POLICY NOTE

THE EDUCATION (SCOTLAND) ACT 2025 (COMMENCEMENT NO. 2, TRANSITIONAL AND TRANSITORY PROVISIONS) REGULATIONS 2026

SSI 2026/2

The above instrument was made in exercise of the powers conferred by section 66(2) and (4) of the Education (Scotland) Act 2025 ("the Act"). The instrument has been laid in the Scottish Parliament but is subject to no procedure.

Summary Box

This instrument brings into force most of the provisions of the Act, insofar as not already in force, at various dates in 2026. Most of the provisions will come into force on 1 February for Part 1 of the Act (Qualifications Scotland), and 1 March for Part 2 of the Act (the Office of His Majesty's Chief Inspector of Education in Scotland). Specific provisions will come into force on 27 January, 1 April, 31 August, and the day on which regulations made under section 9 of the Act come into force. The instrument makes transitional provisions for both Qualifications Scotland and the Office of the Chief Inspector for Education in Scotland, and one transitory provision for Qualifications Scotland, to support operational transition, and to ensure provisions in the Act in relation to accounting and reporting can be met.

Policy Objectives

This SSI supports the overarching objective of bringing the Act into force, allowing Qualifications Scotland and the Office of His Majesty's Chief Inspector of Education in Scotland (HMCIES) to become fully operational. It has also been considered necessary to make transitional provisions and one transitory provision.

Appointed days

Regulation 2 of this instrument brings into force various provisions of the Act on appointed days of 1 February, 1 March, 1 April and 31 August 2026. The provisions and their appointed days are set out in the schedule. Where a purpose is specified in the schedule, the provision comes into force on the appointed day only for that purpose. Additionally, regulation 2 brings into force section 9 of the Act on 27 January 2026, and section 8(1) and (2) for all remaining purposes on the day regulations under section 9 are made.

Qualifications Scotland – Transitional and Transitory Provisions

Corporate plan, annual report and charters

The instrument makes transitional provisions for Qualifications Scotland's requirements to prepare a corporate plan and annual report and how these interact with the provisions in relation to the Learner Charter and the Teacher and Practitioner Charter.

Section 16 of the Act requires Qualifications Scotland to submit a corporate plan to the Scottish Ministers as soon as reasonably practicable after the day on which this section comes into force. Subsection (3)(a)(iv)(B) of this section sets out that the corporate plan must include what Qualifications Scotland intends to do to satisfy the expectations set out in its charters, which are established under sections 11, 12 and 14. Section 16 will come into force on 1 February 2026, and Qualifications Scotland will submit its corporate plan after this.

Section 17 of the Act states that Qualifications Scotland must, as soon as reasonably practicable after the end each financial year prepare and publish a report on its activities during that year. Under subsection (3)(b) of this section Qualifications Scotland is required to include in the report a statement on how Qualifications Scotland has satisfied the expectations set out in its charters. Furthermore, under subsection (4), the report must also include information relating to any failures, their reasons, and what steps are being taken to remedy those failures by Qualifications Scotland in any case where it has failed to satisfy any expectations set out in its charters. Section 17 will come into force on 1 February 2026 and its first annual report will cover both the period of the Scottish Qualifications Authority's (SQA: the body replaced by Qualifications Scotland) operations from 1 April 2025 to 1 February 2026, and the period of Qualifications Scotland's operations from 1 February to 31 March 2026.

The transitional provisions included in this instrument at regulations 3 and 4 will disapply the inclusions of section 16 (3)(a)(iv)(B) and section 17(3)(b) and (4) from Qualifications Scotland's first corporate plan, and their first annual report. This is considered necessary due to Qualifications Scotland not having any charters in place at the time their first corporate plan will be published, and for the period which their first annual report will cover when it is published.

The charters will not be in place at these points due to the nature of how the Learner Charter and the Teacher and Practitioner Interest Charter will be created. The Act requires the charters must be prepared in collaboration with the individuals and groups the charters are designed to provide accountability to. Furthermore, there is a requirement for the charters to be prepared in collaboration with the Learner Interest Committee and the Teacher and Practitioner Interest Committee, and in consultation with the Strategic Advisory Council (SAC). As such, the Act requires the charters to be published six months after the relevant sections come into force – a period set to allow for the necessary collaboration. To allow for Interest Committees and SAC to be fully established, and for effective engagement to take place during term times for education establishments, the charter provisions will come into force on 31 August 2026 and will be required to publish by end of February 2027 ahead of the 2027 examinations diet. This will mean Qualifications Scotland can refresh their next corporate plan and include information relating to the charters in their 2026/27 annual report.

Regulation 5 of this instrument makes a transitional provision in relation to section 18(1). Despite section 18 (annual quality assurance compliance report of Qualifications Scotland) coming into force on 1 April 2026, requiring a report to be prepared as soon as reasonably practicable after the end of the financial year, the provision specifies that Qualifications Scotland is not required to prepare a report mentioned in section 18(1) for any period before 1 April 2026.

Dissolution date of SQA – transitory provision

Section 61(1) of the Act sets out that any relevant thing done by or in relation to the SQA before the dissolution date, so far as required for continuing its effect on or after that date, has effect as if done by or in relation to Qualifications Scotland. Section 61(2) also sets out that anything in the process of being done immediately before the dissolution date by or in relation to SQA may continue to be done by or in relation to Qualifications Scotland on or after that date. These provisions are necessary to ensure continuity of service.

