

Education, Children and Young People Committee

Wednesday 2 October 2024
25th Meeting, 2024 (Session 6)

Education (Scotland) Bill

Introduction

1. The Scottish Government introduced the [Education \(Scotland\) Bill](#) on 4 June 2024.
2. The Bill establishes a new body called Qualifications Scotland. It also creates a new office His Majesty's Chief Inspector of Education in Scotland.
3. The Education, Children and Young People's Committee has been designated as the lead committee for the Bill at Stage 1.

Call for views

4. The Committee issued two calls for views – a [shorter call for views](#) and a [detailed call for views](#) - on the provisions of the Bill on 28 June. These ran until 30 August 2024.
5. The responses to both calls for views have now been published. A summary of the responses was published in the meeting papers for 18 September 2024.
6. SPICe has also prepared a [briefing on the Bill](#).

Committee meeting

7. The Committee has taken oral evidence at its meetings on 18 and 25 September. The Committee will continue to take evidence at its meeting today, and on 9 October.
8. At today's meeting, the Committee will take evidence from two panels.
9. On panel one—
 - Megan Farr, Policy Officer, Children and Young People's Commissioner Scotland
 - Gavin Yates, Executive Director, Connect
 - Garvin Sealy, Interim Executive Director, Intercultural Youth Scotland
10. On panel two—
 - Ken McAra, HM Inspector of Education and Convenor of FDA Education Scotland Section, FDA
 - Allan Sampson, National Officer for Scotland, FDA
 - Sharon McGuigan, Accreditation Manager, Scottish Qualifications Authority, and Unite the Union Workplace Representative

- Pauline Rodger, Understanding Standards Project Manager, Scottish Qualifications Authority, and Unite the Union Workplace Representative

Supporting information

11. A SPICe briefing has been prepared for this meeting. This is included at **Annexe A**.

12. The Children and Young People's Commissioner Scotland, Connect and Unite the Union Scotland responded to the call for views. The FDA provided a written submission ahead of this meeting. These are included at **Annexe B**.

Clerks to the Education, Children and Young People Committee

September 2024

Annexe A



Education, Children and Young People Committee

2 October 2024

Education (Scotland) Bill

Introduction

This briefing is to support the Committee for the third of its evidence sessions on the Education (Scotland) Bill.

The Committee will be taking evidence from two panels. The first will be from representatives of parents and young people and the office of the Children and Young People's Commissioner Scotland; the second panel will include representatives of trade unions who represent staff in Education Scotland and the SQA.

On 18 September, the Committee took evidence from Professor Ken Muir, Professor Graham Donaldson, Professor Mark Priestley and Barry Black. Last week the Committee took evidence from: Education Scotland and the SQA; and teaching unions and ADES.

The focus of the first panel will likely be mainly around the place of children and young people and parents in the provisions of the Bill. The focus of the second panel will be to hear the perspectives of people who work in the current national bodies and their views on the Bill.

CYPCS's submission references a number of articles of the UNCRC. For ease of reference, those articles are reproduced in the Appendix to this paper.

Qualifications Scotland

Culture

A key part of the rationale for the Bill is around creating an improved culture in Qualifications Scotland compared to the SQA. The Policy Memorandum stated that the Bill is "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."

The SQA's submission said the bill is "an important step forward" but "if reform starts and stops with the creation of Qualifications Scotland and changes to governance, then a major opportunity will be missed". In a letter to the Committee, the SQA said—

"There is a real appetite for change across the education system and that is shared by SQA staff. Work has been underway across the organisation to develop our new 'Prospectus for Change' which will set out an ambitious agenda for the transformation of SQA into Qualifications Scotland. This has been approved by the Cabinet Secretary for Education and Skills and will be published soon. Three key pledges are at the heart of the Prospectus:

- resetting relationship with learners and educators to win back their trust;
- grasping the potential of technology to streamline the services we offer; and
- delivering qualifications and assessments that keep pace with rapid changes in society and the economy."

Last week, Fiona Robertson said that she understands and respects the challenging feedback on the SQA. She said that feedback from, for example, surveys is indicating that its engagement with stakeholders is being viewed more positively. A key aspect of this is ensuring that the SQA explains its decisions and demonstrates that they have considered and reflected on feedback.

