

# **EDUCATION (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is 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:
  - Explanatory Notes (SP Bill 49–EN);
  - a Financial Memorandum (SP Bill 49–FM);
  - 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. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### **POLICY OBJECTIVES OF THE BILL**

4. The objectives of the Bill are to provide the legal underpinning to support the design and delivery of a national organisational infrastructure for education in Scotland that more effectively supports the system to deliver the vision for education in Scotland. The intention is to support the right balance of responsibility and autonomy between the different parts of the education system, including national and local government, national education bodies and schools, colleges and other places of learning. It is part of the holistic approach to education reform reflecting a clear expectation that all elements of the education and skills system will work together as one single system that has a collective responsibility to deliver for learners of all ages.
5. The education and skills reform being taken forward by the Scottish Government aims to reshape the ways in which the Scottish Government supports improvement in the quality of teaching, learning and assessment, and achieve improved outcomes and experiences for pupils and students in every setting.

6. Feedback from across the system shows that Scotland’s national education organisations are not always close enough to pupils and students. Reform provides an opportunity to increase trust and confidence in these organisations from teachers, practitioners, parents and carers and other stakeholders. There is a clear desire to simplify policies and institutions for clarity and coherence. The establishment of a new qualifications body and the establishment of an independent HM Chief Inspector of Education in Scotland are important steps in changing the system for the better. The Bill is in two substantive parts. Part 1 establishes a new qualifications body, to be known as Qualifications Scotland, to replace the Scottish Qualifications Authority (SQA). It will be set up as a Non-departmental Public Body (NDPB), including appropriate governance arrangements and statutory functions. As an operationally independent organisation, the provisions set out the framework for how Qualifications Scotland will be able to operate. The operational detail is being developed in parallel as part of the operational design of the new body.

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

## **PART 1: NEW QUALIFICATIONS BODY**

### **Background**

8. The Scottish Government wants to ensure Scotland continues to have a world class education system that remains relevant, is based on the vision of excellence and equity in education and supports learners to fulfil their potential through the acquisition of knowledge and the development of well-rounded skills that give them the best opportunity to succeed and contribute to Scotland’s society and economy. These ambitions will be realised and supported by a new national qualifications body. It is paramount that the public has confidence and trust in the lead body delivering qualifications, and that the body can ensure there is fairness and credibility in the qualifications it provides and accredits.

9. Qualifications are an important component in supporting the education and economic ambitions of Scotland, recognising these are crucial in delivering on Scotland’s National Outcomes. Qualifications provide young people and learners of all ages and backgrounds with opportunities to demonstrate their knowledge, skills and experience. Qualifications also act as tools that enable this knowledge and skill to be recognised by different parts of society, supporting young people and other learners as they move through education and into the workplace.

10. The SQA was established under the Education (Scotland) Act 1996<sup>1</sup> (“the 1996 Act”) as a national body with two distinct functions: awarding and accrediting all types of qualifications except university degrees. As an awarding body, SQA is responsible for developing, maintaining, and improving a framework of qualifications that can be gained in Scotland’s schools and colleges, employment and training settings and other educational establishments. As an accrediting body, the 1996 Act gave SQA the responsibility of accrediting qualifications and includes the

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<sup>1</sup> [Education \(Scotland\) Act 1996 \(legislation.gov.uk\)](https://legislation.gov.uk)

responsibility for setting and maintaining the standards that must be met in order for qualifications to be accredited. SQA accreditation is voluntary except for certain qualifications such as Scottish Vocational Qualifications, Competency Based Qualifications, and some licence to practice qualifications, which are accredited on a mandatory basis. National qualifications currently delivered in schools and other settings, provided by the SQA, go through a separate quality assurance process.

11. The 1996 Act and the subsequent Scottish Qualifications Authority Act 2002<sup>2</sup> (“the 2002 Act”) sets out the SQA’s underpinning legislative governance arrangements. It includes a Board of Management appointed by the Scottish Ministers and an Accreditation Committee to oversee the accreditation functions. Members of the SQA have a wide range of expertise from across the Scottish education and related sectors; however the 1996 Act does not prescribe the experience or skills composition of the Board, such as the statutory inclusion of teaching professionals and learners’ voices. The 2002 Act gave the Scottish Ministers the power to establish an Advisory Council as an advisory body independent from the SQA Board to consider and provide advice to the SQA and the Scottish Ministers on matters relating to SQA’s qualifications, awards and functions. The Advisory Council, the members of which are appointed by the Scottish Ministers, provides a representative forum for SQA’s stakeholders to share their needs and views.

12. The intention to replace the SQA with a new public body responsible for qualifications was announced by Scottish Ministers in June 2021<sup>3</sup>. This was in part in recognition of the challenges relating to the implementation of an alternative certification model overseen by the SQA in 2020 during the coronavirus pandemic, which impacted on levels of trust from learners, their representatives and the teaching profession. The intention also reflected the Government’s response to the recommendations within the Organisation for Economic Co-operation and Development’s (OECD) Review of the Curriculum for Excellence<sup>4</sup> which noted the expanded remit of the SQA and its role in what was described as a complex national education infrastructure. Replacing the SQA with a new body was an opportunity to reset the culture and engagement arrangements with all stakeholders, ensuring the national qualifications body’s governance structures reflect, represent and are accountable to the range of stakeholders it serves and users of its services. A further commitment was given in March 2022<sup>5</sup> in response to the report by Professor Ken Muir, “Putting Learners at the Centre. Towards a Future Vision for Scottish Education.”<sup>6</sup> These reports followed previous reports and reviews by Scottish Parliament Committees (Education and Culture, 2015, Education and Skills, 2017) and a Scottish Government white paper, “Education Governance - Next Steps” (2017)<sup>7</sup>. These reports contained recommendations and objectives on and around creating a school and teacher-led system that put children and young people at its centre, including the need for improvement in the role and focus of the respective national bodies in order to increase trust and confidence in Scottish education by the public, teaching practitioners and learners.

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<sup>2</sup> [Scottish Qualifications Authority Act 2002 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>3</sup> [OECD review backs school curriculum - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>4</sup> [Curriculum for Excellence: Scottish Government response to OECD Review - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>5</sup> [Putting learners at the centre: response to the independent advisor on education reform’s report - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>6</sup> [Putting Learners at the Centre: Towards a Future Vision for Scottish Education - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>7</sup> [Education governance – next steps - gov.scot \(www.gov.scot\)](https://www.gov.scot)

13. The establishment of Qualifications Scotland will put in place a new public body which reflects and supports the overall desired vision for the new national bodies and the wider Scottish education system as a whole. The establishment and development of the new body will provide an opportunity to define and refocus its activities, relationships and interaction with the broader education and skills system.

14. Qualifications Scotland will be established with a clear set of functions enabling it to design and award qualifications, to make arrangements for, or assist in or carry out the assessment of persons undertaking education and training for these qualifications, and certificate qualifications. It will also have responsibility for setting standards for and accrediting qualifications offered in Scotland through its accreditation functions. Both sets of functions will be equivalent to those the SQA currently has, as these are essential functions for the body and Scotland's education and qualifications system. The location of accreditation functions has been fully considered and the Scottish Government believes the functions should remain at arms-length from government and that they should sit within Qualifications Scotland. It is how these functions are exercised, through changes to governance, that will be the key difference in the new body.

15. The Bill provisions set out robust governance structures for Qualifications Scotland which bring forward a package of key changes from the current SQA structures. The new structures recognise that Qualifications Scotland requires more knowledge and understanding of, representation from, and accountability towards young people and all learners, teachers, lecturers and practitioners, and the wider stakeholders it engages with than seen in the SQA. Qualifications Scotland will have a strong focus on young people and adult learners, teachers and other education and skills professions, and the wider education system. These stakeholders will have clear roles in how qualifications are devised, delivered, supported, assessed for and awarded. The governance arrangements will ensure this through building such expertise into the legislative basis for the Board of Management and through the creation of new user-focused statutory committees for learners, and for teachers and practitioners. The legislation strengthens these governance arrangements through enhanced accountability mechanisms by requiring the creation of learner and teacher and practitioner charters. These changes are being brought forward to ensure the governance of Qualifications Scotland reflects and meets broader principles of good public management and specifically empowers learners of all ages and backgrounds and stakeholders to input into the work and direction of the organisation.

16. While the accreditation and awarding functions within the SQA are delivered as two separate and distinct functions, the Scottish Government recognised that this existing separation could be strengthened in Qualifications Scotland through additional legislative measures. The Bill therefore provides a package of measures that ensures the accreditation activity of Qualifications Scotland is not directed or influenced by the decisions taken on its awarding functions.

### **Policy objectives**

17. The overarching policy objective of this part of the Bill is to establish a new public body that can provide qualifications services that consistently meet the needs and expectations of young people and all other learners, the education and skills system, economy, industry and other providers who use and recognise qualifications and awards.

18. A key priority and objective for the new body is that it will be a model organisation in how it better involves young people and other learners, teachers and practitioners, and wider stakeholders in its decision-making. It will also be an exemplar in how it will be accountable to and transparent with these stakeholders. By emphasising these characteristics of the organisation alongside its functions, the Bill seeks to encourage an organisational culture that puts learners in Scotland, and other key education stakeholders, at its centre.

19. The Bill provides Qualifications Scotland with a framework that establishes it as an operationally autonomous public body that remains strategically accountable to the Scottish Ministers. The Bill establishes the foundations for the governance and functional arrangements for the body.

20. The Bill lays the legal foundations that will enable the body to deliver two distinct and separate functions to achieve these overarching objectives:

- To develop and award qualifications.
- To accredit qualifications.

21. By exercising these functions Qualifications Scotland will be able to provide a breadth of different qualifications and awards that meet the diverse and ever-evolving needs of young people, other learners and all those who use and recognise qualifications. Its accreditation functions will also promote excellence, fairness and integrity in Scotland's qualifications market, improving the standards of qualifications that can support better outcomes for all.

22. As a vital component of the wider education and skills reform programme, the legislative foundations for Qualifications Scotland will be enhanced and supplemented by further, more detailed work on its structure, the design of services and operations, and the defining of its relationships with other education organisations. This detailed work will be developed as part of the multi-year reform programme in parallel to the Bill's passage through Parliament and beyond. Close collaborative working with Qualifications Scotland's service users, delivery partners and wider stakeholders will ensure the organisation can deliver on its expectations and add value to the existing system.

## **Specific provisions**

### ***Establishment - Qualifications Scotland***

23. Provisions in Part 1 of the Bill will establish a body to be known as Qualifications Scotland (Gaelic name *Teisteanasan Alba*).

24. The establishment of Qualifications Scotland will deliver on the Scottish Government's decision that there should continue to be a national body responsible for delivering qualifications in Scotland. Qualifications Scotland will be accountable to the Scottish Ministers while being operationally autonomous. This will ensure continuous alignment with the Scottish Government's national education and skills strategies whilst ensuring an operationally independent, agile and responsive organisation meaning Qualifications Scotland's policies and services are coherent with the Scottish Ministers' vision for the qualifications, education and skills systems.

