Ministers must consult the Chief Inspector. Where any of those powers are exercised, the Scottish Ministers must lay before the Scottish Parliament a report on their exercise of that power.

Supporting provisions

Section 49 – Publication of documents

104. This section applies when the Chief Inspector is publishing a document under this Part of the Act. It requires the Chief Inspector to have regard to the importance of communicating in a way that best meets the needs of children and young people (including those with additional support needs), users of Gaelic and other people affected by the Chief Inspector's functions. For example, this section would require the Chief Inspector to consider publishing the inspection plan under section 36 in an accessible format and translating it into Gaelic.

Part 3: General and miscellaneous

Section 50 – Transfer of staff, property etc. to Qualifications Scotland

105. This section introduces schedule 3, which makes further provision about the transfer of staff and property from the Scottish Qualifications Authority to Qualifications Scotland. See paragraphs 164 to 179 of these Notes for commentary on schedule 3.

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

Section 51 – Dissolution of the Scottish Qualifications Authority

106. Section 51 dissolves the Scottish Qualifications Authority.

Section 52 – Transitional provisions

107. Subsections (1) and (2) of this section provide that any relevant thing (defined in subsection (4)) done by or in relation to the Scottish Qualifications Authority, or in the process of being done, before its dissolution is to be treated after the dissolution date as being done by, in relation to, or in the process of being done to or by, Qualifications Scotland.

108. Subsection (3) requires the Scottish Qualifications Authority to provide Qualifications Scotland with any information it may reasonably require for the exercise of its functions.

109. Subsection (4) sets out the defined terms for this section.

Section 53 – Consequential modifications

110. This section introduces schedule 4 of the Bill, which contains modifications of certain enactments in relation to both Part 1 and Part 2 of the Bill. See paragraphs 180 to 218 of these Notes for commentary on those modifications.

Section 54 – Interpretation

111. Subsection (1) of this section sets out the meanings of key terms used in the Bill.

112. Subsection (2) sets out what is meant by undertaking a qualification. This includes taking education or training with a view to obtaining the qualification, and would therefore include (for example) a student who takes a class but does not end up completing the assessments as well as including those for whom the assessments have not yet occurred.

Section 55 – Regulation-making powers

113. This section makes further provision about the powers the Scottish Ministers are given under this Act to make regulations. It provides that a power to make regulations includes the power to make different rules for different purposes or make incidental, supplementary, consequential, transitional, transitory or saving provision when doing so.

114. It also sets out the parliamentary procedure to which each regulation-making power is subject (i.e. affirmative or negative – see sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

115. However, the section does not apply to commencement regulations. Provision is made in relation to them in section 57 instead (see paragraphs 118 and 119 of these Notes).

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

Section 56 – Ancillary provision

116. This section provides the Scottish Ministers with the power to make any ancillary provision which they consider appropriate for the purposes of, in connection with, or for giving full effect to the Act or any provision made under it. Regulations made under this section may modify any legislation (including the Bill as enacted).

117. This power is exercisable by regulations. Where the regulations amend primary legislation, they are subject to the affirmative procedure. Otherwise, they are subject to the negative procedure.

Section 57 – Commencement

118. This section sets out when the provisions of the Bill will come into force (i.e. begin to have effect). Some of the final sections of the Bill, including this section, will come into force automatically on the day after Royal Assent is granted. However, for the most part, commencement will take place on the date or dates specified by the Scottish Ministers in regulations. These regulations will be laid before the Scottish Parliament but will not otherwise be subject to any parliamentary procedure (see section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010).

119. In addition, this section provides that commencement regulations may include transitional, transitory or saving provision and may make different provision for different purposes. In particular, this allows different sections of the Bill to be commenced on different days.

Section 58 – Short title

120. This section provides for the short title of the resulting Act to be the Education (Scotland) Act 2025.

Schedule 1 – Qualifications Scotland

121. Schedule 1 makes further provision about Qualifications Scotland.

Status

Exclusion of Crown status

122. Paragraph 1 provides that Qualifications Scotland is not a servant or agent of the Crown. The Crown, which for this purpose broadly means the executive branch of government, enjoys certain privileges and immunities in law. Qualifications Scotland is not to be regarded as a government body and therefore none of the particular legal rules that apply to government bodies apply to it.

123. This paragraph also states that Qualifications Scotland's members and staff are not to be regarded as civil servants. This means that none of the statutes that make provision about the civil service (see, for example, Part 1 of the Constitutional Reform

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

and Governance Act 2010) apply to the people who comprise, or work for, Qualifications Scotland.

