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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Delegated powers in the Education (Scotland) Bill (as amended at Stage 2)



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Contents

Introduction	1
Overview of the Bill	1
Delegated Powers	1
Review of relevant powers	3

Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. This report considers the delegated powers in the Education (Scotland) Bill (“the Bill”) as amended at Stage 2.
2. The Committee previously considered the delegated powers in this Bill at Stage 1 and published [its report, Delegated powers in the Education \(Scotland\) Bill at Stage 1](#) on 3 October 2024. The Committee was content with 13 of the 14 delegated powers contained in the Bill at that stage; and drew the attention of the lead committee to the remaining power to consider further.
3. The Bill completed Stage 2 on 9 May 2025. At this point, the Bill was amended to include one new delegated power and to revise one delegated power. Therefore, the Committee is required to consider the Bill as amended at Stage 2.

Overview of the Bill

4. This Bill was introduced by the Scottish Government on 4 June 2024. The lead committee was the Education, Children and Young People Committee. As this report is after Stage 2, it is addressed to the Parliament.
5. The Bill comprises 58 sections in 3 parts together with 4 schedules. A summary of the 3 parts of the Bill is outlined below.
6. Part 1 establishes a new body, Qualifications Scotland (“QS”) to replace the current Scottish Qualification Authority (“the SQA”). It sets out its functions; requires the establishment of a Strategic Advisory Council; provides for QS to prepare and publish a learner charter and a teacher and practitioner charter; and requires it to publish a corporate plan, annual report and accounts.
7. Part 2 establishes a new office holder, the Chief Inspector of Education (“the CIE”). It sets out the functions and powers of the CIE; makes provision for supporting roles; requires the establishment of an Advisory Council; requires the CIE to publish an inspection plan, reports on inspections and annual reports; requires educational establishments to cooperate with inspections; and makes provision for enforcement measures that can follow an inspection. The CIE will also be required to lay an inspection plan before Parliament which sets out the frequency that educational establishment will be inspected, the inspection standards that will apply, and to keep that plan under review.
8. Part 3 contains the general and miscellaneous provisions applying to the Bill, including the transitional provisions for the transfer of staff and property from the SQA to QS, and the dissolution of the SQA.

Delegated Powers

9. The amended Bill contains one new and one revised power to make subordinate legislation conferred on Scottish Ministers. The Scottish Government has prepared a [Supplementary Delegated Powers Memorandum](#) (“SDPM”) which sets out the

new and revised powers and provides an explanation of what the powers allow for, why they have been taken and why the Parliamentary procedures are considered appropriate.

Review of relevant powers

Section 39(4): Power to modify the “reporting period” in relation to which the CIE must prepare and publish its report on the performance of the Scottish education system

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Revised or new power: New

Provision

10. Section 39(1) of the Bill requires the CIE to prepare and publish a report on the performance of the Scottish education system during the “reporting period”. Section 39(3) states that the first reporting period begins on the day section 39 comes into force and ends on the following 31 July, with each subsequent reporting period being a period of 1 year beginning on 1 August. New section 39(4) will allow the Scottish Ministers to amend the reporting period set out under section 39(3).

Committee consideration

11. The Scottish Government explains in the SDPM that if the reporting period requires changing some years down the line, this new provision gives Scottish Ministers the power to change it, and is an important part of future planning for the operations of the CIE. This could be by changing the date from which the annual period runs from 1 August to a different date, or for it to run for shorter/longer than a year.
12. The Scottish Government further explains that it considers the affirmative procedure is appropriate because the report will provide important information to the public and will ensure that any change to its frequency is suitably assessed. The affirmative procedure is also appropriate given the power entails the modification of primary legislation and will ensure that it is clear on the face of the legislation what the position is in relation to when a new plan is prepared.
13. The Committee considers that there is sufficient detail in new section 39(4) and in the SDPM as to how this power is to be exercised, that this power is limited to amending the reporting period, allows for flexibility in the future and can be implemented more easily than by primary legislation. The Committee also agrees that the affirmative procedure is appropriate given this power can amend primary legislation and that this provides for appropriate parliamentary oversight.

14. **The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 57(2A) and (3): the Scottish Ministers may make commencement regulations in relation to section 51 and paragraph 11 of schedule 4 only once the SQA has no functions exercisable otherwise than in or as regards Scotland

Power conferred on: Scottish Ministers**Power exercisable by: Regulations****Parliamentary procedure: Laid, no procedure****Revised or new power: Revised****Provision**

15. Sections 54 to 58 of the Bill come into force on the day after Royal Assent. The other provisions of the Bill come into force on such day as Scottish Ministers appoint, under section 57(2).
16. New section 57(2A) restricts Scottish Ministers from laying regulations that commence section 51, which dissolves the SQA, and that commence paragraph 11 of Schedule 4, which repeals part 1 of the Education (Scotland) Act 1996 (“the 1996 Act”), which established the SQA, until the SQA has no functions exercisable otherwise than in or as regards Scotland.

Committee consideration

17. As the Scottish Government explains in the SDPM this new subsection does not give the Scottish Ministers any new powers but amends the parameters in which the power can be exercised. The SQA was established by an act of the UK Parliament before devolution; and this new subsection reflects that the Scottish and UK Governments are working together to ensure legislation is made and repealed by the appropriate mechanisms and in the right order.
18. This will be achieved through a combination of the provisions of the Bill, which establish QS and ensure the transfer of staff and property from the SQA are given effect to; and through a section 104 Order made under the Scotland Act 1998. The Order would strip the SQA of any functions that are exercisable otherwise than in or as regards Scotland and ensure that QS’s functions are as broad as the SQA’s currently are. Scottish Ministers will then be able to commence the provisions which will dissolve the SQA and repeal its establishing legislation.
19. The Scottish Government also explains in its SDPM that, as is usual for commencement regulations, the default laying requirement will continue to apply. As with the Bill as introduced, the Scottish Government considers this appropriate because the policy behind the provisions will already have been considered by the Parliament during the passage of the Bill.
20. Section 104 Orders allow the UK Parliament to fill gaps in legislation where the Parliament cannot legislate because of legislative competence restrictions. The power to make section 104 Orders in the Scotland Act 1998 is worded to enable the making of “such provision as the person making the legislation considers necessary or expedient in consequence of any provision made by or under any Act of the Scottish Parliament”.
21. The Committee considers that there is sufficient detail in new section 57(2A) and in the SDPM as to the reasons for this power and how it is to be exercised; and that this power is necessary to give effect to the transfer of functions, staff and property from the SQA to QS in the right order. The Committee agrees that the laid only

procedure is appropriate as the provisions will already have been considered by the Parliament during the passage of the Bill.

22. **The Committee finds the revised power acceptable in principle and is content that it is subject to the laid only procedure.**