### ***Awarding qualifications***

25. Section 2 of the Bill gives Qualifications Scotland key functions that will enable it to deliver qualifications, assessment and connected services. These functions will relate to any type of qualification, except university degrees.

26. Section 2 enables Qualifications Scotland to design, develop, create, award and review its own qualifications. This will ensure the body can create new qualifications and update its existing qualifications so they consistently cater to a range of different user needs and interests. These different needs, for example, include the ever-evolving interests and expectations of young people and other learners; those who provide the learning, teaching and assessment of qualifications such as teachers and lecturers; and those who recognise qualifications, such as training providers, higher and further education institutions, and employers and industry sectors.

27. Section 2 will also give Qualifications Scotland the ability to set out how assessment is used in respect of its qualifications. This includes the means of assessment, and the ability level that must be met to be awarded a qualification. The section will give Qualifications Scotland the power to use, organise, support or carry out assessment of those in education and training to support the delivery of assessment for their own qualifications, and to provide assessment services to customers and other service users looking to deliver assessment for their own qualifications and awards.

28. The provisions in this section that enable these functions are intended to be broad and flexible. This will allow Qualifications Scotland to innovate, adapt and extend its qualifications and assessment services in a highly agile and responsive manner. Through this, Qualifications Scotland will be able to better meet user and system needs. Importantly, this flexibility will ensure Qualifications Scotland can suitably implement any reforms to Scottish qualifications, assessment or the skills landscape that may come in response to the Independent Review of Qualifications and Assessment (IRQA)<sup>8</sup>, the Skills Delivery Review<sup>9</sup> and wider post-school reform.

29. Sections 2 and 3 also set out several functions that enable Qualifications Scotland to guarantee the quality and integrity of its qualifications and assessment services, and that they are being used appropriately by others. This includes the ability to approve the types of establishments that can offer its qualifications; deciding which young people and other learners are entitled to undertake and be awarded qualifications; and quality assure the practices of the establishments offering its qualifications and connected assessment approaches.

30. These quality and integrity focussed functions are important for two key reasons. The first reason is to ensure the high standards Qualifications Scotland will expect around the use of its services can be met to better support a fair awarding system for all. For example, it will use these powers to scrutinise assessment practices in educational establishments in relation to how they better support individuals with additional support needs for learning.

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<sup>8</sup> [It's Our Future - Independent Review of Qualifications and Assessment: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2023/06/16/IRQA-report-2023-24.pdf)

<sup>9</sup> [Fit for the Future: developing a post-school learning system to fuel economic transformation - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2023/06/16/Fit-for-the-Future-report-2023-24.pdf)

31. The second reason is to ensure the appropriateness of different education establishments and potential candidates. For example, this is relevant to ensuring individuals with the necessary prior learning or qualifications are able to take certain qualifications, or ensuring education establishments have the necessary knowledge and skills to deliver certain qualifications to provide assurance to young people and learners.

32. Furthermore, these particular provisions are important in the context of the IRQA<sup>10</sup> recommendation regarding parity of access for qualifications for all young people, and the need to rationalise qualifications to show clear learner pathways. These powers will enable Qualifications Scotland to work with different education establishments, such as schools, colleges and training institutions, to ensure their learners are able to access the qualifications that best support their learning journey at different stages of their lives.

### ***The accreditation function***

33. Section 4(1)(a) gives Qualifications Scotland powers to accredit any qualification apart from a university degree (section 4(4)).

34. Qualifications Scotland will be a lead organisation involved in supporting a high-quality education and skills sector in Scotland by providing nationally recognised standards for the delivery and assessment of qualifications in Scotland. This role is essential so that all users of qualifications have confidence and trust in the qualifications they are using. Trust in the integrity of Scottish qualifications ensures sufficient, credible qualification options are available for users of qualifications to choose from and recognise. The accreditation function supports this.

35. Section 4(1) and (2) ensure Qualifications Scotland will have responsibility for setting and publishing the requirements that must be met in order for qualifications to be accredited. Under section 4(2), these requirements must be published. This is to ensure the accreditation process is transparent. Obtaining accredited status for a qualification will clearly indicate that the highest standards in the delivery and assessment of qualifications have been met and approved by the national standards-setting body.

36. Current SQA practice requires organisations offering qualifications (known as ‘awarding bodies’) to meet a set of “General Principles” and receive approved awarding body status in order to seek accreditation for their qualifications. The Scottish Government does not expect this process to change in Qualifications Scotland. However, Qualifications Scotland will have autonomy for determining and, if needed, changing the requirements for qualifications to be accredited. The Bill therefore does not set any of these requirements out in legislation.

37. Currently, all qualifications known as a Scottish Vocational Qualification (SVQ)<sup>11</sup> must be accredited in order to be delivered in Scotland. Certain other qualifications must also be accredited, such as those in the licence trade sector and in the security industry sector which lead to a licence to practice. For all other qualifications, accreditation is voluntary. The provision made in section 4 ensures this approach continues.

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<sup>10</sup> [It's Our Future - Independent Review of Qualifications and Assessment: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2023/06/230614_it_s_our_future_independent_review_of_qualifications_and_assessment_report.pdf)

<sup>11</sup> [Approval and accreditation of vocational training courses \(Scotland\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100000/Approval_and_accreditation_of_vocational_training_courses_Scotland.pdf)



38. The Scottish Government recognises that effective quality assurance of the qualifications on offer in Scotland is essential for a thriving and world leading education and skills system, and accreditation of qualifications plays an important role in this. Ensuring the quality of qualifications is crucial to protecting young people and adult learners. This was recognised by the IRQA<sup>12</sup> and the Skills Delivery Review<sup>13</sup>.

### ***Working with, or recognition of, others***

39. Section 6(1) gives Qualifications Scotland the ability to provide services to others in Scotland and beyond and enables them to deliver services on behalf of others.

40. Section 6(2) requires Qualifications Scotland to consider the benefits of working in collaboration with others. This is to ensure its functions are delivered in a way that maximises the positive impacts of its qualifications and assessment services within the education, skills and employment system for example, working with other national education and skills bodies, or with industry sectors to develop key qualifications products.

41. Section 6(3) gives Qualifications Scotland the ability to issue fellowships or awards to individuals who have made an outstanding contribution to the advancement of education and training.

### ***Duties when exercising functions***

42. Section 7 places a number of duties and obligations on Qualifications Scotland to ensure it is delivering in the best interests of Scottish education and training, and the individuals and groups it is designed to serve. Section 7(a) requires it to promote and advance education and training.

43. Section 7(b) ensures it has regard to the needs and interests of all those using its services when it makes decisions or delivers its functions. The provisions in particular highlight the needs and interests of those undertaking Gaelic learner education, Gaelic medium education, or the teaching of the Gaelic language in the provision of further education by education authorities. Section 7(c) places a duty on Qualifications Scotland to have regard to any advice it receives from the Strategic Advisory Council to ensure system-wide stakeholders have opportunity to shape the decisions and services provided by Qualifications Scotland to support greater education, skills and economic alignment throughout Scotland. The role of the Strategic Advisory Council is set out in further detail at paragraph 71.

### ***Funding and use of resources***

44. Section 22 enables Qualifications Scotland to be a publicly funded organisation. This is to ensure it can meet its spending requirements for delivering its statutory functions.

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<sup>12</sup> [It's Our Future - Independent Review of Qualifications and Assessment: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/06/Its-Our-Future-Independent-Review-of-Qualifications-and-Assessment-report-2022-06-2022.pdf)

<sup>13</sup> [Fit for the Future: developing a post-school learning system to fuel economic transformation - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/06/Fit-for-the-Future-developing-a-post-school-learning-system-to-fuel-economic-transformation-2022-06-2022.pdf)



45. Additionally, the model Framework Document for NDPBs (as set out in the Scottish Public Finance Manual)<sup>14</sup>, stipulates NDPBs will be expected to optimise income from all sources. With this, section 23 ensures Qualifications Scotland will be able to charge for and provide services in Scotland, the rest of the UK and internationally, to support the optimisation of income to contribute to the financial sustainability of Qualifications Scotland.

### ***Governance***

46. The Bill establishes Qualifications Scotland with a statutory governance model, the details of which are set out in schedule 1. This model includes the Board of Management, its wider committee structure and procedures, and its reporting and accountability mechanisms. This governance structure is in line with contemporary governance practice, expectations and requirements of public bodies, and in line with relevant public bodies legislation. It also aligns with other examples of Scottish NDPBs.

47. The model will allow for a transparent relationship between Qualifications Scotland and the Scottish Government, whilst enabling clear and accountable decision-making. The provisions in schedule 1 will also enable the Scottish Government to deliver on its key objective for the body, by creating a governance structure that better involves and recognises the needs of young people and other learners, of teachers and practitioners, and of wider stakeholders.

### ***Membership***

48. Part 2 of schedule 1 makes provision for the Scottish Ministers to appoint a Chair of Qualifications Scotland. The Scottish Ministers recently appointed a new Chair of the SQA who will oversee the SQA and the transition to Qualifications Scotland. To support this transition, the new SQA Chair will become the first Chair of Qualifications Scotland. The appointment of the SQA Chair was made after fair and open competition and was regulated by the Commissioner for Ethical Standards in Public Life in Scotland, and the Code of Practice for Ministerial Appointments to Public Bodies in Scotland<sup>15</sup> on the express basis that the successful candidate would transition to the new body. Schedule 3 therefore includes a provision under which the current SQA Chair becomes the first Chair of Qualifications Scotland, and as such, this first appointment will not be regulated by the Commissioner for Ethical Standards in Public Life in Scotland, or subject to the Code of Practice for Ministerial Appointments to Public Bodies in Scotland<sup>16</sup> (on the basis that the existing appointment, which is being transferred, was already so regulated). All subsequent Chair appointments will be regulated appointments in compliance with the Code of Practice.

49. Part 2 of schedule 1 also makes provision for the Scottish Ministers to appoint other members to Qualifications Scotland in addition to the Chair. In total, there can be between nine and thirteen members, which includes the Chair and the Chief Executive (who is approved but not appointed by the Scottish Ministers, and who becomes a member by virtue of being appointed as Chief Executive). The Scottish Ministers will have the power, by regulations, to amend membership numbers to suit the future needs of the body.

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<sup>14</sup> [Scottish Public Finance Manual - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>15</sup> [Public appointments: guide - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>16</sup> [Public appointments: guide - gov.scot \(www.gov.scot\)](http://www.gov.scot)

50. The Scottish Ministers also recently began recruitment for new members to oversee the SQA while it continues as Scotland's national qualifications body. This recruitment is essential to ensure the SQA can remain quorate and deliver its statutory duties alongside the Scottish Government's education reform agenda. The SQA's new members will also be essential in supporting transition from the SQA to Qualifications Scotland. Given their existing expertise, the experience they will have and gain in their role at the SQA, and their essential role in supporting transition, it will be important to ensure that some of the SQA's existing members can become initial members of Qualifications Scotland, should that be needed. Any of these appointments will follow the same process as for the first Chair of Qualifications Scotland noted above, in that all other and future member appointments after the initial members will be regulated appointments. Provisions under schedule 3 allow for this to happen under regulations made under the negative procedure.