Membership

Number and appointment of members

124. Paragraph 2 provides that Qualifications Scotland is to consist of a member appointed by the Scottish Ministers as its chairing member, a member appointed by the Scottish Ministers as the convener of the Accreditation Committee to be established under paragraph 12, the organisation's chief executive appointed under paragraph 7, and between 6 and 10 other members appointed by the Scottish Ministers. This means that in total the body will have between 9 and 13 members.

125. However, there is a power (subject to the negative procedure) for Ministers to make regulations which would vary the number of other members. The chairing member must be consulted before any regulations are made using this power.

126. For details of how the first members of Qualifications Scotland will be appointed (as a transitional measure), see paragraphs 176 to 179 of these Notes.

Appointment as a member: criteria

127. Paragraph 3 deals with who may be appointed as a member. This therefore covers the appointment of all members of Qualifications Scotland other than the chief executive (who is not appointed as a member but who becomes a member *ex officio* by dint of being appointed chief executive).

128. The Scottish Ministers can only appoint persons who they believe have skills, knowledge and expertise relevant to the carrying out of the body's functions. In addition, there are a number of designated places which must be filled and where, prior to appointment, there is to be consultation with the relevant cohort whose interests are being represented. Consultation may take place before this section comes into force. The positions which must be filled are as follows—

- There is to be at least one member who appears to the Scottish Ministers to have knowledge of the interests of persons undertaking a relevant qualification (as defined in section 54).
- There are to be at least two members who are registered teachers (as defined at sub-paragraph (7)) providing relevant teaching or training.
- There are to be at least two members who are college teaching staff providing relevant teaching or training.
- There is to be at least one member who appears to the Scottish Ministers to have knowledge of the interests of the staff of Qualifications Scotland.

129. This paragraph also sets out certain categories of person who may not be appointed – namely an MSP, an MP or a member of the House of Lords, or a person

who is disqualified from acting as a company director, charity trustee or analogous position (unless they are disqualified only by reason of being an undischarged bankrupt). In addition, it provides that Ministers must encourage equal opportunities when appointing members.

Period and conditions of membership

130. Paragraph 4 deals with the terms and conditions of appointment for individuals who are appointed as members of Qualifications Scotland. Again, this therefore covers all members other than the chief executive (who is not appointed as a member but becomes one automatically).

131. Members are to be appointed for a term of up to 4 years, although they may be reappointed. They are appointed on such terms and conditions as the Scottish Ministers determine (subject to the provision made by the Bill). Although a maximum period of appointment is not specified here, it should be noted that the appointment of a member of Qualifications Scotland is, as a result of paragraph 4 of schedule 4, made subject to the code of practice issued by the Commissioner for Ethical Standards in Public Life¹. This code places a limit (currently 8 years) on the overall length of appointment which will be relevant where members are reappointed.

132. This paragraph also allows a member to be appointed by the Scottish Ministers to deputise for the chairing member – which covers deputising for someone who is appointed but is unable to act and also acting when there is a vacancy in that role. Any function of so deputising is assigned for such period as the Scottish Ministers specify when making the appointment and the appointment is subject to any other terms and conditions that are specified by Ministers. This role of deputising can be resigned without resulting in resignation as a member.

Early termination of membership

133. Paragraph 5 sets out the circumstances in which a person's appointment as a member will terminate prior to the person's period of appointment coming to an end. Again, this provision therefore applies to all members other than the chief executive. The circumstances which end the appointment are:

- where the person gives written notice of their resignation,
- if the person becomes disqualified from being appointed as a member (see paragraph 3(4) and (5)),
- if the person is removed as a member by the Scottish Ministers, which can only be done because the person is apparently insolvent, has been absent without reasonable excuse from meetings for a period of longer than 6 months, or in the opinion of the Scottish Ministers is unable or unsuitable to continue as a member.

¹ [Code of Practice for Ministerial Appointments to Public Bodies in Scotland – March 2022 version | Ethical Standards Commissioner](#)

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

Members' remuneration and allowances

134. Paragraph 6 permits the payment of such remuneration and allowances (including expenses) to members as the Scottish Ministers authorise. This means that the level of this payment – if indeed any is authorised – is to be at the discretion of the Scottish Ministers.

Staff

Chief executive and other staff

135. Paragraph 7 provides that Qualifications Scotland must appoint a chief executive, subject to Ministerial approval of the person appointed. This chief executive also automatically becomes a member of Qualifications Scotland (see paragraph 2(1)(c) of this schedule). Other staff members may be appointed by Qualifications Scotland and these appointments do not require Ministerial approval. The Scottish Ministers are to approve the terms and conditions of employment for the chief executive and staff members set by Qualifications Scotland.