Representatives of SLS and ADES both reported that SQA was being more collaborative and consultative than it has been in the past. Although both hoped for further improvements.

Learner involvement

One of the main differences of the Bill compared to the current legislative framework for the SQA is around the structures to increase the influence of educators and learners in the work of Qualifications Scotland. These include the creation of Learner and Teacher Charters and a Learner Interest Committee and a Teacher and Practitioner Interest Committee.

Charter

The new body would be required to consult "such persons it sees fit" in developing the charters. The Charters would set out what learners, teachers and practitioners "should expect from Qualifications Scotland in the exercise of its functions". Qualifications Scotland would have to set out how it satisfies the expectations set out in its charters both in its Corporate Plan and its Annual report. The Policy Memorandum states—

“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) 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.” (PM Para 78)

Interest Committee

The function of the Learner Interest Committee would be—

“to advise Qualifications Scotland in relation to the exercise of Qualifications Scotland’s functions from the perspective of persons undertaking a Qualifications Scotland qualification.”

The majority of the Learner Interest Committee would not be members of QS’ board or members of staff of QS. Of the members of these committees that are not part of QS, a majority would need to be “undertaking, or have recent experience of undertaking, a Qualifications Scotland qualification.” A Qualifications Scotland qualification is defined in the Bill as a “qualification devised or awarded by Qualifications Scotland” (section 54), i.e. it does not include qualifications awarded by another body but accredited by QS.

CYPCS’s submission challenged the use of the word learner in the Bill. It said—

“We have some concerns about the use of the term “learner” throughout the proposals and indeed more broadly in education. We acknowledge that a proportion of those doing SQA qualifications in Scotland are adults, but the majority are children. There is an inherent risk that, through the use of terms like learner, the status of children as rights holders under the UNCRC may be diminished. Securing the involvement of learners, will not secure the involvement of children unless this is specified.”

More specifically on the Learner Interest Committee, CYPCS’s submission said—

“We find the proposals for the Learner Interest Committee disappointing in their lack of ambition. As currently drafted the Bill would permit the Learner Interest Committee to include no children at all. ... these proposals appear to embed existing power relationships rather than creating a child-friendly mechanism to put children at the centre of decision making, as called for by Professor Muir. These proposals simply slot children into an adult-centred governance structure in a way which is tokenistic and risks creating a forum that silences children rather than empowers them.”

A theme of the evidence the Committee has heard is how the new organisation responds and incorporates the ideas and feedback from these bodies into their work will be critical. Fiona Robertson said that the Bill provides “scaffolding” for better and more formalised engagement and work with stakeholders. She also said that work

has been taking place over recent years to strengthen and deepen learner engagement.

The SYP's submission said that it welcomes the inclusion of both the Learners Interest Committee and Learners' Charter in the Bill. However, it reported that "MSYPs were concerned that the measures would be tokenistic and there would be no real opportunity for young people to shape the work of the organisation" and the "participation experts should be involved from the start to work with young people to develop a process which upholds the principles of meaningful participation." The SYP's submission said that the Learner Interest Committee should:

- Be truly accessible and should include young people with additional support needs to reflect the diversity of people in Scottish schools.
- Have structures and support for the Committee to consult with the wider population of young people in schools to acknowledge that we cannot expect the Committee to represent every learner.
- Have a clear understanding of the role and power of the Committee to hold the body to account and this should be honestly communicated with the young people involved.
- Work closely with other key stakeholders including parents, teachers, and education experts.

The Coalition for Racial Equality and Rights' submission also warned against a tokenistic approach to engagement. It said—

"It important that processes designed to include learners, teachers and others must also have an equalities focus. This includes the Board of Management, committees and advisory council. As mentioned above, it may be most effective and appropriate to work closely with [the Anti-Racism in Education Programme] to ensure that race equality is at the centre of all decision-making. The method of collaboration will likely depend on areas of expertise, capacity and suitability, however, should ensure that Black and minority ethnic learners, teachers and others are represented in decision-making."