51. Noting the Scottish Government's ambition for the new body to be focused on the needs of young people and other learners, teachers, lecturers and other practitioners, provisions under Part 2 of schedule 1 set down requirements about the membership of Qualifications Scotland. These provisions set out that membership of Qualifications Scotland must include the following:

- two or more members who are providing teaching or training as a registered teacher.
- two or more members who are providing relevant teaching or training in colleges.
- one or more member with relevant experience and knowledge of the interests of young people and other learners who undertake qualifications.
- one or more member who has relevant knowledge of the interests of employees within Qualifications Scotland.

52. In addition to this, a vital component of the membership of Qualifications Scotland will be ensuring it has a balanced mix of relevant skills and experience that reflect its core activity and responsibilities. This includes knowledge and expertise of qualifications, assessment and the education, skills and employment landscapes, as well as the corporate governance experience needed to oversee such a significant public body such as Qualifications Scotland. The Bill does not specify a list of required experience for the Board beyond the provisions in Part 2 of schedule 1, as a wider but more detailed skills mix will be determined outwith legislation.

53. The Scottish Ministers will be responsible for appointing all these members.<sup>17</sup> As part of this established appointments process, the Scottish Ministers will have expectations and supporting guidance that makes it clear that these members should include members from the teaching profession who are not in promoted or leadership posts (such as Headteachers or Principals). This additional guidance will support the overarching legislative requirement but is not set out in the Bill.

54. The creation of a membership model that centres on the experiences and needs of young people, and other learners and of those trusted to deliver the learning, teaching and assessment for them, will help shape the focus and culture of Qualifications Scotland from the top down. To further ensure these members meet the expectations of these stakeholders, Part 2 of schedule 1

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<sup>17</sup> [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(legislation.gov.uk\)](#)

requires the Scottish Ministers to consult with the respective sectors on the skills and experience that these members must have before recruitment.

55. As highlighted above, Part 2 of schedule 1 also prescribes that there must be one member of the Board who has relevant knowledge of the interests of employees within Qualifications Scotland. This is to ensure there is an expert member on the Board who is responsible for listening to and understanding the impacts of decisions on staff working to deliver qualifications, assessment and accreditation services, and support an effective staff voice within the organisation.

56. All appointments made by the Scottish Ministers will be made in accordance with a commitment to fairness and openness in recruitment and they will be regulated by the Commissioner for Ethical Standards in Public Life in Scotland and the Code of Practice for Ministerial Appointments in Scotland<sup>18</sup>. All Chair and member appointments will be subject to terms and conditions set out by the Scottish Ministers at the time of their appointment.

### ***Accreditation governance***

57. The Scottish Government decided that the most appropriate place to locate the SQA's qualification accreditation functions is in Qualifications Scotland<sup>19</sup>. This decision was made to ensure there was sufficient independence in decision-making from the Scottish Ministers. The Scottish Government recognises some concerns regarding the need to ensure continued and enhanced separation between awarding functions and these accreditation functions. The creation of Qualifications Scotland is an opportunity to strengthen that separation and the independence between how these functions are governed and carried out, without affecting independence from the Scottish Ministers.

58. Continued separation between the two functions is essential. The Scottish Government is committed to ensuring that the policy, strategy and processes for accrediting qualifications and regulating awarding bodies in Scotland are robust, fair, proportionate and importantly, as independent from the awarding functions as possible, without the expense of creating a new, separate organisation. An accreditation service with integrity in its processes and without undue outside influence will inspire trust and support in qualifications in Scotland that gives all learners, education and training establishments, employers and other stakeholders, confidence in the qualifications they use.

59. To ensure this, Part 4 of schedule 1 (Chapters 1 and 2), and related provisions in sections 4, 19, 20 and 21, contain a number of specific measures that ensure this continued and strengthened separation. These include the Scottish Ministers appointing a specific member of Qualifications Scotland to oversee the accreditation functions. This member will convene and oversee an Accreditation Committee created specifically to carry out these functions. The member will be known as the convener. The convener will determine the membership of this committee, with the majority required to be appointed from outside of Qualifications Scotland.

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<sup>18</sup> [Code of Practice for Ministerial Appointments to Public Bodies in Scotland – March 2022 version | Ethical Standards Commissioner](#)

<sup>19</sup> [Questions and answers | Scottish Parliament Website](#)

60. The role of the convener and the Accreditation Committee will have several requirements placed on it. This includes separate governance and accountability documents, such as producing and publishing their own corporate plan and publishing a separate annual report (sections 19 and 20). Furthermore, there is a package of provisions that strengthen the independence of the accreditation role. For example, the Bill includes an express provision that all decisions of the Accreditation Committee must be made independently of the Board of Management in Qualifications Scotland, and a provision that forbids Qualifications Scotland from providing direction to the Accreditation Committee in relation to its role overseeing accreditation functions (see Part 4 of schedule 1 (Chapters 1 and 2)). This is to ensure the decisions made under the accreditation functions are made independently from the decisions made under the awarding functions.

61. Importantly, the convener will be accountable to the Chair of Qualifications Scotland whilst making independent decisions. This ensures the Chair has effective oversight of all Qualifications Scotland's activity, even if they cannot direct this activity. The convener will also have a direct, advisory relationship with the Scottish Ministers (section 21 and Part 4 of schedule 1 (Chapter 1)). This relationship will enable the convener, supported by the Accreditation Committee and staff members responsible for accreditation, to engage directly with the Scottish Ministers on any matter in relation to accreditation. This is an important power, as it will ensure advice that shapes qualifications accreditation policy can continue to be shared with the Scottish Ministers in a more direct manner.

### ***Learner Interest Committee***

62. Part 4 of schedule 1 (Chapter 1) makes provision for Qualifications Scotland to establish a "Learner Interest Committee" that will act as a key part of Qualifications Scotland's governance. It will provide a meaningful mechanism for the lived experience of young people, adult learners and the wider learning community to inform Qualifications Scotland's decision-making.

63. It is a priority that the voices of Scotland's young people, adult learners and the wider learning community are involved at the heart of decision making. This is to ensure the actions Qualifications Scotland takes are always focussed on the needs and expectations of learners. Young people and adult learners of all backgrounds can provide important perspectives and these must be taken into account when designing qualifications and assessment services as part of a high performing education and skills system.

64. With regard to membership of the Learner Interest Committee, the Scottish Government expects this group to include a diversity of young people and other learners who undertake different forms of qualifications and assessment. For example, this might include young people taking national qualifications, individuals studying for a Qualifications Scotland SVQ, or individuals who receive additional support for learning while studying for Qualifications Scotland qualifications. It should also include a range of professional or specialist members who can support the wider learner members and share their expert knowledge and experience to support decision-making. For example, this might include representatives of young learners and those with additional support needs and those with experience in advocating on behalf of young people.

65. The Bill does not prescribe the exact membership and model to ensure the system that is put in place can be agile and responsive to the needs of Qualifications Scotland, the education and

skills system, and the needs of different learners. However, this chapter of schedule 1 of the Bill provides some specific legislative parameters on membership. This includes specifying that a majority of its members must be appointed from outside of Qualifications Scotland. Within those non-Qualifications Scotland members, a majority of those people must be individuals who undertake qualifications, such as young people or adult learners.

### ***Teacher and Practitioner Interest Committee***

66. Part 4 of schedule 1 (Chapter 1) also makes provision for Qualifications Scotland to establish a “Teacher and Practitioner Interest Committee”. The Teacher and Practitioner Interest Committee forms part of the formal internal governance of Qualifications Scotland and will provide a robust platform for teachers, lecturers and other education professionals delivering learning for qualifications to shape decision-making.

67. Teachers, lecturers and other educational and skills professionals are key to delivering better outcomes for Scotland’s young people, adult learners, and entire learning communities. Excellent learning, teaching and assessment delivered by Scotland’s teaching profession is essential to enable people to reach their full potential. The knowledge and expertise Scotland’s teaching profession holds is integral to the delivery of high-quality qualifications in Scotland. This is why it is essential they have a central role in supporting, shaping and making decisions within Qualifications Scotland.

68. The Bill does not prescribe exact membership of this Committee. As with the Learner Interest Committee, the Scottish Government wants membership to be able to be easily adapted to reflect teacher and system needs. However, this chapter of schedule 1 of the Bill also provides similar parameters on the membership model as it does with the Learner Interest Committee. This includes specifying that a majority of members must come from outside Qualifications Scotland. Within that non-Qualifications Scotland majority, there must be a majority who are practising lecturers and registered practising teachers. This is to support the Scottish Government’s ambition that the Teacher and Practitioner Interest Committee consists of a range of different lived experiences of teachers and lecturers delivering different types of Qualifications Scotland qualifications in different educational settings, alongside wider teaching specialists, representative organisations and other experts.

69. A statutory role for the teaching profession in Qualifications Scotland’s decision-making structures is integral to shaping the body’s focus, culture and operational practices, delivering an organisation that better utilises the experience and knowledge of teaching professions and those delivering qualifications. The Teacher and Practitioner Interest Committee will support a consistent presence of the teaching profession across the operational structures of Qualifications Scotland, ensuring the day-to-day activities harness the teaching profession’s expertise in order to maximise the effectiveness of the body’s services.

### ***Strategic Advisory Council***

70. The Scottish Government recognises that the wider education, skills and economic landscape has a stake in qualifications and assessments services Qualifications Scotland will provide, and therefore a keen interest in policy decisions it makes. The breadth of interest spans from schools and colleges, universities and further education institutions, employers, training

providers, a range of different industries, parents and carers, education authorities, other Scottish public bodies, other qualifications providers and beyond. The benefits of such a forum were seen in advising the SQA.

71. As such, section 9 of the Bill makes provision requiring the Scottish Ministers to set up a “Strategic Advisory Council”. The purpose of this council is to provide a forum for system and organisational stakeholders to scrutinise and advise Qualifications Scotland on its activities. This is to ensure Qualifications Scotland is making informed decisions that align with the needs of the wider system, and to ensure a joined-up and cohesive approach to the delivery of qualifications and related services across Scotland’s national landscape. This builds on the benefits of the SQA equivalent, while emphasising a more strategic role for this new council.

72. Section 9(1) will enable the Strategic Advisory Council to advise the Scottish Ministers directly in relation to Qualifications Scotland’s activities. The Scottish Ministers will be responsible for appointing members of the council, which will not be public appointments. The exact membership model will not be set out in the Bill to ensure flexibility is built in for the council to adapt who is appointed as members. To determine membership, the Scottish Ministers will consult Qualifications Scotland and the wider system stakeholders to ensure the council accurately reflects the context and needs of the landscape.