Staff pensions

136. Provision is also made at paragraph 8 for the payment of staff pensions and allowances. The power to pay staff salaries is not mentioned as it is implicit in the power to appoint staff; their remuneration will form part of the terms and conditions referred to in paragraph 7 on which they are appointed.

Procedure: Committees

Committees

137. Paragraph 9 allows Qualifications Scotland to set up committees in addition to those already expressly provided for by the Bill. It may also establish sub-committees, except in relation to the Accreditation Committee where the committee itself has the power to establish its sub-committees. The members of any such further committees or sub-committees need not be members of Qualifications Scotland itself.

138. This paragraph also provides powers to pay, in return for their participation in committees, remuneration and allowances (including expenses) to those who are neither members nor staff – though it is for the Scottish Ministers to determine the level of any such remuneration or allowances.

139. A committee or sub-committee must comply with directions given to it by Qualifications Scotland, except for the Accreditation Committee and any of its sub-committees as it is independent of Qualifications Scotland.

The Learner Interest Committee

140. Paragraph 10 requires Qualifications Scotland to establish a Learner Interest Committee. The function of this committee is to advise Qualifications Scotland on the

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

exercise of its functions from the point of view of those undertaking Qualifications Scotland qualifications. A majority of the committee members must not be members of Qualifications Scotland or members of its staff. Of those persons comprising that majority, a further majority must be persons who are undertaking, or have recent experience of undertaking, a Qualifications Scotland qualification. Qualifications Scotland must consult the Scottish Ministers before making an appointment to the committee.

The Teacher and Practitioner Interest Committee

141. Paragraph 11 requires Qualifications Scotland to establish a Teacher and Practitioner Interest Committee. The function of this committee is to advise Qualifications Scotland on the exercise of its functions from the point of view of those providing teaching or training of Qualifications Scotland qualifications. A majority of the committee members must not be members of Qualifications Scotland or members of its staff. Of those persons comprising that majority, a further majority must be persons who provide such teaching or training. Qualifications Scotland must consult the Scottish Ministers before making an appointment to the committee.

The Accreditation Committee

142. Paragraph 12 requires Qualifications Scotland to establish an Accreditation Committee. The function of this Committee is to perform the function of Qualifications Scotland under section 4(1) – that is, the function of accrediting qualifications which meet requirements specified and published by Qualifications Scotland, and of satisfying itself as to the suitability of establishments providing accredited qualifications. The committee is also to advise the Scottish Ministers on any matters relating to that function.

143. The committee (and its sub-committees) cannot be directed by Qualifications Scotland and must act independently of it, although the committee (and its sub-committees) and Qualifications Scotland may share information with each other.

144. The convener of the Accreditation Committee (who is appointed under paragraph 2(1)(b)) is to appoint the other members to the committee, the majority of whom must be people other than members or staff of Qualifications Scotland.

145. This paragraph also allows a member of Qualifications Scotland to be appointed by the Scottish Ministers to deputise for the convener – which covers deputising for someone who is appointed as convener but is unable to act and also acting when there is a vacancy in that role. Any function of so deputising is assigned for such period as the Scottish Ministers specify when making the appointment and the appointment is subject to any other terms and conditions that are specified by Ministers. This role of deputising can be resigned without resulting in resignation as a member. If the deputy is not already a member of the committee in their own right, they are to be treated as a member of the committee when acting as the deputy. It should be noted that the deputy may not be the chief executive of Qualifications Scotland, as the deputy may only be

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

someone who is appointed as a member of Qualifications Scotland and the chief executive is not an appointed member but rather becomes a member *ex officio*.

Procedure: Administration of Qualifications Scotland and its Committees

Regulation of procedure

146. Paragraph 13 requires Qualifications Scotland to make at least one meeting each financial year open to the public, although it may temporarily exclude members of the public from those meetings if dealing with a confidential matter.

147. Qualifications Scotland must take reasonable steps to encourage members of the public to attend its public meetings.

148. Qualifications Scotland may also direct that its committees or sub-committees (other than the Accreditation Committee, which is not subject to direction by Qualifications Scotland) make at least one meeting each financial year open to the public and that reasonable steps be taken to encourage members of the public to attend.

149. A meeting of the Accreditation Committee is only quorate if a majority of members present are not members or staff of Qualifications Scotland. This is to ensure the independence of the Accreditation Committee.

150. The Scottish Ministers may make regulations (subject to the negative procedure) further governing the procedure of Qualifications Scotland and its committees or sub-committees. Other than as set out in this paragraph and any such regulations, Qualifications Scotland is to regulate its own procedures and that of its committees and sub-committees (other than the Accreditation Committee, which is, subject to any regulations made under sub-paragraph (6), to regulate its own procedure and that of its sub-committees).