Professor Donaldson suggested that these were "analogue solutions in a digital age", that more of a citizen's panel approach should be taken and that the process of feedback and change needs to be quicker. He said—

"There are many ways in which we can use the digital world to engage people much more fully in the process of deliberation. There is a lot to learn from citizens assembly methodology about how to do that. It is not a kind of crowdsourced policy, where you just try to work out who wants what and what the numbers are. You can use the citizens assembly methodology, combined with a much better use of technology, to engage the totality of those who have a stake in the education system much more directly in the process of sifting and, ultimately, deciding what to do." ([18 Sep 24](#), Col 31)

Fiona Robertson said last week that it was looking at digital solutions to allow all learners and educators to engage with the new body.

Professor Priestley said that the aim should be a sense of ownership of the education system. Gillian Hamilton, Chief Executive of Education Scotland said that it is important that teachers feel that they are engaged in processes. She highlighted recent work on curriculum review where around 1,000 teachers had contributed, but noted that this is a small percentage of the total teaching profession in Scotland, she suggested that working with local authorities would be an appropriate way to reach more of the profession. Professor Priestley also noted—

“It is formidably difficult to engage with people on the level that is required. It is time consuming and resource intensive and, with young people and children, it is very difficult to reach certain populations. It is the old school council conundrum: it is easy to reach out to successful students or pupils in a school and far less easy to reach out to children who are disengaged from the system. There will be significant logistical issues with doing that, and there needs to be a commitment to working with, for example, those in the community learning and development field, in order to reach out to children who are not engaged in school.” ([18 Sep 24](#), Col 7)

Connect’s submission said—

“Engagement with parents and young people cannot simply be a tick box exercise for both new bodies, but instead seen as a vital and valued part of the process. Good communication is fundamental. It is important to use parent-friendly language and avoid education jargon where possible and clear explanations when it must be used. It should also acknowledge and meet the needs of education delivered in Gaelic, as well as support for those with English as a second language and those with support for learning needs.”

The [CYCPS has powers to investigate service providers](#). This includes an investigation into “whether, by what means and to what extent a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people”. Investigations must not cover reserved matters, matters under consideration by a tribunal or that might “duplicate work that is properly the function of another person”.

Parental involvement

The Bill does not provide for a specific mechanism for communication, consultation or input from parents and carers in the work of Qualifications Scotland. The PM said that the Strategic Advisory Council would be the forum for a wider group of stakeholders to influence the operation of Qualifications Scotland, including parents. It said—

“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.” (PM para 70)

Connect's submission said that it would expect parents/carers to be involved in the development of the Learner Charter. The policy memorandum states—

“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.” (PM Para 77)

Board and the Strategic Advisory Council

The Bill includes some prescriptions around the appointments, membership and terms of office of those members. The Bill provides that Ministers must appoint to the board of Qualifications Scotland a Chair, the Convener of the Accreditation Committee and between six and 10 further members. In addition, the Chief Executive would sit on the board.

The Bill provides that, of the appointed members of Qualifications Scotland:

- one or more should “have knowledge of the interests” of people taking relevant qualifications (i.e. a qualification devised or accredited by Qualifications Scotland)
- two or more be registered teachers who are teaching learners taking relevant qualifications
- two or more must be college teaching staff teaching courses leading to a relevant qualification
- one or more “with knowledge of the interests” of the staff at Qualifications Scotland.

These conditions are new and are not found in the Education (Scotland) Act 1996, with the exception of the member with knowledge of staff interests (see [section 1\(2A\)](#)). The membership of the board of the SQA is a matter for Ministers who have had wide discretion in who they have appointed.

Unite's submission stated—

“Unite wish to make very clear that the member representing staff should be selected from the staff body of Qualifications Scotland (excluding Senior Managers and Directors) and should be elected by the entire staff body; this is critical to ensuring legitimacy. Equally, we wish to stress that one member of the Board representing staff interests is completely insufficient. It is very important that the proportion of worker members on the board is sufficient to make a real difference to the culture, discussions and decisions of the Board. ... As such, we are now seeking an amendment to the bill, one that explicitly and legally enshrines the importance of Qualifications Scotland's recognised Trade Unions being represented on its Board of Management. This would

equate to three seats in total with Qualifications Scotland staff representation as their focus.”