73. Section 9 sets out that the Scottish Ministers will establish the Strategic Advisory Council via regulations. This means the proceedings, processes, structure and wider governance aspects of the council will also be set out in regulations. This will ensure the legal framework for the council’s processes can be adapted in a more flexible manner, should the framework for the council need to change to reflect stakeholder needs.

#### ***Accountability to learners and teachers - Charters***

74. Scotland’s national qualifications body needs to be trusted by its service users, and the public. It needs to be an exemplar in how it conducts itself and delivers its services. This means being fair, open, transparent and above all, able to be held accountable by the individuals and groups it engages with, serves and relies on to support and deliver qualifications and assessment services. There must be confidence that Qualifications Scotland can consistently deliver in the best interests of young people and other learners, and can support better learning, teaching and assessment by Scotland’s teachers and educational practitioners.

75. The Scottish Government is clear that Qualifications Scotland must have a strong, legislative mechanism that provides a means for strengthened accountability and transparency. To do this, the sections 10 and 11 place requirements on Qualifications Scotland to create two specific “charters”: one for young people and learners; and one for teachers and practitioners.

76. The purpose of the charters is to set out what these particular service users and delivery partners should expect from Qualifications Scotland and is set out in section 10(1) and section 11(1) respectively. The charters will serve as frameworks for ensuring the rights, needs and views of all different categories of learners, and of the teaching professions, always shape how Qualifications Scotland delivers its services, and the culture in which it does this. The charters will act as a clear additional accountability tool for the Scottish Ministers, the Scottish Parliament and

the public to assess the performance of Qualifications Scotland from the perspective of these groups, as well as supporting Qualifications Scotland to appraise itself of how it can better deliver in the interests of its core service users.

77. How these charters are created is important. They must be co-created by the groups they are designed to support. Section 10(3) and (4) and section 11(3) and (4) require Qualifications Scotland to consult appropriately when creating and reviewing its charters. This means engaging with (in the case of the learner charter) young people, adult learners, and their representatives such as parents and carers, or (in the case of the teacher and practitioner charter) teachers, lecturers and their representative and professional bodies.

78. For the learner charter, it will be paramount that the charter's contents, and how it is developed, is underpinned by Article 12 of the United Nations Convention on the Rights of the Child (UNCRC)<sup>20</sup> to ensure the rights of children and young people to be heard are central to its creation and purpose. The Bill does not make provision for this, however through consultation with the Scottish Ministers (section 10 (4)) there will be clear expectations that this need is fulfilled. Furthermore, as a Scottish public authority Qualifications Scotland will have to comply with its obligations under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

79. The Scottish Government recognises that Qualifications Scotland will also have a suite of other key stakeholders, such as training providers, awarding bodies, employers and industry sectors that will have certain expectations of it and how it conducts its services. Section 13 therefore requires Qualifications Scotland to consider the creation of other charters that support greater fairness, openness and accountability to the wider education, skills and economic system.

### ***Accountability, reporting and Ministerial powers***

80. Section 17 enables the Scottish Ministers to give directions to Qualifications Scotland in a general or specific manner. These directions must be published once communicated to Qualifications Scotland. This is to ensure an appropriate degree of Ministerial oversight for Qualifications Scotland and to guarantee public accountability.

81. Section 5 gives Qualifications Scotland an advisory function to the Scottish Ministers. This will ensure Qualifications Scotland provides the Scottish Ministers with advice when they request it and will enable Qualifications Scotland to provide advice to the Scottish Ministers on any matter in relation to its functions, such as the delivery, assessment and awarding of qualifications.

82. As is common practice for NDPBs, Qualifications Scotland will be expected to meet a range of governance obligations including financial, planning and reporting requirements and to establish an appropriate level of openness, transparency and accountability. These are set out in sections 14, 15 and 16 of the Bill. For example, section 14 requires Qualifications Scotland to prepare a corporate plan which sets out how it intends to deliver on its objectives and section 15 requires it to produce an annual report. These are key mechanisms that enable a clear approach to corporate governance and give the Scottish Ministers the tools to oversee and evaluate the

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<sup>20</sup> [UN Convention on the Rights of the Child - UNICEF UK](#)



organisation effectively. These documents will also be laid before the Scottish Parliament to allow for wider scrutiny.

83. Qualifications Scotland, despite having two separate and independently governed functional arms (awarding and accreditation), will be a single public body that is accountable to the Scottish Ministers. Section 16 therefore provides for Qualifications Scotland to prepare its financial accounts and respond to audit as a single entity. Qualifications Scotland will be expected to show clearly within this financial reporting the separation between the two functions.

84. To ensure the awarding functions and the accreditation functions of Qualifications Scotland can be governed, evaluated, and carried out in a way that embodies separation and independence, the Bill makes provision for the Accreditation Committee to have separate planning and reporting requirements to ensure separate scrutiny can take place from the awarding functions. This will include a duty to prepare and publish a separate corporate plan (section 19) and submit a separate annual report for the Scottish Ministers to lay in the Scottish Parliament (section 20). This will ensure more effective scrutiny of the separate functions and provide greater transparency which will support clearer accountability to and greater trust from the public.

85. The policy aim is to ensure that the governance of the organisation is always robust, and to ensure there are safeguards in place to allow interventions to be made on the governance arrangements if required. Part 4 of schedule 1 (Chapter 2) therefore makes provision for the Scottish Ministers, by regulations, to be able to, subject to some rules which are provided for in the Bill, set and make changes to the procedures of Qualifications Scotland and its committees. The Delegated Powers Memorandum sets out the intention for how this power may be used.

### ***Staff***

86. Qualifications Scotland will be able to appoint its own staff on terms and conditions approved by the Scottish Ministers. Qualifications Scotland will also be able to appoint a Chief Executive, subject to the approval of the Scottish Ministers, on such terms and conditions as are approved by the Scottish Ministers. These provisions are set out in Part 3 of schedule 1. The Chief Executive will also be an ex-officio member of the Board, as set out in Part 2 of schedule 1.

### ***Transfer of staff***

87. As Qualifications Scotland will replace the SQA, staff employed to deliver those functions will transfer to Qualifications Scotland. The Scottish Ministers have provided a commitment that there will be no compulsory redundancies as a result of the education reform programme. It is expected that Qualifications Scotland will be a similar sized organisation to the SQA. The SQA currently employ around one thousand members of staff. Part 3 of the Bill (specifically section 50) also makes provision to ensure staff transfers can happen.

### ***Transfer of property and liabilities***

88. As Qualifications Scotland will be replacing the SQA, the policy aim is to ensure that any property, rights, liabilities or obligations of the SQA, relevant to the activities and the functions of the new body created by the Bill, can transfer as smoothly as possible. Part 3 (section 50) of the Bill therefore makes provision to enable any transfers of this kind to take place.

## **Transitions**

89. Part 3 of the Bill (section 52) also includes provision for a smooth and effective transitional period to ensure that there is continuity of service provision with minimal disruption and cost, where suitable approaches to manage and mitigate the risks regarding product and service delivery are considered. The Scottish Ministers will be enabled to make regulations that support incidental, supplementary, consequential, transitional, transitory, or saving provisions, and this is set out in section 56. This will allow the dissolution of the SQA (section 51) to be done in a way that can ensure the continuity of service between the SQA and Qualifications Scotland, and a winding down period for the SQA once the new body is established.

## **PART 2: HM CHIEF INSPECTOR OF EDUCATION IN SCOTLAND**

### **Background**

90. HM Inspectors have evaluated the quality of education in Scotland initially in schools for children and young people, and subsequently in a variety of other educational settings for more than 150 years.

91. Following the Scotland Act 1998<sup>21</sup>, the Inspectorate was made an Executive Agency of the Scottish Government in 2001 and HM Inspectors were answerable to the Scottish Ministers for the running of the Inspectorate and the whole inspection system in Scotland.

92. HM Inspectors became part of the new executive agency of the Scottish Government, Education Scotland, which came into existence on 30 June 2011 as the lead public body for assurance and education improvement in Scotland and a key partner in helping achieve the Scottish Government's vision for education.

93. In 2020, the Scottish Ministers commissioned a review to be undertaken by the OECD, to help better understand how the curriculum is being designed and implemented in schools in Scotland, and to identify areas for improvement.

94. In June 2021, the OECD report *Scotland's Curriculum for Excellence Into the Future*<sup>22</sup>, found that having the inspectorate as part of an organisation that is also responsible for supporting school leaders, curriculum design and support, teacher professional learning and a range of other initiatives is an "unusual configuration".

95. The then Cabinet Secretary for Education and Skills subsequently appointed an independent advisor, Professor Ken Muir in August 2021<sup>23</sup> to engage widely with stakeholders and report findings and recommendations to the Scottish Government on the implementation of the OECD's recommendations.

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<sup>21</sup> [Scotland Act 1998 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>22</sup> [Scotland's Curriculum for Excellence: Into the Future | en | OECD](#)

<sup>23</sup> [Reform of the SQA and Education Scotland: advisor draft remit - gov.scot \(www.gov.scot\)](https://www.gov.scot)

96. Professor Muir's report, *Putting Learners at the Centre: Towards a Future Vision for Scottish Education*<sup>24</sup>, was published in March 2022 and included his view that having an inspection function within the same body charged with supporting improvement (Education Scotland) created potential conflicts of interest and compromised the organisation's ability to perform both roles well.

97. The then Cabinet Secretary for Education and Skills announced in March 2022 that Education Scotland would be replaced by a new national agency for education (which does not require legislation) and an independent inspectorate. This decision was in line with the views expressed by many respondents to Professor Muir's public consultation<sup>25</sup> and in the engagements that he held, as reported in his findings.

98. In addition to a targeted consultation on legislative intentions with key stakeholders in early 2023 a public consultation<sup>26</sup> on the proposed content of the Bill was undertaken between 7 November and 18 December 2023 which included seeking views on the purpose and priorities of education inspection, and on options for taking forward a new approach to inspection, whether that be to establish the inspectorate as a separate Executive Agency or by establishing the role of HM Chief Inspector of Education in Scotland as an office-holder in legislation.

99. Whilst there was no clear consensus on this point, among those who supported the appointment of an independent office-holder, many commented that legislation would make accountability and independence more obvious and more stringent which, in turn, could maximise public and professional confidence in the inspection process.

## **Current position**

100. Currently, during inspection activity, HM Inspectors evaluate the impact of interventions (i.e. activity to support learners), the quality of learners' experience and, using the relevant framework for the sector, make judgements on a school's or setting's capacity to improve. This supports system-wide learning and capacity-building. HM Inspectors also evaluate as part of the inspection activity how well settings and schools fulfil their statutory duties.