Authority to perform functions

151. Paragraph 14 permits Qualifications Scotland to delegate certain functions to members, committees, employees or, with the consent of the Scottish Ministers, any other person. This means that not everything that may, or must, be done by Qualifications Scotland needs to be done by the members as a collective body (though it still can be so dealt with if that is what is preferred). However, certain things may not be delegated. These are the approval of its corporate plan, annual reports and accounts, and the functions of the Accreditation Committee.

152. The Accreditation Committee may itself delegate certain functions to its members or sub-committees, or employees of Qualifications Scotland. However, the approval of its corporate plan and annual report may not be delegated.

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

153. If functions are delegated under this paragraph, Qualifications Scotland or (as the case may be) the Accreditation Committee remains responsible for the performance of those delegated functions, and are still able to decide to perform those functions themselves.

Validity of things done

154. Paragraph 15 provides that the validity of anything done by Qualifications Scotland or its committees is not affected by any vacancy in membership, defect in the appointment of a member or of the chief executive, or a member's appointment being terminated early by virtue of paragraph 5.

Schedule 2 – The Office of His Majesty's Chief Inspector of Education in Scotland

Part 1: Status

Status

155. Paragraph 1 confirms the separate juristic personality of the Chief Inspector. This means that the office has legal personality, distinct from the individual holding the office of Chief Inspector from time to time. The result of this is that, for example, contracts signed by the office-holder are not personal to them but, rather, attach to the office. As such, if the Chief Inspector steps down and is replaced the contracts continue on in the same way as they would in a case where the contracts were with a company and the directors changed.

Independence

156. Paragraph 2 confirms the independence of the Chief Inspector, subject only to any provision made in legislation (such as section 30(2)(b)).

Part 2: Appointment and terms

Appointment

157. Under paragraph 3, the Chief Inspector is to be appointed by His Majesty by Order in Council on the recommendation of the Scottish Ministers.

Period and conditions of office

158. Under paragraph 4, the Chief Inspector holds and vacates office at His Majesty's pleasure. The Chief Inspector therefore does not have any fixed tenure.

159. The Scottish Ministers are to determine the other terms and conditions on which the Chief Inspector is appointed.

Part 3: Staff

Staff

160. Paragraph 5 allows the Chief Inspector to appoint staff on terms and conditions to be determined by the Chief Inspector, subject to the approval of the Scottish Ministers.

Part 4: Procedure

Authority to perform functions

161. Under paragraph 6, while the Chief Inspector can delegate any function to an Inspector, ultimately the Chief Inspector remains responsible for the performance of those delegated functions. Having delegated functions, the Chief Inspector is still able to decide to perform those functions personally. This ability to delegate functions is additional to the authority that is granted by the Bill to the Deputy Chief Inspector to deputise for the Chief Inspector (see section 27).

162. In addition, provision is made in paragraph 7 to cover the circumstance where there would otherwise be a gap because neither the Chief Inspector nor the Deputy Chief Inspector is able to act (either because a position is temporarily vacant or a person is incapacitated). This ensures that the functions of the Chief Inspector will still be able to be fulfilled. This role can only be assigned to an Inspector and any assignment of this nature is for such period as the Scottish Ministers specify when making the appointment. The appointment is subject to any other terms and conditions that are specified by Ministers. This role can be resigned without resulting in resignation as an Inspector.

Validity of things done

163. Paragraph 8 provides that if there is a defect in a person's appointment as Chief Inspector, things done by the Chief Inspector are not invalidated by that defect.

Schedule 3 – Transfer of staff, property etc. to Qualifications Scotland

164. Schedule 3 provides for the transfer of staff, property and membership of the Scottish Qualifications Authority to Qualifications Scotland.

165. Paragraph 1 provides that the “transfer date” referred to in the schedule will be the date on which that paragraph comes into force.

Transfer of staff

166. Paragraph 2 sets out how the staff of the Scottish Qualifications Authority will be transferred to Qualifications Scotland.

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

167. Sub-paragraph (1) provides that any person who is a staff member of the Scottish Qualifications Authority immediately before the transfer date will be transferred into the employment of Qualifications Scotland on that date.

168. Sub-paragraph (2) confirms that the transfer of Scottish Qualifications Authority employees to Qualifications Scotland does not terminate their contracts of employment and has effect as if their contracts of employment were originally made with Qualifications Scotland.

169. Sub-paragraph (3) provides that all the rights, powers, duties and liabilities of, and anything done by or in relation to, the Scottish Qualifications Authority in respect of a transferred person and their contract of employment, transfer to Qualifications Scotland. For example, an Employment Tribunal claim actionable against the Scottish Qualifications Authority by an employee would transfer with the employee and become actionable against Qualifications Scotland (subject to the time limits and other rules for bringing such claims).

