POLICY NOTE

THE PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) ACT 2003 (TREATMENT OF QUALIFICATIONS SCOTLAND AS SPECIFIED AUTHORITY) ORDER 2025

SSI 2025/98

The above instrument was made in exercise of the powers conferred by section 3(3) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 ("the 2003 Act").

The instrument is subject to affirmative procedure.

Summary Box

This instrument will enable the Scottish Ministers to make appointments to Qualifications Scotland, which are treated as regulated appointments, prior to it being established and listed as a specified authority in the Public Appointments and Public Bodies etc. (Scotland) Act 2003

Policy Objectives

This order is designed to allow the appointments to the Board of Qualifications Scotland to be regulated by the Commissioner for Ethical Standards in Public Life.

The Education (Scotland) Bill ("the Bill") is currently being considered by the Scottish Parliament and passed Stage 1 on 18 December 2024. Part 1 of the Bill has the key purpose of establishing Qualifications Scotland as a new Executive Non-Departmental Public Body (NDPB) to replace the Scottish Qualifications Authority (SQA) as Scotland's national qualifications body. To oversee this new body, the Bill makes provision for the appointment of members and these ministerial appointments are to be regulated appointments under the 2003 Act.

The Scottish Government has committed to Qualifications Scotland being fully functional by Autumn 2025. In order for this timetable to be met, a section 3(3) order under the 2003 Act will be required so that appointments to Qualifications Scotland will be treated as a regulated appointments under the 2003 Act ahead of the Bill being passed by Parliament and coming into force, for the purpose of making appointments to the Board.

Following the precedent being set by a number of other new public bodies, this order is being laid following the conclusion of the Stage 1 debate. This is to allow the recruitment of the Board to begin following this order coming into force so that they can be in place to assume their duties in Autumn 2025.

As part of the Bill, subject to Parliamentary approval, it is expected that the chairing member of the SQA will also become a member of Qualifications Scotland, and other members of the SQA Board may become members by way of regulations made under the Bill. This is to ensure continuity of leadership from appointments made during the transitional period between SQA and Qualifications Scotland. This order, and the provisions in the Bill, will

ensure there is a quorate and functioning Board from the day that Qualifications Scotland becomes fully functional.

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

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 The Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Qualifications Scotland as Specified Authority) Order 2025 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

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**1**.One of its key recommendations was 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 for curriculum (and perhaps assessment) to a specialist stand-alone agency; and consider refreshing the remit of an inspectorate of education regarding CfE"

The Cabinet Secretary for Education and Skills subsequently appointed an independent Advisor, Professor Ken Muir, in August 2021 to engage widely with stakeholders and report findings and recommendations to the Scottish Government on the implementation of the aforementioned OECD recommendation. He reported in March 2022**2**. Professor Muir's recommendations included the creation of a new qualifications body to replace the SQA. The Scottish Government accepted this recommendation and took forward the Education (Scotland) Bill to deliver this.

The Scottish Government consulted on proposals for the Education (Scotland) Bill in November 2023**3**. Responses to the consultation reaffirmed Professor Muir's review and the Scottish Government's decision to establish a new qualifications body. A full appraisal of the consultation in relation to the Education (Scotland) Bill that was undertaken and stakeholder views can be found in the published Policy Memorandum for the Education (Scotland) Bill.

Education (Scotland) Bill - https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/education-scotland-bill/introduced/policy-memorandum-accessible.pdf

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1 'Scotland's Curriculum for Excellence – Into the Future' by the OECD: https://www.oecd.org/en/publications/scotland-s-curriculum-for-excellence_bf624417-en.html

2'Putting Learners at the Centre: Towards a Future Vision for Scottish Education by Professor Ken Muir': https://www.gov.scot/publications/putting-learners-centre-towards-future-vision-scottish-education/

3 https://www.gov.scot/publications/consultation-provisions-education-bill/

Consultation with stakeholders has continued through the development of the Bill and the Parliamentary process. There is unanimous support for the establishment of Qualifications Scotland. There continues to be debate over the composition of the membership of the Board of Qualifications Scotland. This order is not expected to come into force until after decisions will have generally been taken at Stage 2 regarding the Bill's provisions about membership, however the order will not impact any changes here as it only applies to regulated appointments.

This order simply enables the appointments to be regulated under the 2003 Act and it was therefore considered that specific consultation on this instrument was not needed. The Cabinet Secretary for Education and Skills wrote to the Conveners of the Education, Children and Young People Committee and the Delegated Powers and Law Reform Committee who are considering the Bill to inform them of the proposal to lay this order.

Impact Assessments

In line with the requirements of 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. This specific order has no negative impacts children's rights and wellbeing. A full CRWIA was completed for the Education (Scotland) Bill.

No other impact assessments were conducted for this order as provision. The impact assessments, or screenings, that were completed for the Education (Scotland) Bill are available here**4**.

Financial Effects

The Cabinet Secretary confirms that no 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) Bill is available here: **5**

Any costs incurred from the recruitment of the Board are covered in the Financial Memorandum to the Bill and are likely to be minimal.

Scottish Government
Education Reform Directorate

22 January 2025

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4 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/
5 https://www.gov.scot/publications/education-bill-business-regulatory-impact-assessment/