101. His Majesty's Inspectorate can currently inspect:

- Primary and secondary schools (this includes public, grant-aided, and independent schools, and both mainstream and special/Additional Support Needs services, with or without residential provision);
- Nursery schools (i.e. those providing early learning and childcare, and funded partner providers of early learning and childcare);
- Gaelic education;
- Community learning and development services;
- Publicly funded colleges, private colleges, English language schools;

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<sup>24</sup> [Putting Learners at the Centre: Towards a Future Vision for Scottish Education - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/putting-learners-at-the-centre-towards-a-future-vision-for-scottish-education/pages/1-introduction-and-contents.aspx)

<sup>25</sup> [Education reform consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/education-reform-consultation/pages/1-introduction.aspx)

<sup>26</sup> [Education Bill provisions: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/education-bill-provisions-consultation/pages/1-introduction.aspx)

- Modern apprenticeship training;
- Education functions of local authorities;
- Educational psychology services;
- Career information, advice and guidance services;
- Initial teacher education;
- Compliance with Nutritional Regulations for educational establishments;
- Grant-funded national voluntary organisations;
- Services for children and young people (at the request of the Care Inspectorate);
- The educational provision provided to a ‘looked after child or young person’, who has subsequently died (at the request of the Care Inspectorate);
- Education provision in prisons and young offender institutions (at the request of HM Inspectorate of Prisons in Scotland).

102. Inspection serves to provide assurance and public accountability to stakeholders about the quality of education by carrying out individual establishment/service level inspections and conducting national thematic inspections on specific aspects of the education system. It also promotes continuous improvement and builds capacity for improvement by identifying and sharing effective practice and informs the development of educational policy and practice by providing independent, professional, evidence-based advice.

103. While most respondents to Professor Muir’s consultation<sup>27</sup> supported the removal of the inspection function from Education Scotland, there were views that this alone would not be sufficient to optimise the contribution of inspection to Scottish education. In addition, the approach to inspections (and general inspection ethos) was also seen as being in need of fundamental review and change to make it more supportive, creative and formative. This included the need for a renewed focus on improvement and support, with collaboration at the heart of the process. These findings were echoed in the public consultation on a new approach to inspection, contained in the Education Bill provisions: consultation analysis report (2024)<sup>28</sup>.

## **Specific provisions**

### ***Establishment and functions***

104. The provisions in Part 2 of the Bill establish the new office of His Majesty’s Chief Inspector of Education in Scotland (“the Chief Inspector”) - in Gaelic *Àrd-Neach-sgrùdaidh an Rìgh airson Foghlam ann an Alba*. The Chief Inspector will separately be designated an office-holder in the Scottish Administration. That will be taken forward by subordinate legislation of the UK Parliament and discussions on this are underway. The statutory functions will be conferred on the Chief Inspector and the Chief Inspector will lead a new independent education inspectorate (to be known as His Majesty’s Inspectorate of Education in Scotland), to take forward the education inspection functions that currently sit within Education Scotland. The Inspectorate will be funded

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<sup>27</sup> [Education Scotland and the Scottish Qualifications Authority: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/education-scotland-and-the-scottish-qualifications-authority/consultation-analysis-report-2024/pages/113-114.aspx)

<sup>28</sup> [Education \(Scotland\) Bill - Consultation Analysis – \(available after 10 am, 5 June 2024\)](#)

by the Scottish Government and, under section 38(1) of the Bill, required to lay an annual report before the Scottish Parliament.

105. The legislative underpinning for the Inspectorate must enable it to operate flexibly and independently, as Professor Muir recommended. Inspection can and does take many different forms and therefore the functions conferred on the Chief Inspector must be configured in a way that meets current needs but is also flexible to meet future requirements, as the education system continues to change, and to support a culture of continuous improvement. The Bill seeks to ensure the inspection of education provision can continue to be carried out in the full range of establishments and services as are currently inspected, from early years to adult learning. Further, it seeks to ensure inspections are carried out by inspectors appointed by His Majesty as recommended by Professor Muir (though non-inspectors can also be appointed to carry out or help with an inspection (see paragraph 123 below).

106. Given the focus on independence, for most of the areas within the reach of the provisions, the Bill gives the Chief Inspector powers to set the frequency and focus for inspections and requires them, under section 36(2), to set these operations out in an inspection plan. This is a significant change from the current position where these are entirely under the control of the Scottish Ministers who have statutory power to ‘cause’ inspections.

107. It is expected that the inspection plan prepared by the Chief Inspector under section 36 of the Bill will set out the quality and improvement standards that will form the basis for evaluation and reporting (applied to different sectors and services), different models for how inspections should be carried out, the circumstances of when inspections are to be carried out, and how often. While this will be the responsibility of the Chief Inspector, to give assurance to stakeholders that there will be a regular, planned and systematic approach in place, section 36(5) of the Bill also gives power to the Scottish Ministers to make provision by regulations about how often the Chief Inspector must review and revise the inspection plan - if this is considered necessary in the future.

108. There is a different position in relation to the inspection of further education and of initial teacher education in higher education, where the Chief Inspector will ordinarily only be able to inspect under an arrangement with the Scottish Funding Council. This reflects the existing statutory responsibility of the Scottish Funding Council to secure that provision is made for assessing and enhancing the quality of fundable further education provided by fundable bodies and of higher education.

109. Notwithstanding this, the Scottish Ministers will be able to request inspections (under section 30(2)(b)) in both these areas to be carried out by the Chief Inspector if they consider it necessary.

110. More broadly, the Bill also retains a power for the Scottish Ministers to request inspection of a particular establishment in all areas of the Chief Inspector’s remit, with which the Chief Inspector must comply. The intention is that this power would only be exercised when necessary and in specific situations, such as where there are concerns about a particular establishment or setting. Such a power is necessary for the Scottish Ministers to enable them to carry out some of their own functions relating to school education, including the duty to endeavour to secure

improvement in the quality of school education in Scotland<sup>29</sup> and the regulation of independent schools<sup>30</sup>.

111. Additionally, the Bill does not set a minimum frequency for how often inspection should be carried out, as in the first instance this should be considered by the Chief Inspector as part of their remit. However, it does include a power for the Scottish Ministers, under section 30(4), to specify frequency by way of regulations, if they believe this to be necessary to provide sufficient assurance of the quality of education to pupils, students, parents and carers, in the future.

112. Furthermore, to ensure cooperation with inspection, section 44(1) of the Bill requires that the Chief Inspector be assisted by education establishments in the carrying out of inspection, both by granting access to their establishments and in providing documents that may assist in the carrying out of this important work. The Bill also looks to mirror existing legislation (section 66(3) of the Education (Scotland) Act 1980<sup>31</sup>) in that it will continue to be a criminal offence to intentionally obstruct the carrying out of an inspection, and if a person were to do so then they may be subject to a fine.

### ***Stakeholder involvement in governance***

113. The establishment of the office of Chief Inspector presents an important opportunity to ensure more learner and service user engagement and representation. This can be achieved in the model and approach to how inspection is carried out, which the Chief Inspector will take forward. However, there is also an opportunity to strengthen learner and parent/carer voices in the governance arrangements, alongside other important perspectives, such as those of teachers and other education professionals. This aligns with the opportunities set out by Professor Muir in his report to the Scottish Ministers to “align inspection with the vision of putting learners at the centre and incorporating the implications of the UNCRC”<sup>32</sup>.

114. The Bill therefore includes a requirement, under section 35, for the Chief Inspector to establish an Advisory Council. As an independent office-holder, membership of the council advising them is to be decided by the Chief Inspector but there is a duty on them to have regard to the desirability of ensuring that the Advisory Council taken as a whole is representative of persons likely to be affected by the Chief Inspector’s functions. Importantly the legislation will place a duty on the Chief Inspector to have regard to any advice provided by the council and, where decisions taken diverge from this advice, to set out the reasons why.

### ***Reporting***

115. Section 38(1) of the Bill sets out a requirement for the Chief Inspector to report annually on the carrying out of their functions, which it is anticipated will include information about activities carried out during the reporting period, the approach taken and evidence to support the chosen approach. There is a further requirement, under section 38(2) for the report to set out a summary of any advice provided by the Advisory Council in that reporting period and a summary of the Chief Inspector’s response to that advice.

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<sup>29</sup> [Standards in Scotland’s Schools etc. Act 2000 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2000/10/section/1)

<sup>30</sup> [Education \(Scotland\) Act 1980 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1980/10/section/1)

<sup>31</sup> [Education \(Scotland\) Act 1980 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1980/10/section/1)

<sup>32</sup> [UN Convention on the Rights of the Child - UNICEF UK](https://www.unicef.org/uk/about-us/our-work/childrens-rights)

116. Furthermore, under section 39(1), the Chief Inspector will be required to report annually on the performance of Scottish education (as far as falling into the Chief Inspector's remit), as recommended by Professor Muir<sup>33</sup>. This will provide a regular, independent statement to the Scottish Parliament and other stakeholders on the education system at a national level, supporting accountability and improvement. It will be for the Chief Inspector to determine the form that the annual report should take. The Chief Inspector must lay these reports before the Scottish Parliament.

117. In addition, a duty is placed on the Chief Inspector, under section 37(1), to publish individual establishment/service inspection reports. This will reinforce the important role of inspection findings in supporting assurance and improvement and the expected transparency of inspection processes, in particular in line with the UNCRC<sup>34</sup> Articles 13<sup>35</sup> and 17<sup>36</sup>, which frame children and young people's right to information.

118. Section 40 of the Bill also gives power to the Chief Inspector to report about any matters relating to the Inspectorate. If doing so, the Chief Inspector must send a copy of the report to the Scottish Ministers and may (if appropriate) publish the report and lay it before the Scottish Parliament.

119. The Bill requires the Chief Inspector, under section 49, 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 the Gaelic language and users of their services. Additionally, the Bill includes a specific requirement for the Chief Inspector to take account of Gaelic education and of the needs and interests of those who are provided with Gaelic education.

### ***Members and staff***

120. As recommended by Professor Muir<sup>37</sup>, the new inspectorate is to continue to be staffed by civil servants (with inspectors appointed by His Majesty, under section 28), consistent with the employment of current staff as part of Education Scotland. Historically, prior to moving into Education Scotland, the function of education inspections was held by a separate Executive Agency staffed by civil servants.

121. Whilst historically an individual has carried out the role of HM Chief Inspector of education establishments in Scotland, there is currently no express statutory basis for this appointment. Part 2 of schedule 2 of the Bill introduces this by including a provision for HRH the King on the recommendation of the Scottish Ministers to appoint a HM Chief Inspector of Education in Scotland. Additionally, part 3 of schedule 2 makes provision for the Chief Inspector to staff the Inspectorate as necessary and section 27 includes a duty for them to appoint a Deputy Chief Inspector with the approval of the Scottish Ministers. It is anticipated that the Deputy Chief Inspector will act on behalf of and perform the functions of the Chief Inspector during any period in which the Chief Inspector is temporarily unable to perform their functions, for example because

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<sup>33</sup> [Putting Learners at the Centre: Towards a Future Vision for Scottish Education - gov.scot \(www.gov.scot\)](http://gov.scot)

<sup>34</sup> [UN Convention on the Rights of the Child - UNICEF UK](http://www.unicef.org)

<sup>35</sup> [UNCRC Full Text - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](http://cypcs.org.uk)

<sup>36</sup> [UNCRC Full Text - The Children and Young People's Commissioner Scotland \(cypcs.org.uk\)](http://cypcs.org.uk)

<sup>37</sup> [Putting Learners at the Centre: Towards a Future Vision for Scottish Education - gov.scot \(www.gov.scot\)](http://gov.scot)



of absence, ill-health or for any other reason for the duration of the period of the Chief Inspector's appointment.