170. Under sub-paragraph (4), if an employee of the Scottish Qualifications Authority does not want to become an employee of Qualifications Scotland, their employment will not be transferred, and their contract will be terminated on the day before the transfer date. Sub-paragraph (5) confirms that this termination will not be treated as a dismissal of that person.

171. Sub-paragraph (6) provides that a transferred person's right to terminate their contract of employment, where there is a substantially detrimental change to the contract, is not affected by sub-paragraphs (1) to (3). However, sub-paragraph (7) clarifies that the change of a transferred person's employer from the Scottish Qualifications Authority to Qualifications Scotland is not to be treated as such a substantially detrimental change.

Transfer of property

172. Paragraph 3 sets out how the property, rights, liabilities and obligations of the Scottish Qualifications Authority will be transferred to Qualifications Scotland.

173. Sub-paragraphs (1) and (2) provide that on the transfer date, all of the property, rights, liabilities and obligations which on that date belong to or subsist in the Scottish Qualifications Authority are to be transferred to, and vest in, Qualifications Scotland.

174. Sub-paragraph (3) ensures that the Act overrides any other provisions that may prevent, penalise or restrict the transfers under this paragraph.

Duty to secure vesting of foreign property

175. Paragraph 4 requires the Scottish Qualifications Authority and Qualifications Scotland to take all steps as are required to ensure that the transfer to and vesting in

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

Qualifications Scotland of any foreign property, right, liability or obligation of the Scottish Qualifications Authority is effective under the relevant foreign law.

Appointment of initial members

176. Paragraph 5 sets out how members of the Scottish Qualifications Authority will be appointed as initial members of Qualifications Scotland.

177. Sub-paragraph (1) appoints the chairing member of the Scottish Qualifications Authority (defined in sub-paragraph (5)) immediately before the transfer date as the chairing member of Qualifications Scotland. The chairing member is taken to have been appointed under paragraph 2(1)(a) of schedule 1 of this Bill.

178. Sub-paragraph (2) provides that the Scottish Ministers may, by regulations subject to the negative procedure, appoint ordinary members of the Scottish Qualifications Authority as members of Qualifications Scotland (to be known, alongside the chair, as “initial members”). The ordinary members appointed are to be taken as having been appointed under paragraph 2(1) of schedule 1 of this Bill.

179. Sub-paragraph (4) confirms that, unless exceptions are agreed between the Scottish Ministers and an initial member, the terms of an initial member’s appointment with Qualifications Scotland will continue to be the same as those on which the member had been appointed as a member of the Scottish Qualifications Authority, so far as is consistent with the Bill.

Schedule 4 – Consequential modifications

Part 1: Qualifications Scotland

Chapter 1: Application of legislation relating to public bodies

180. This Chapter of schedule 4 amends relevant public bodies legislation so as to encompass Qualifications Scotland.

Ethical Standards in Public Life etc. (Scotland) Act 2000

181. Paragraph 1 adds Qualifications Scotland to the list of devolved public bodies in schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (“the 2000 Act”). This means that Qualifications Scotland will need to:

- have a code of conduct for its members, whose compliance with the code will be policed by the Standards Commission for Scotland (see sections 3 and 9 of the 2000 Act), and
- maintain a public register of its members’ interests (see section 7 of the 2000 Act).

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

Scottish Public Services Ombudsman Act 2002

182. Paragraph 2 adds Qualifications Scotland to the list of authorities in schedule 2 of the Scottish Public Services Ombudsman Act 2002 (“the 2002 Act”). The effect of this is to:

- make the exercise of administrative functions by Qualifications Scotland amenable to investigation by the ombudsman (see section 5 of the 2002 Act),
- oblige Qualifications Scotland to have its own complaints handling procedure that complies with the statement of principles published by the ombudsman under section 16A of the 2002 Act,
- permit Qualifications Scotland to be made subject to the further requirement to have a complaints handling procedure that complies with a model complaints handling procedure prepared by the ombudsman (see sections 16B and 16C of the 2002 Act).

Freedom of Information (Scotland) Act 2002

183. Paragraph 3 adds Qualifications Scotland to the list of Scottish public authorities in schedule 1 of the Freedom of Information (Scotland) Act 2002 (“the FOI (S) Act”). This means that Qualifications Scotland will be subject to the requirements which the FOI (S) Act places on public bodies, including requirements to provide information to the public on request and to have in place a scheme under section 23 of that Act for the pro-active publication of information it holds.