EIS’s submission welcomed the aim to increase the contribution of practitioners in the governance structures of the new body. However, it argued that the Bill does not go far enough. It said that the board of “Qualifications Scotland must comprise of a majority of teachers and lecturers.” Anne Keenan from EIS said that the professional voice is essential not only as experts in education, but also as advocates of learners.

The Policy Memorandum explained that there is expected to be a level of continuity between the current board of SQA and the new body, it said—

“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 on the express basis that the successful candidate would transition to the new body.” (Para 48)

The Bill provides that there will be a Strategic Advisory Council similar to the current [SQA Advisory Council](#). The role of this council will be to provide advice to Qualifications Scotland and Ministers on matters relating to:

- qualifications devised or awarded by Qualifications Scotland
- the functions and procedure of Qualifications Scotland.

Fiona Robertson said that the current advisory council have provided advice on a range of topics including appeals and certification; she said that its reports are considered by the SQA board.

Professor Donaldson also said that it should be clear whether the people sitting on these committees as practitioners or learners are appointed as individuals or as representatives. ([18 Sep 24](#), Col 34) Professor Mark Priestley said that it was important there be a variety of views and types of expertise in policy-making bodies. Professor Priestley also referred to his experience sitting on strategic boards in the Government. He said that these meetings can be too short and could be viewed as “rubber stamping” civil service papers rather than forums where policy is developed. (Col 46) Barry Black said—

“Advisory councils—across the bill—would be positive and make a difference. They should be part of the national agencies as they exist already, particularly pertaining to the SQA, for example. In the past four years, the brilliant staff at the SQA have felt that they have not been heard and have not had a voice in the process.” ([18 Sep 24](#), Col 46)

Accreditation

The Muir review recommended that the accreditation function be separated from the awarding function under new arrangements. The Government initially agreed with

this recommendation but subsequently revised its approach. The Policy Memorandum states:

“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.” (Para 14)

As with the current situation with the SQA, the Bill provides that the accreditation function will be overseen by an Accreditation Committee. Paragraph 12 of Schedule 1 provides that the work of the Accreditation Committee cannot be directed by the overall board of Qualifications Scotland and is operationally independent. The Bill provides that Ministers appoint the convener of the Accreditation Committee and this person sits on the board of Qualifications Scotland. Sections 19 and 20 provide that the Accrediting Committee develops a separate corporate plan and annual report.

The Policy Memorandum explained:

“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.” (Para 58)

SQA Accreditation currently has a statutory remit to independently accredit and quality assure qualifications and regulate approved awarding bodies. Fiona Robertson said that a key question should be what the scope of the regulation and accreditation body, and that the form of the body should follow on from this decision. The [SQA's submission to the Muir review](#) said—

“Accreditation and regulation is a discrete function [of the SQA]. It is one of the most important of the elements that support valid, reliable, credible qualifications and promote national standards in education. Qualification routes and progression pathways depend on accreditation and awarding functions working together across the full offer of qualifications in Scotland.

“... Essentially, this is voluntary regulation. Other bodies such as the Scottish Government, the Security Industry Authority, etc, have mandated that certain qualifications must be accredited and regulated by SQA Accreditation. Consideration needs to be given to the future role of accreditation and regulation by ensuring that any subsequent legislation strengthens the need for qualification regulation in Scotland. We believe this could also incorporate the functions of the SCQF partnership into the regulatory function, with appropriate devolved authority for credit rating available to the university sector. This would help ensure further coherence and promote public confidence in all qualifications in the Scottish education system.

“... SQA Accreditation also quality assures the development of, and gives final product approval for, National Occupational Standards (NOS). It is the only organisation that carries this function out, and it does so on behalf of the devolved administrations, which fund the Standards and Frameworks programme.”

