POLICY NOTE

THE EDUCATION (SCOTLAND) ACT 2025 (CONSEQUENTIAL PROVISIONS) REGULATIONS 2026

SSI 2026/40

The above instrument is made in exercise of the powers conferred by section 65 of the Education (Scotland) Act 2025 and section 7(1)(b) of the Budget (Scotland) Act 2025. The instrument is subject to affirmative procedure.

Summary Box

Consequential modifications to support implementation of the Education (Scotland) Act 2025. It updates the Gaelic Language (Scotland) Act 2005 and the Education (Scotland) Act 2016 by replacing references to the Scottish Qualifications Authority with Qualifications Scotland, and references to His Majesty's inspectors of schools with His Majesty's Chief Inspector of Education in Scotland. It also amends the Budget (Scotland) 2025 Act with references to Qualifications Scotland and His Majesty's Chief Inspector of Education.

Policy Objectives

The Education (Scotland) Act 2025 ("the Act") establishes Qualifications Scotland as Scotland's public body responsible for delivering, awarding and accrediting qualifications, replacing the Scottish Qualifications Authority (SQA). Additionally, the Act establishes the office of His Majesty's Chief Inspector of Education in Scotland as the body responsible for inspection and reporting on education provision in Scotland and confers functions on His Majesty's Chief Inspector of Education in Scotland (the Chief Inspector), who will be an office-holder within the Scottish Administration. This replaces the current arrangement whereby HM inspectors of schools, appointed under the Education (Scotland) Act 1980, carry out inspection functions from within Education Scotland (an Executive Agency of Scottish Ministers). The SSI makes the following amendments to primary legislation in consequence of these new bodies.

<u>The Education (Scotland) Act 2016</u>

Section 6B of the Education (Scotland) Act 2016 (the 2016 Act) (inserted by section 16(2) of the Scottish Languages Act 2025) provides that, in preparing Regulations which specify standards and requirements relating to Gaelic education, Scottish Ministers must consult HM inspectors of schools. The policy objective is to ensure that the Chief Inspector is consulted where HM inspectors of schools would have been previously. The SSI therefore replaces this with a requirement to consult the Chief Inspector.

Sections 13B and 13D of the 2016 Act (inserted by section 29(2) of the Scottish Languages Act 2025) require education authorities, in considering the viability of establishing all-Gaelic schools, to seek advice from HM inspectors of schools and provide that before directing an education authority to establish an all-Gaelic school, Scottish Ministers must seek advice

from HM inspectors of schools. The SSI replaces these requirements with requirements to seek advice from the Chief Inspector.

Under Section 16B of the 2016 Act (inserted by section 23(2) of the Scottish Languages Act 2025) the SQA is required to ensure it makes an appropriate number and range of qualifications available through the medium of Gaelic, and to do this in consultation with selected stakeholders. Under Section 16C, The SQA is also required to produce information or guidance in the Gaelic language for qualifications made available through the medium of Gaelic, as well as any other materials requested by Scottish Ministers. The policy objective is to ensure that Qualifications Scotland is subject to the same duties in the Scottish Languages Act as the SQA was. This SSI will remove the SQA from these provisions and replace Qualifications Scotland instead.

Amendment of the Gaelic Language (Scotland) Act 2005

Section 3(6A) of the Gaelic Language (Scotland) Act 2005 (inserted by section 22(2)(d) of the Scottish Languages Act 2025) requires education authorities to consult with His Majesty's inspectors of schools in preparing Gaelic language plans. The policy objective is to ensure the Chief Inspector is consulted where HM inspectors of schools would have been previously. The SSI therefore replaces this with a requirement to consult the Chief Inspector.

Amendment of the Budget (Scotland) Act 2025

The SQA is referenced in Schedule 1 (the Scottish Administration) of the Budget (Scotland) Act 2025 in regards to the Scottish Ministers' budget for the Education and Skills portfolio. It ensures Scottish Ministers can fund the SQA as an organisation, as well as the delivery and development of qualifications, and SQA Accreditation. As Qualifications Scotland will assume the SQA's awarding and accreditations functions, and is expected to do so part way through the 2025/26 budget year, Scottish Ministers must be able to use the budget for the Education and Skills portfolio on Qualifications Scotland during this budget year. This SSI will include references to Qualifications Scotland alongside the SQA to allow for this.

Additionally, this SSI will add reference to the office of His Majesty's Chief Inspector of Education in Scotland in Schedule 1 (the Scottish Administration) of the Budget (Scotland) Act 2025, alongside Education Scotland, in regard to the Scottish Ministers budget for the Education and Skills portfolio. Currently HM inspectors of schools operate within Education Scotland. As the office of His Majesty's Chief Inspector of Education in Scotland will assume inspection functions, and is expected to do so before the end of the 2025/26 budget year, budget for the Education and Skills portfolio must be used on the office of HMCIE.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Education (Scotland) Act 2025 (Consequential Provisions) Regulations 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

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 stakeholder consultation on this instrument, consultation on the Education (Scotland) Act 2025 sought views on the creation of Qualifications Scotland to replace the SQA. The response to consultation showed support for the creation of this replacement body. The creation of Qualifications Scotland was agreed to by Scottish Parliament when they passed the Education (Scotland) Act 2025. This SSI supports the outcomes of that public consultation by updating legislation in consequence of the Education (Scotland) Act 2025.

Impact Assessments

In line with the UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, a Children's Rights and Wellbeing Impact Assessment (CRWIA) has been completed. A positive impact has been identified, as it supports the full implementation of the Education (Scotland) Act and the positive effects the Act will bring for children's rights and wellbeing as identified in the Act's CRWIA.

No further impact assessments were developed for this SSI, however a range of other impact assessments, including the CRWIA, for the 2025 Act were produced and can be found here:[1]

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 the instrument 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].

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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/

[2] https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/education-scotland-bill/introduced/financial-memorandum.pdf
[3] https://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/

Scottish Government
Education Reform Directorate

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