184. Being a public authority within the meaning of the FOI (S) Act also makes Qualifications Scotland a “Scottish public authority” to which the Environmental Information (Scotland) Regulations 2004 apply.

185. In addition, it means that Qualifications Scotland falls within the definition of a “public body” under section 44 of the Climate Change (Scotland) Act 2009. This means that it must act in a way calculated to contribute to the delivery of climate change targets and any climate change adaptation programme and in the way that it considers is most sustainable. It can also have further duties, including reporting duties, imposed upon it.

186. Further, as a public authority within the meaning of the FOI (S) Act, Qualifications Scotland is a “public authority” or “public body” for the purposes of the General Data Protection Regulation by virtue of section 7 of the Data Protection Act 2018 (provided the power under that section to remove such status is not exercised). The General Data Protection Regulation (also commonly referred to by the acronym “GDPR”) is Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. There are particular rules applied to bodies classified as “public authorities” (over and above those applied to all data processors) in the GDPR and the Data Protection Act 2018. An analysis of those rules is beyond the scope of these Notes.

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

Public Appointments and Public Bodies etc. (Scotland) Act 2003

187. Paragraph 4 adds Qualifications Scotland to the list of specified authorities in schedule 2 of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (“the 2003 Act”). This means that the Scottish Ministers, when appointing Qualifications Scotland’s members, will need (under section 2 of the 2003 Act) to comply with the code of practice on public appointments produced by the Commissioner for Ethical Standards in Public Life in Scotland.

Public Services Reform (Scotland) Act 2010

188. Paragraph 5(2) adds Qualifications Scotland to the list of bodies in schedule 5 of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”). This means that Qualifications Scotland is a body in relation to which an order can be made under section 14 of the 2010 Act where it would improve the exercise of public functions, having regard to efficiency, effectiveness or economy. An order under section 14 of the 2010 Act can (subject to restrictions, and only after the Scottish Parliament has approved a draft of the order):

- modify, confer, abolish, transfer or provide for the delegation of any function of a public body,
- amend the constitution of a public body.

189. Paragraph 5(3) adds Qualifications Scotland to the list of bodies in schedule 8 of the 2010 Act. This means that Qualifications Scotland will be subject to the duties to report after each financial year on:

- expenditure (see section 31 of the 2010 Act), and
- the steps it has taken to promote and increase sustainable growth and improve its efficiency, effectiveness and economy (see section 32 of the 2010 Act).

Public Records (Scotland) Act 2011

190. Paragraph 6 makes Qualifications Scotland subject to the duties created by the Public Records (Scotland) Act 2011 to produce, implement and keep under review a records management plan.

Procurement Reform (Scotland) Act 2014

191. Paragraph 7 makes Qualifications Scotland subject to the procurement rules applicable to contracting authorities in the Procurement Reform (Scotland) Act 2014 regarding their procurement activities and some specific measures aimed at promoting good, transparent and consistent practice in procurement.

Gender Representation on Public Boards (Scotland) Act 2018

192. Paragraph 8 adds Qualifications Scotland to the list of bodies in schedule 1 of the Gender Representation on Public Boards (Scotland) Act 2018 (“the 2018 Act”). This means that in appointing members to Qualifications Scotland, the Scottish Ministers

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

must ordinarily give preference to a woman if there are equally qualified candidates – one who is a woman and one who is not – where appointing a woman would result in, or be a step towards, 50% of the body’s membership being women (see section 4 of the 2018 Act).

193. In addition, the 2018 Act requires that steps be taken to encourage women to apply to be members of Qualifications Scotland (see section 5 of the 2018 Act), and further steps to be taken to promote gender balance in the membership if the 50% target has not been reached by particular dates (see section 6 of the 2018 Act).

Islands (Scotland) Act 2018

194. Paragraph 9 adds Qualifications Scotland to the list of relevant authorities in the schedule of the Islands (Scotland) Act 2018. This means that Qualifications Scotland must have regard to island communities in carrying out its functions (see section 7(1) of the Islands (Scotland) Act 2018).

Chapter 2: Other modifications

Further and Higher Education (Scotland) Act 1992

195. Paragraph 10 replaces reference to the Scottish Qualifications Authority in the Further and Higher Education (Scotland) Act 1992 with reference to Qualifications Scotland. This will have the effect of bringing qualifications awarded by Qualifications Scotland within the definition of “further education” in section 1 of that Act, and including any qualification known as the Qualifications Scotland national certificate in the list of courses which set the standard above which education is treated as “higher education”.

Education (Scotland) Act 1996

196. Paragraph 11 repeals the bulk of the Education (Scotland) Act 1996, which amongst other matters established the Scottish Qualifications Authority. The provisions which are repealed all relate to the Authority’s establishment.