122. There is also a contingency in part 4 of schedule 2 to allow the Scottish Ministers to assign to an inspector the function of acting as a temporary deputy Chief Inspector in the very unlikely event that both the Chief Inspector and the deputy are unable to temporarily perform the legislative functions of the Chief Inspector, or there is a temporary vacancy in the office of Chief Inspector.

123. Professor Muir expressed strong views on the importance of the wider inspection team to help ensure that accountability to the public is maintained and ensure relevant field knowledge and experience is captured. Specifically, he noted in his report to the Scottish Ministers<sup>38</sup> that "approaches to inspection should build significantly on the current practice of involving senior leaders and teachers, practitioners and local government officers in inspection teams...and increasing the involvement of associate assessors and local authority officers as part of a more collaborative approach to inspections that supports professional learning and builds capacity." The Bill therefore includes provision under section 29(1) for the Chief Inspector to appoint such persons as appear to the Chief Inspector to be suitable to assist in inspections, such as, but not limited to, lay members (those being volunteers who join a professional team of inspectors to help make sure that the views of parents, carers, learners and others are taken into account during inspections) to help ensure that accountability to the public interest is maintained and that any suspicion of too close a relationship between inspectors and teachers is allayed) and associate assessors (who are experienced practitioners in the relevant field and can provide a level of peer support to the inspection process, as well as supporting staff development).

### ***Provision of evidence to support Ministerial enforcement powers***

124. The Bill seeks to mirror the current law (sections 66B to 66D of the Education (Scotland) Act 1980<sup>39</sup> and sections 10A to 10C of the Standards in Scotland's Schools etc, Act 2000<sup>40</sup>) regarding securing improvements following an inspection if it is necessary. Specifically, section 46(2) of the Bill requires the Chief Inspector to make referral to the Scottish Ministers if they consider that, following an inspection, an establishment or local authority is failing or has failed to secure improvement, despite having been given sufficient opportunity to do so and the failure is sufficiently serious that the use of an enforcement direction is justified. It is then for the Scottish Ministers to give preliminary notices and, where necessary, enforcement directions.

125. An enforcement direction is the highest-level intervention by the Scottish Ministers following an inspection. Under section 48(3), the person to whom an enforcement direction is given must comply with it. It is an important power, particularly where there are serious risks regarding children's wellbeing, safeguarding and child protection.

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<sup>38</sup> [Putting Learners at the Centre: Towards a Future Vision for Scottish Education - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/putting-learners-at-the-centre-towards-a-future-vision-for-scottish-education/pages/10-to-12.aspx)

<sup>39</sup> [Education \(Scotland\) Act 1980 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1980/46/section/46)

<sup>40</sup> [Standards in Scotland's Schools etc. Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2000/10/section/10)

## **ALTERNATIVE APPROACHES**

### **Qualifications Scotland**

126. The Scottish Government asked Professor Muir to consider the OECD recommendation that consideration was given to a national “Curriculum and Assessment Agency” that would replace the SQA and seek to better align the Curriculum for Excellence with the rest of the system. Professor Muir proposed that the SQA be replaced with a dedicated and focused qualifications body. The Scottish Government accepted this recommendation.

127. In considering Professor Muir’s recommendation in February and March 2022, the Scottish Government assessed other options for reform.

128. A ‘do nothing’ option was considered. This would have seen no action taken on Professor Muir’s report and the SQA would not have been replaced. While this would have been the least disruptive and most cost-effective option, it would not have delivered on the Scottish Government’s ambition for education and structural reform.

129. The option of reforming the SQA without replacing it was also considered. This option would see the SQA brand retained, with the identified areas for reform taken forward and built into their existing continuous improvement work. This option would not require the body to be replaced and therefore avoid costs associated with establishing a new body including branding work, and the transfer of staff and property. However, it also meant that the key concerns with the SQA would remain. These included the reputational damage to the organisation and brand, and how its governance structures do not sufficiently involve learners, teachers and other stakeholders in decisions. In order to change the governance structures to strengthen learner and teacher involvement in the organisation, legislation would be required. The strength of negative public sentiment towards the SQA meant the existence of the SQA brand was a significant barrier to restoring public trust in the organisation. Taking these two factors, alongside the wider education reform programme, it was assessed that replacing the SQA while reforming how qualifications services are delivered would be the most effective way to achieving the change in culture and practice the Scottish Government is seeking to deliver.

130. Furthermore, a new Curriculum and Assessment Agency was considered. This would have seen a single body created to oversee the functions currently delivered by the SQA and some of the functions currently delivered by Education Scotland. This would have taken forward part of the OECD’s recommendation and would have placed most of the national education infrastructure into one organisation. In his report<sup>41</sup>, Professor Muir disagreed with this, highlighting that such an agency with a large and extensive remit may only add further complexity to the national education landscape. The Scottish Government agreed with Professor Muir that such an organisation would not simplify institutions as the OECD intended and that the benefits of specific organisations with clear, direct roles and responsibilities that addressed different needs in the education and skills system outweighed the benefits of a single body doing everything.

131. In deciding to replace the SQA with Qualifications Scotland, the Scottish Government also considered a number of options for the location of the accreditation functions of the SQA. To

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<sup>41</sup> [Putting Learners at the Centre: Towards a Future Vision for Scottish Education - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/06/20220622_Putting_Learners_at_the_Centre_Towards_a_Future_Vision_for_Scottish_Education.pdf)

understand the impacts of any decision on the location of accreditation, six options were identified and assessed between May and September 2022.

132. This covered the following options:

- The creation of a new small NDPB to act as an independent regulator/accreditation body;
- Include as part of the functions of Qualifications Scotland with increased separation from its awarding functions;
- Add to the Scottish Credit and Qualifications Partnership (SCQP);
- Include as part of the functions of a new national education agency;
- Include as part of the functions of the new Inspectorate;
- Add to an existing NDPB such as the Scottish Funding Council or Skills Development Scotland.

133. On balance, the decision to place these functions within Qualifications Scotland was considered the best option. There was limited concern expressed by key accreditation stakeholders about the independence of the accreditation and awarding functions. Awarding bodies had not raised any issues with this prior to it being highlighted in the 2021 OECD report<sup>42</sup>, nor when the Scottish Government engaged with them on this. They had no strong view about the location of the functions, as long as the functions themselves did not change and as long as independent and impartial decision making could be shown. The creation of a new qualifications body in legislation presents the opportunity to ensure existing independence measures are strengthened. Other criteria such as value for money (no additional cost), continuity and effectiveness of services and the least disruption to staff also highlighted this as being the most appropriate option.

134. All other options considered did support criteria that the accreditation functions would be separate from awarding functions. However, all of these presented additional costs and disruption to well-established services and required the moving of staff. Of these alternatives, Professor Muir's recommendation that accreditation functions become part of a new education agency could have been achieved with lower costs and slightly less disruption than all the others, besides it being in Qualifications Scotland. However, bringing the accreditation functions into an executive agency would have seen its operational independence called into question as it would be within the remit of the Scottish Ministers. This option was ruled out to ensure independence from the Scottish Ministers remained.

### **His Majesty's Inspector of Education in Scotland**

135. The rationale for creating a new Inspectorate was examined. Specifically, a strategic options appraisal was undertaken to review possible options for the future delivery of the functions currently undertaken against measures of strategic, economic, commercial, financial and management case for change.

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<sup>42</sup> [Scotland's Curriculum for Excellence: Into the Future | en | OECD](#)

136. The work undertaken identified the pros and cons of a short-list of four scenarios against six weighted decision-making criteria. The options considered a status quo scenario (no organisational changes i.e. structure, governance and role of Education Scotland remain the same); minimal change scenario (establishment of a separate inspections organisation without legislation); Professor Muir’s recommendations scenario (establishment of the inspectorate through legislation); and a maximum change scenario (the inspectorate and the register for independent schools combine into one body).

137. Maintaining the status quo was considered. However, not creating a new inspectorate would result in a single body remaining responsible for the improvement of education in schools and also being accountable for assuring education standards in a range of establishments. This could reinforce the current perceived conflict of interest that undermines full confidence in the judgements of HM Inspectors. Such an approach was therefore discounted.

138. Similarly, a new separate executive agency was considered an unsuitable approach as it would not provide the independence being sought. As noted at paragraph 98, the Scottish Government undertook consultation on this point as part of consultation on this Bill. That consultation revealed mixed views from stakeholders on this point – with no clear themes emerging and several respondents commenting on what they perceived to be the strengths and weaknesses of both options. In the main, there was also strong support for the idea that whichever approach was adopted, the new agencies/new office-holder must have a degree of independence from government. Only a very small number of responses indicated that they did not feel the inspectorate should be completely independent and/or that responsibility should not be taken away from the Scottish Ministers.

139. In addition, Professor Muir recommended that the Inspectorate be “funded by the Scottish Parliament, staffed by civil servants.” There are a small number of existing bodies directly funded by the Scottish Parliament but none of these are staffed by civil servants. Establishing an inspectorate using this model would therefore be anomalous in comparison with other inspectorate bodies and there is no strong evidence to support the benefits of such a move. Given these considerations, the Inspectorate will be funded by the Scottish Government, in line with other HM inspectorates in Scotland, and will be required to lay its reports directly before the Scottish Parliament.

## **CONSULTATION**

140. In 2020 the Scottish Ministers commissioned a review to be undertaken by the OECD to help better understand how the curriculum is being designed and implemented in schools in Scotland and to identify areas for improvement. The OECD reported in June 2021<sup>43</sup>. It set out twelve recommendations and a number of actions that should be taken to strengthen the Curriculum for Excellence (“CfE”) and tackle its ongoing implementation challenges as part of a structured approach to the future of CfE.

141. The specific OECD recommendation being addressed through the Bill is to “Simplify policies and institutions for clarity and coherence. To align the institutional structures with clear ownership of CfE, Scotland could explore assigning leadership and development responsibilities

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<sup>43</sup> [Scotland’s Curriculum for Excellence: Into the Future | en | OECD](#)

for curriculum (and perhaps assessment) to a specialist stand-alone agency; and consider refreshing the remit of an inspectorate of education regarding CfE”. In addition to this recommendation the OECD expressed a view that having the inspectorate as part of an organisation that is also responsible for supporting school leaders, curriculum design and support, teacher professional learning and a range of other initiatives is an “unusual configuration”.