Regulation 10 of this instrument makes a transitory provision in relation to section 61, which comes into force on 1 February 2026. This is needed to ensure a smooth transition between SQA and Qualifications Scotland. The SQA's dissolution will happen under a further commencement instrument, on a date shortly after Qualifications Scotland assumes functions, due to how the coming into force of provisions need to be sequenced alongside an accompanying Scotland Act Order. Under section 66(3) of the Act, SQA cannot be dissolved until certain of its functions have been repealed. The Education (Scotland) Act 2025 (Consequential Provisions and Modifications) Order 2025 will repeal these functions of the SQA on the day that functions are conferred on Qualifications Scotland, being 1 February 2026. As such, there will be a short gap between this date and SQA's dissolution date, therefore the transitory provision adjusts the meaning of "dissolution date" set out in section 61(5) to be read as 1 February 2026 for a temporary period beginning on 1 February 2026 and ending immediately before section 60, which provides for the SQA's dissolution, comes into force.

<u>HMCIES - Transitional Provisions</u>

Regulations 6 to 9 of this instrument make transitional provisions in relation to the coming into force of provisions of the Act relating to HMCIES. These are necessary for operational reasons and to ensure continuity between the existing and new inspection arrangements.

Annual report

Section 47 (annual report) of the Act provides that the Chief Inspector must, as soon as reasonably practicable after the end of the financial year, prepare and publish an annual report on activities during that year. This comes into force on 1 April 2026. HMCIES will be operational from 1 March 2026 and from a policy perspective it is not considered necessary for the Chief Inspector to prepare an annual report for 2025/26 as requiring an annual report for just one month of activity would be disproportionate. Regulation 6 therefore makes transitional provision in relation to section 47. This provides the Chief Inspector is not required to prepare a report mentioned in section 47(1) relating to any period before 1 April 2026.

Consequential modifications: enforcement

Regulations 7 and 8 make transitional provision in relation to modifications made by schedule 4, Part 2 (consequential modifications: the Office of His Majesty's Chief Inspector of Education in Scotland) of the Act to the Education (Scotland) Act 1980 and the Standards in Scotland's Schools, etc. Act 2000. These modifications repeal provisions relating to enforcement, which are replaced by equivalent provisions under sections 55 to 57 of the Act. Transitional provisions relating to enforcement action are important to ensure that any

references made to Scottish Ministers, preliminary notices being considered or issued, enforcement directions issued and recommendations made by HM Inspectors in respect of educational establishments, including local authority performance, prior to 1 March 2026 are treated as having been done under the provisions of the Act. This provides continuous scrutiny, assurance to stakeholders and supports improvement across the education system. Regulations 7 and 8 therefore make transitional provisions in relation to enforcement action in respect of educational establishments and local authorities under various provisions within the Education (Scotland) Act 1980 and the Standard in Scotland's Schools etc. Act 2000 which are being repealed and replaced by section 55-57 of the Act.

Consequential modifications: Chief Inspector

Regulation 9 makes transitional provisions in respect of schedule 4, Part 2 of the Act, as regards provisions which replace references in legislation to HM inspectors of schools with references to the Chief Inspector, and which comes into force on 1 March 2026. Regulation 9 provides that anything done by/in relation to HM Inspectors before 1 March which would, from that date on, be done by or in relation to the Chief Inspector, so far as required for continuing its effect, has effect as if it had been done by/in relation to the Chief Inspector. Also, to ensure that the legislation operates in these transitional cases, anything which was in the process of being done by/in relation to HM inspectors immediately before 1 March which, if started from 1 March, would have been done by the Chief Inspector, can continue to be done by/in relation to the Chief Inspector. This ensures that legislation currently in place continues to operate effectively during the transition to the new inspection regime.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU

Consultation

While there was no specific consultation on this instrument, consultation on the 2025 Act sought views on the creation of Qualifications Scotland and the establishment of an independent inspectorate. The response to the consultation showed support for the creation of both new bodies. The establishment of Qualifications Scotland and the Office of the Chief Inspector of Education in Scotland was agreed to by Scottish Parliament when they passed the 2025 Act. This SSI supports the outcomes of that public consultation by commencing the provisions in this Act and making related transitional and transitory provisions.

Impact Assessments

The impact assessments, or screenings, that were completed for the Education (Scotland) Act 2025 are available[1]. No further impact assessments were considered necessary for this SSI.

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1 https://www.gov.scot/publications/education-scotland-bill-child-rights-wellbeing-impact-assessment-crwia/
https://www.gov.scot/publications/education-scotland-bill-data-protection-impact-assessment/
https://www.gov.scot/publications/education-bill-equality-impact-assessment/
https://www.gov.scot/publications/education-scotland-bill-fairer-scotland-duty-summary/
https://www.gov.scot/publications/education-bill-island-communities-impact-assessment/
https://www.gov.scot/publications/education-scotland-bill-strategic-environment-assessment-sea-pre-screening-notification/

Financial Effects

A Financial Memorandum for the Education (Scotland) Act 2025 was completed and is available[2]. A supplementary Financial Memorandum was provided after Stage 2 and is available[3].

The Cabinet Secretary confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as this instrument only brings into force provisions of the 2025 Act and makes related transitional and transitory provision. This instrument of itself has no financial effects on the Scottish Government, local government or on business. A full BRIA was completed for the Education (Scotland) Act 2025 and is available[4]. This instrument is not expected to incur any new or routine costs.

Scottish Government
Education Reform Directorate
January 2026

2https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/education-scotland-bill/introduced/financial-memorandum.pdf
3https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/education-scotland-bill/stage-2/spbill49afms062025accessible.pdf
4 https://www.gov.scot/publications/education-bill-business-regulatory-impact-assessment/