Scottish Qualifications Authority Act 2002

197. Paragraph 12 repeals the Scottish Qualifications Authority Act 2002, which made provision for the membership and procedures of the Scottish Qualifications Authority and established a committee to consider and advise on qualifications awarded by it. The functions of the Authority will now be undertaken by Qualifications Scotland and the Accreditation Committee.

Further and Higher Education (Scotland) Act 2005

198. Paragraph 13 modifies the Further and Higher Education (Scotland) Act 2005 to replace references to the Scottish Qualifications Authority with references to Qualifications Scotland. This ensures that references to things which were previously done by the Scottish Qualifications Authority will continue to apply when those things are done by Qualifications Scotland.

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

Children and Young People (Scotland) Act 2014

199. Paragraph 14 modifies the Children and Young People (Scotland) Act 2014 so that Qualifications Scotland assumes the duty to publish a report of what steps it has taken to secure better or further effect of the rights and obligations set out in Part 1 of the United Nations Convention on the Rights of the Child and specified parts of the protocols to it, in place of the Scottish Qualifications Authority.

Coronavirus (Recovery and Reform) (Scotland) Act 2022

200. Paragraph 15 modifies the Coronavirus (Recovery and Reform) (Scotland) Act 2022 to replace references to the Scottish Qualifications Authority approving education and training establishments with references to Qualifications Scotland doing so.

Part 2: The Office of His Majesty’s Chief Inspector of Education in Scotland

Chapter 1: Application of legislation relating to office-holders

201. This Chapter of schedule 4 amends relevant public bodies legislation so as to encompass His Majesty’s Chief Inspector of Education in Scotland.

Freedom of Information (Scotland) Act 2002

202. Paragraph 16 of schedule 4 adds the Chief Inspector to the list of non-ministerial office holders in the Scottish Administration in schedule 1 of the FOI (S) Act. This means that the Chief Inspector will be subject to the requirements which the FOI (S) Act places on public bodies, including requirements to provide information to the public on request and to have in place a scheme under section 23 of that Act for the pro-active publication of information it holds.

203. Being a public authority within the meaning of the FOI (S) Act also makes the Chief Inspector a “Scottish public authority” to which the Environmental Information (Scotland) Regulations 2004 apply.

204. In addition, it means that the Chief Inspector falls within the definition of a “public body” under section 44 of the Climate Change (Scotland) Act 2009. This means that the Chief Inspector must act in a way calculated to contribute to the delivery of climate change targets and any climate change adaptation programme and in the way that the Chief Inspector considers is most sustainable. The Chief Inspector can also be made subject to further duties, including reporting duties.

205. Further, as a public authority within the meaning of the FOI (S) Act, the Chief Inspector is a “public authority” or “public body” for the purposes of the General Data Protection Regulation by virtue of section 7 of the Data Protection Act 2018 (provided the power under that section to remove such status is not exercised). The General Data Protection Regulation (also commonly referred to by the acronym “GDPR”) is Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

and on the free movement of such data. There are particular rules applied to bodies classified as “public authorities” (over and above those applied to all data processors) in the GDPR and the Data Protection Act 2018. An analysis of those rules is beyond the scope of these Notes.

Protection of Vulnerable Groups (Scotland) Act 2007

206. The Protection of Vulnerable Groups (Scotland) Act 2007 relates to the inclusion of individuals on a “children’s list” and an “adult’s list”. Section 19(3) names persons who may be required to provide information to the Scottish Ministers under section 19(1)(b) for the purpose of assisting Ministers in deciding whether to list an individual. “HM Inspectors of Schools” is named here, and section 97 provides a definition for that term, which is repeated in the index in schedule 5. Paragraph 17 of schedule 4 updates these references by substituting them for the Chief Inspector.

Public Services Reform (Scotland) Act 2010

207. Paragraph 18 of schedule 4 adds the Chief Inspector to the list of bodies in schedule 19 of the 2010 Act. This means that the Chief Inspector is subject to the user focus scrutiny duty set out in section 112 of the 2010 Act. This will require the Chief Inspector to secure continuous improvement in the involvement of users in the design and delivery of scrutiny functions, such as the inspection function set out in section 30.

208. It also adds the Chief Inspector to the list of bodies in schedule 20 of the 2010 Act. This means that the Chief Inspector is subject to section 114 of the 2010 Act and must co-operate and co-ordinate activity with the other bodies listed there and, where appropriate, the Scottish Ministers with a view to achieving the purpose of improving the exercise of the scrutiny functions of, among other things, local authorities.