142. In respect of the SQA, the report acknowledged that the SQA’s role and remit had expanded since its creation, creating some confusion regarding its functions and services and how these crossover with the functions and services of other national institutions. It also commented on the unusual arrangement for the SQA to be both an awarding body and the qualifications and awarding body regulator. This report, coupled with ongoing concerns with the SQA’s performance, led to the Scottish Government announcing that the SQA would be replaced<sup>44</sup>.

143. The then Cabinet Secretary for Education and Skills subsequently appointed an independent Advisor, Professor Ken Muir, in August 2021<sup>45</sup> to engage widely with stakeholders and report findings and recommendations to the Scottish Government on the implementation of the OECD’s recommendations. Professor Muir’s report, *Putting Learning at the Centre: Towards a Future Vision for Scottish Education*<sup>46</sup> was published in March 2022. Professor Muir’s work was informed by comprehensive consultation with education system stakeholders which included a public consultation resulting in 764 responses and extensive engagement including 87 meetings and events. In addition, Professor Muir undertook extensive consultation and engagement with children and young people, resulting in 1,210 primary school aged children and 394 secondary school aged children and young people taking part in conversations facilitated by adults known to them. 3,889 12- to 18-year-olds also responded to the online survey. All respondents to the consultation recognised the need for reform and offered various views as to where the weaknesses in the system were and commented generally on where improvements were needed and on the proposals which included removing the inspection function from Education Scotland and replacing the SQA (although there were mixed views regarding whether the SQA should be replaced or reformed, most respondents agreed some form of change was required).

144. Following the decision by the Cabinet Secretary for Education and Skills in June 2023 to postpone the Bill<sup>47</sup>, the Scottish Government conducted a public consultation to inform the development of the proposed Bill between 7 November and 18 December 2023<sup>48</sup>. The purpose was to seek specific views on the detail of creating a new qualifications body and the approaches to enhance the role inspection plays in improving education, including potentially through legislation. The consultation provided further opportunity to engage on the detail of the proposals, building on the previous substantial engagement and consultation undertaken as part of the OECD report and Professor Muir’s report<sup>49</sup>.

145. In total, 386 consultation responses were received and analysed. This consisted of 234 individuals and 152 responses submitted on behalf of organisations. A higher number of people contributed overall as several organisations had conducted wider consultation to develop their

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<sup>44</sup> [New national education bodies - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>45</sup> [Reform of the SQA and Education Scotland: advisor draft remit - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>46</sup> [Putting Learners at the Centre: Towards a Future Vision for Scottish Education - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>47</sup> [Meeting of the Parliament: 22/06/2023 | Scottish Parliament Website](http://www.scottish.parliament.gov.uk)

<sup>48</sup> [Education Bill provisions: consultation - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>49</sup> [Putting Learners at the Centre: Towards a Future Vision for Scottish Education - gov.scot \(www.gov.scot\)](http://www.gov.scot)

response. In addition, nine online consultation events were held which were attended by just under 1,000 people in total.

## **Qualifications Body**

146. Professor Muir made the following recommendations in respect of a new qualifications body, which the Scottish Government fully agreed with:

- A new body, Qualifications Scotland, should be established. This new body should be an Executive NDPB. It should take on board the SQA’s current awarding functions (chiefly the responsibility for the design and delivering of qualifications, the operation and certification of examinations, and the awarding of certificates);
- Income-generating contract services currently provided by the SQA for organisations, governments and businesses, should be included in the remit of the new NDPB. The SQA’s current international work should also be part of the new NDPB’s remit;
- The governance structure of the proposed qualifications body should be revised to include more representation from and accountability to all learners, teachers, practitioners and the stakeholders with whom it engages.

147. From the consultation that underpinned Professor Muir’s recommendations, it was clear that a large number of different stakeholders had lost trust and confidence in the SQA. Young people, learners and teachers highlighted the lack of involvement they had in the SQA’s decision making, citing the absence of meaningful engagement and communication being a key driver why this trust had been reduced. While certain stakeholders, such as industry leaders, employers, training providers and awarding bodies, highlighted a more positive relationship with the SQA, repairing the damaged relationship with young people, other learners and the teaching professions was crucial for a new organisation.

148. Professor Muir also recommended the accreditation functions of the SQA should be removed from the new qualifications body. The Scottish Government agreed in principle that there should be more separation than currently exists at the SQA between the functions. Extensive engagement around the location of the accreditation functions in the new body responsible for qualifications was undertaken. Scottish Government officials engaged with the SQA, including union representatives, and met with standard-setting organisations, twenty-five awarding bodies and other public bodies in the Scottish education sector, as well as other UK regulation and accreditation bodies including Ofqual and Qualifications Wales.

149. Overall, there was a lack of appetite from stakeholders and those engaged with for the accreditation functions to join another new or existing agency or Scottish public body. There was a view from some that a standalone agency would support calls for independent decision making. Awarding bodies – the organisations that directly use the accreditation services – expressed little concern over the location of these functions, as long as decisions on accreditation were made independently of the awarding functions. The decision was taken in November 2022 for the accreditation function to be included as part of the new qualifications body<sup>50</sup>. The rationale for this is detailed in the aforementioned “alternative approaches” section.

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<sup>50</sup> [Written question and answer: S6W-12733 | Scottish Parliament Website](#)



150. Responses to the Education Bill consultation in November 2023<sup>51</sup> reaffirmed much of Professor Muir’s review. Respondents stressed the need for a system-wide holistic approach incorporating curriculum design and review and pedagogy in order to raise standards. There was discussion of the need to include a range of learner-centred qualification pathways with parity of esteem and equality of access between different qualifications. It was stressed that the new qualifications body should work collaboratively with partners and stakeholders across the education landscape, in particular to encourage a common and shared understanding of any new qualifications and their value.

151. There was strong support for teaching professionals having more involvement and representation in the structure and functions of the new body, although concerns were raised that having only one teacher and one lecturer on the Board would not provide sufficient representation and could mean their input is ignored. In response to this the draft Bill was amended to increase the number of teachers and teaching staff from colleges on the Board. Proposals for the Advisory Committee and introduction of a charter were generally welcomed, albeit with a desire for more detail around roles and responsibilities. Organisations mostly welcomed greater learner involvement within the new qualifications body, although several cautioned that the learner’s voice must be truly impactful and not tokenistic, while views from individuals were more mixed focusing on concerns around the difficulty of individual representatives adequately representing the full range of learner views.

152. The importance of the independence of accreditation from government was regularly stressed, as well as the need for teacher and wider stakeholder involvement through a culture that invites feedback, reflection and regular evaluation. Some organisations questioned the new qualifications body’s dual function of designing and awarding qualifications and verifying them, pushing instead for a separate board to oversee accreditation.

153. Respondents endorsed a strong and effective collaborative, co-working approach, with robust and effective feedback and communications systems being built into the new qualifications body.

### **Inspectorate for Education in Scotland**

154. Professor Muir indicated that<sup>52</sup>, in his view, Education Scotland having an inspection function within the same body charged with supporting improvement created potential conflicts of interest and compromised the organisation’s ability to perform both roles well. He made several specific recommendations around the new proposed inspectorate body, including:

- A new inspectorate body should be established with its independence enshrined in legislation. Its governance should reflect this independence, with the body funded by the Scottish Parliament, staffed by civil servants and inspectors, the latter of which are appointed with the approval of His Majesty via the Privy Council.
- Building on recent work undertaken by Education Scotland on re-imagining inspection, the new independent inspectorate should undertake the functions set out in

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<sup>51</sup> [Education Bill provisions: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/Information/Consultation/Consultations/2023/education-bill-provisions-consultation)

<sup>52</sup> [Putting Learners at the Centre: Towards a Future Vision for Scottish Education - gov.scot \(www.gov.scot\)](https://www.gov.scot/Information/Consultation/Consultations/2023/putting-learners-at-the-centre)



section 10 of his report<sup>53</sup> (in which Professor Muir made further suggestions for the independent inspectorate). Critical roles of the independent inspectorate will be to support improvement, evaluate major changes in the education system and report annually and over longer periods, on the performance of Scottish education.

- As a matter of urgency, the new independent inspectorate should re-engage with the Care Inspectorate to agree a shared inspection framework designed to reduce the burden on ELC practitioners and centres.
- Preparing to inspect the effectiveness of the new arrangements designed to support change and improvement at local and regional levels. This should be completed within two years of the new inspectorate coming into operation. Addressing this recommendation does not require legislation. The Scottish Government expects the Chief Inspector to progress this as part of ongoing future operations.

155. The Scottish Government's response to Professor Muir's report<sup>54</sup> committed that "we will engage with key stakeholders to ensure a new inspection body which is separate from a national education agency has the governance and reporting arrangements in place to ensure its powers support teachers and practitioners and institutions to improve and agree that legislation will underpin this. This new inspectorate will strive to create a supportive inspection system to foster improvement across education settings facilitating a trusting environment between our national agencies and our learning institutions. The new inspection body will continue to be staffed by civil servants and inspectors, the latter of which are appointed with the approval of Her Majesty via the Privy Council."

156. The move of His Majesty's Inspectors of Education (HMIE) into a new inspectorate body will work alongside existing Ministerial commitments to the Scottish Funding Council's development of a single quality assurance and enhancement framework for tertiary education.

157. On 24 March 2023, the Scottish Government published its response to the findings of the 2022 consultation on inspection of early learning and childcare (ELC) and school age childcare services<sup>55</sup>. The consultation response outlined some areas where work is already underway or developing in terms of improving the inspection landscape and included a commitment from the Care Inspectorate and HMIE/Education Scotland to collaborate and work in partnership, sharing their expertise to develop a shared framework that intends to provide a more streamlined and consistent process for services and reduce the burden of bureaucracy.

158. Responses to the November 2023 Bill consultation<sup>56</sup> reemphasised a number of points set out in Professor Muir's review. Just over two thirds (69%) of all respondents agreed with the purposes of inspection, while 66% of respondents supported the notion that education inspection should be provided to the full range of establishments and services currently subject to education inspection - though arguments were provided that a single body should be established for the inspection of ELC to avoid duplication, respondents did not always offer a preference for how this

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<sup>53</sup> [Putting Learners at the Centre: Towards a Future Vision for Scottish Education - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>54</sup> [Putting learners at the centre: response to the independent advisor on education reform's report - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>55</sup> [Inspection of early learning and childcare and school age childcare services: consultation - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>56</sup> [Education Bill provisions: consultation - gov.scot \(www.gov.scot\)](http://www.gov.scot)

should be achieved. Similarly, several respondents stressed the need to avoid duplication of inspection/quality assurance arrangements in the tertiary sector and for Initial Teacher Education.