Public Records (Scotland) Act 2011

209. Paragraph 19 of schedule 4 makes the Chief Inspector subject to the duties created by the Public Records (Scotland) Act 2011 to produce, implement and keep under review a records management plan.

Procurement Reform (Scotland) Act 2014

210. Paragraph 20 of schedule 4 makes the Chief Inspector subject to the procurement rules applicable to contracting authorities in the Procurement Reform (Scotland) Act 2014 regarding their procurement activities and some specific measures aimed at promoting good, transparent and consistent practice in procurement.

Chapter 2: Other modifications

Education (Scotland) Act 1980

211. Paragraph 21 of schedule 4 modifies the Education (Scotland) Act 1980 to remove the following provisions regarding inspections of educational establishments, as they are no longer required in light of the provision made by the Bill:

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

- the power of the Scottish Ministers to request inspections of schools by Her Majesty's Inspectors (section 66 of the 1980 Act),
- provision regarding the issuing of a code of practice for inspections (section 66A of the 1980 Act),
- Her Majesty's Inspectors' duty to make a reference to the Scottish Ministers in relation to a failing identified in an inspection (section 66B of the 1980 Act),
- provision regarding the issuing of preliminary notices (section 66C of the 1980 Act),
- provision regarding the giving of enforcement directions (section 66D of the 1980 Act).

212. It also removes provisions permitting the Scottish Ministers to recover expenses from educational establishments following inspections requested by the establishment, and the power to inspect residential accommodation to ensure the safeguarding and promotion of a child's welfare. Both of these are superseded by the provision now made in the Bill. This paragraph further removes the definitions of enforcement direction, Her Majesty's Inspections, and preliminary notice from the Act.

Standards in Scotland's Schools etc. Act 2000

213. Paragraph 22 of schedule 4 modifies the Standards in Scotland's Schools etc. Act 2000. It repeals the provisions in the 2000 Act that complement those that were repealed in the Education (Scotland) Act 1980 by paragraph 21 (see paragraph 211 of these Notes). These provisions related to the inspection of education authorities, which is now provided for in the Bill instead.

Scottish Schools (Parental Involvement) Act 2006

214. Paragraph 23 of schedule 4 modifies the Scottish Schools (Parental Involvement) Act 2006 to replace references to Her Majesty's inspectors with references to His Majesty's Chief Inspector of Education in Scotland. This ensures that the current rules about when the Parent Council can make representations to the Her Majesty's inspectors, and what must be done on receipt of such representations, will apply to representations which are made by the Parent Council to His Majesty's Chief Inspector of Education in Scotland.

Schools (Consultation) (Scotland) Act 2010

215. Paragraph 24 of schedule 4 modifies the Schools (Consultation) (Scotland) Act 2010 to replace references to Her Majesty's Inspectors of Education (HMIE) with references to the Chief Inspector of Education in Scotland. This ensures that references to things that were previously done by or in relation to HMIE will now apply to things that are done by or in relation to the Chief Inspector. Specifically, this means that the Chief Inspector will require to be involved in any relevant proposals made by an education authority. A relevant proposal is defined in schedule 1 of that Act but includes, for example, a proposal to permanently discontinue a school.

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

Public Services Reform (Scotland) Act 2010

216. Paragraph 25 of schedule 4 modifies the Public Services Reform (Scotland) Act 2010 to replace the reference in section 115(6) of that Act to Her Majesty's inspectors of schools with a reference to His Majesty's Chief Inspector of Education in Scotland. This ensures that this section will apply to His Majesty's Chief Inspector of Education in Scotland as it applied to Her Majesty's inspectors of schools. This means that the Scottish Ministers will be able to require the Chief Inspector to carry out a joint inspection with another specified body of children's or other services.

Education (Scotland) Act 2016

217. Paragraph 26 of schedule 4 modifies the Education (Scotland) Act 2016 to replace the reference in section 12(3) of that Act to Her Majesty's inspectors of schools with a reference to His Majesty's Chief Inspector of Education in Scotland. This ensures that this section will apply to His Majesty's Chief Inspector of Education in Scotland as it applied to Her Majesty's inspectors of schools. This means that the Chief Inspector must be notified by an education authority if it receives a request to assess the need for Gaelic medium primary education and decides to carry out a full assessment of that need.

Schools General (Scotland) Regulations 1975

218. Paragraph 27 of schedule 4 revokes part 4 of the Schools General (Scotland) Regulations 1975, which permits Inspectors acting under section 67 of the Education (Scotland) Act 1962 to visit schools under their management without notice and to inspect documents kept in the school.

This document relates to the Education (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 4 June 2024

Education (Scotland) Bill

Explanatory Notes

© Parliamentary copyright. Scottish Parliamentary Corporate Body

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

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

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