159. Respondents expressed mixed views on the necessity of legislation to establish new approaches to inspection, although there was general agreement in the importance of the inspectorate's separation from Education Scotland and independence from the government. The main reason given in support of taking forward legislation to establish the role of HM Chief Inspector of Education for Scotland was that this would make accountability and independence more obvious and more stringent which, in turn, could maximise public and professional confidence in the inspection process. Among those who disagreed with this proposal, concerns were mainly linked to how a single office-holder might be regulated or held to account. There were also concerns that any legislative changes may add another level of complexity to the existing system and act as a barrier to progress.

160. Whilst no direct question was asked on the topic, there was strong support for involving teachers and other practitioners, learners, parents/carers, local authorities and providers in inspections and governance arrangements – it was felt this would ensure impartiality and responsiveness of inspections while maximising stakeholder trust. Views were more mixed on whether an Advisory Council should be specifically legislated for. Some respondents felt that a legislative footing would give the role and authority of the Advisory Council and the Inspectorate a more robust standing, while others felt that placing the advisory committee on a statutory footing was overly bureaucratic.

161. Respondents who addressed legislation tended to favour setting out reporting requirements in law, stressing that this would prevent future political interference. A majority of respondents supported a requirement to report annually on inspection activity to the Scottish Parliament. It should be noted that responses often took a broader approach to the question including offering practical suggestions relating to the inspection process.

## **IMPLEMENTATION AND DELIVERY**

162. The Bill provides legislative underpinning for specific aspects of the Scottish Government's commitment to create a new qualifications body and a new inspectorate.

163. Delivery and governance arrangements are in place to support implementation and provide assurance on the education reform programme. This includes the aspects of the new education bodies covered by the Bill and the broader work required to establish them and make each new body operational.

164. The education reform programme governance structures include a Ministerial group chaired by the Cabinet Secretary for Education and Skills and a programme board chaired by the Senior Responsible Officer for the education reform programme. Membership of the Ministerial group includes independent experts and professional advisors. Membership of the programme board includes Scottish Government officials, the Confederation of Scottish Local Authorities and the Association of Directors of Education in Scotland as well as experts, professional advisors and individuals working across Scottish education, ensuring insights, assurance and challenge on the delivery of the new organisations.

165. Engagement has taken place with established Trade Unions representing the professions and employees, at both Ministerial and official level. Specific sessions were held to discuss the development of the Bill with staff in the existing organisations and with Trade Unions.

166. Historically, additional external challenge on the establishment of the new national education bodies had been sought via an education reform stakeholder reference group. This group, which met from September 2022 to March 2023, discussed a range of topics related to education and skills reform, and was chaired by the Cabinet Secretary for Education and Skills. It brought together a range of stakeholders from across the education system including early years, school and tertiary sectors, trade unions, professional associations, and academic representatives. At the March 2023 meeting of the Group, Scottish Government officials provided an overview of the policy intent of the proposed Bill for discussion. The Group was interested in more details around the new qualifications body's committees and it was noted that more detail would be provided in the accompanying documents. Members also agreed that the independence of the awarding and accreditation functions would be strengthened given that the Convener will be appointed by Scottish Ministers and that Convener then will appoint a committee (as set out in this Bill). On the inspection side, there was discussion about other inspectorates and their inspection models, such as the Care Inspectorate. Members highlighted a concern that work within early years may be duplicated between the Care Inspectorate and new Inspectorate body. Members were supportive of the independence of the inspectorate and the responsibility to report to the Scottish Parliament.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Equal opportunities**

167. An Equality Impact Assessment (EQIA) has been carried out on the policies in the Bill. Based on the evidence considered and the proposed content of the Bill at this stage no negative impacts were identified for any equality groups. The Scottish Government recognises the services and policies the bodies will be delivering, as operationally autonomous organisations, may impact people with protected characteristics differently. The Bill does not directly address these. It will be for the organisations to identify and determine the impact on people with protected characteristics when delivering their functions.

168. The provisions in the Bill around engagement and involvement of stakeholders are an important aspect in supporting how the bodies address inequality or discrimination, with positive impacts identified with regard to advancing equality of opportunity and promoting good relations between groups with regard to age and disability. This is chiefly through the Bill's focus on empowering learners, including all age groups and those with additional support needs, to have clearer roles at the centre of decision making. Children and young people and adult learners will benefit from the emphasis within the new qualifications body's quality assurance function on ensuring learners with additional support needs are assessed appropriately when seeking to obtain a qualification. They will also benefit from Bill provisions requiring both bodies to produce reports in an accessible format. It is acknowledged that there are some groups of children and young people who are more vulnerable than others or who face multiple sources of potential discrimination resulting from certain protected characteristics: disability, gender reassignment, race, religion or belief and/or sexual orientation. It is further acknowledged that there are limitations in the available data (collated within the EQIA) concerning all groups of children

exhibiting one or more of these protected characteristics. However, The Scottish Government will continue to work with its internal and external stakeholders to ensure that collectively full and ongoing consideration of relevant equality issues is undertaken.

## **Human rights**

169. The Scottish Government's view is that the provisions of the Bill are compatible with the Convention rights, under Article 2 of Protocol 1<sup>57</sup> (the right to education) of the Convention for the Protection of Human Rights and Fundamental Freedoms. This states that "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions."

170. Provisions in the Bill place a requirement on Qualifications Scotland to strengthen young people's and learners' voices in its governance through the creation of a Learner Charter. It will be paramount that this Learner's Charter is underpinned by Article 12 of the UNCRC to ensure the rights of children and young people to be heard are central to its creation and purpose.

171. As per Articles 13 and 17 of the UNCRC, children and young people have a right to information. As such the Bill will place a duty on HM Chief Inspector to publish inspection reports which are easily accessible by everyone.

172. Article 30 states children and young people of ethnic, religious or linguistic minorities or persons of indigenous origin have the right to learn the language, religion and culture of their families, and in Scotland this also includes Gaelic and Scots speakers, for which the Bill makes provisions for across both parts.

## **Island communities**

173. The Bill establishes a new qualifications body, Qualifications Scotland (which will be a named organisation in the Islands (Scotland) Act 2018), to replace the SQA, and an independent office-holder to undertake legislative control for education inspections and lead the new inspectorate by the removal of the inspectorate function from Education Scotland. The provisions in this Bill are intended to benefit all communities across Scotland. No policy issues were identified during the course of the development of the Bill, or from the stakeholder discussions or the public consultations, which would have an effect on an island community that would be significantly different from the effect on other communities (including other island communities). It was therefore not considered necessary to conduct a full Island Communities Impact Assessment.

## **Local government**

### ***Qualifications Scotland***

174. Many Scottish public authorities and local authorities in particular, already engage with the SQA and access its products and services. With the establishment of Qualifications Scotland, the

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<sup>57</sup> [Article 2 of the First Protocol: Right to education | EHRC \(equalityhumanrights.com\)](#)

related provisions of the Bill will result in minimal impact on those local government bodies as a result of this legislation, as the qualifications body's functions and operational delivery will be largely unchanged.

175. Of those who responded to the question “There is sufficient trust with all stakeholders, including children, young people, parents & carers, so they are genuinely involved in decision making” within Professor Muir’s report 58% either disagreed or strongly disagreed with the statement. In addressing this within the Bill, there is a clear commitment to learners, and other users of qualifications, that Qualifications Scotland will be focused on delivering in their interests and be more accountable to them. This should lead to better outcomes for learners and therefore better value for money for local government bodies who pay for those qualifications.

***Office of HM Chief Inspector of Education in Scotland - Inspection of education functions of local authorities and local authority psychological services***

176. Currently, section 9 of the Standards in Scotland’s Schools etc. Act 2000<sup>58</sup> provides for the Scottish Ministers to request HM Inspectors to inspect an education authority so as to review the way in which the authority is exercising their functions in relation to the provision of school education, including local authority psychology services. Whilst work has not been undertaken by HMIE in recent years, it is critical that HM education inspectors continue to have the ability to inspect the way in which local authorities are exercising their statutory functions in relation to the provision of school education.

177. The Bill seeks to move the power of inspecting local education authorities from the Scottish Ministers to the Chief Inspector in relation to their schedule and frequency, with the Scottish Ministers holding power to bring forward further legislation by way of specifying frequency in the future, if considered necessary. It is not considered that this shift in legislative power will have direct impact on local authorities in operation as it is not seeking to change existing practice in this area. If the Chief Inspector sets plans to inspect in the future (detailed at paragraphs 106 to 107), it is assumed this will be raised with the Advisory Council, as part of the ‘Inspection Plan’ linking to legislative requirements to consult with Members.

**Sustainable development**

178. The potential environmental impact of the Bill has been considered. A pre-screening report confirmed that the Bill has minimal or no impact on the environment and consequently that a full Strategic Environmental Assessment does not need to be undertaken. It is therefore exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005<sup>59</sup>.

179. A Business and Regulatory Impact Assessment has been carried out and will be published alongside the Bill. To support the assessment, the views from businesses, the Third Sector and other public bodies were gathered alongside the wider views shared in response to the several consultations and reports noted above. The assessment concluded that there would be minimal

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<sup>58</sup> [Standards in Scotland’s Schools etc. Act 2000 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>59</sup> [Environmental Assessment \(Scotland\) Act 2005 \(legislation.gov.uk\)](https://legislation.gov.uk)

impact on these stakeholders as a result of the Bill given the functions Qualifications Scotland and the HM Chief Inspector will deliver are already in the system.

180. For Qualifications Scotland specifically, it was concluded that a national qualifications body continuing to provide a breadth of different qualifications would be beneficial for sustainable development in Scotland. It will be able to support learners and workers, employers and industry sectors, and training providers through high-quality, recognised qualifications, which in turn can benefit Scotland's economic landscape in a sustainable way. Furthermore, the existence of an accreditation function will ensure there are nationally recognised standards for qualifications that supports high-quality qualifications and supports and encourages an active qualifications market in Scotland.

181. There is an expectation that both new bodies will be committed to measures that promote sustainable development across all of the sustainable development goals. They will be expected to do so in a way that is mindful of resources and the environment. Both Qualifications Scotland and the HM Chief Inspector will be subject to existing public bodies requirements that ensures this is central to how they operate. It is important to note that both organisations will be operationally independent and will therefore be best placed to make decisions that ensure their strategies and activities support the goals of sustainable development.

## **CROWN CONSENT**

182. It is the Scottish Government's view that the Bill as introduced does not require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that this Bill does none of those things.

183. For the source of the requirement for Crown consent, see the Scotland Act 1998<sup>60</sup> and also Rule 9.11 of the Parliament's Standing Orders<sup>61</sup>. For further information about the considerations that go into determining whether Crown consent is required for a Bill see the guide to procedure in the UK Parliament<sup>62</sup>.

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<sup>60</sup> [Scotland Act 1998 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>61</sup> [Chapter 9 Public Bill Procedures | Scottish Parliament Website](#)

<sup>62</sup> [Erskine May - UK Parliament](#)

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

# **EDUCATION (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

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