The SQA had a number of suggestions in relation to the accreditation function in its response to the Muir review. These included—

- further investment in accreditation and regulatory functions in Scotland
- a strengthened function in self-regulation around National Qualifications (where there is not a qualifications market), including greater emphasis on codes of practice, monitoring, a system of checks and balances, and critically, greater transparency and independence from government around these.
- an augmented role for accrediting vocational qualifications (where there is a market) ... to ensure that only quality qualifications that meet the needs of a range of stakeholders attract public funding.
- incorporate the functions of the SCQF partnership into the regulatory function

Last week Fiona Robertson said she would like to see a move away from a voluntary model of accreditation. She also said that if there are issues to do with public perception of qualifications and this could be improved by a separate accreditation and regulatory body, and the scope of the work requires it, then a separate organisation should be considered.

Unite’s submission suggests that there is a missed opportunity to create a qualifications regulator, similar to Ofqual in England or Qualifications Wales. It said—

“Education Scotland Bill does not recognise the importance of Qualification Regulation in relation to the protection of the learner. There is nothing in the Bill that would strengthen regulation of qualifications in Scotland and this is a missed opportunity.”

Professor Donaldson told the Committee that when he was working on reform of the curriculum in Wales, his discussions were with Qualifications Wales, the regulator. Professor Donaldson said indicated that it was helpful to work with a strategic body which was separate to the body responsible for delivering qualifications. ([18 Sep 24](#), Col 37) [Qualifications Wales describes](#) itself—

“Our role is broader than that of a conventional qualifications regulator. We have additional powers to commission new qualifications and to restrict the range of qualifications offered. We also support Welsh-language assessment and the qualifications system by issuing dedicated grants.

“We have an interest in the potential for innovation within qualifications and the qualifications system to meet future requirements. This means that we both seek opportunities to be innovative ourselves and wish to be supportive of awarding bodies when they innovate. This extended role has many benefits, but when undertaking this type of work, we will always consider the potential impact on our core regulatory role.”

[Ofqual summarises its responsibilities](#) as regulating “awarding organisations that design, deliver and award qualifications and apprenticeship end-point assessments in England. Ofqual controls entry to the regulated market, and we create rules and provide guidance for awarding organisations to help make sure regulated qualifications are fit for purpose, valid and delivered securely.”

HM Chief Inspector of Education in Scotland

Inspections’ Purposes and Approaches

The Bill would leave the approaches to inspections to the Chief Inspector to determine. She or he would have to include, among other things, “information about the different types of inspection model which may be used” in an inspection plan that would need to be laid before Parliament.

Last week the Committee was told by Stuart Hunter from the SSTA that schools can find the process of an inspection very stressful and undertake a significant amount of work prior to an inspection. Anne Keenan from the EIS said that the current inspection model is antiquated, top down and driven by national targets; she questioned its contribution to educational outcomes.

Graham Hutton from SLS said that the context of schools is very important and each school is different; he also said that areas such as local authority support could form part of the process. Professor Donaldson, who is a former chief inspector, said—

“We need to get away from an inspection process that is perceived—and the media tend to play up this aspect—as a big stick. That of course then winds up teachers and winds up the schools, so everyone ends up being wound up.”
([18 Sep 24](#), Col 49)

A number of responses to the Committee’s call for views suggested that there should be more explicit provisions in the Bill about the purposes of inspection. SLS’s submission said—

“We would welcome more direction with regard to the review of inspection models, particularly regarding thematic inspections across sectors and subjects as well as fuller inspections of Local Authorities and how they support schools in their jurisdiction. The fact that the plan must also set out the standards against which establishments will be evaluated is also welcome and this should include a revision and updated version of HGIOS or a new approach which replaces HGIOS.

“We feel this should lead to an increase in peer reviewing with a larger and more influential role for Associate Assessors, who are practising school leaders, as this will enhance the currency and standing of HMIE.”

The panel of experts on 18 September suggested that the Bill should be flexible to allow the inspectorate to adapt, but that the purposes of the inspectorate could usefully be included in the Bill.

EIS’s submission said “inspection, in the context of an Empowered system, is an outdated model for educational improvement. It is costly, in terms of resource and in

terms of the time lost to teaching and learning, and it is of very limited value in supporting accurate self-evaluation and informing professional practice. It frequently fails to get to the heart of a school's endeavour to serve the needs of its community."

Connect's submission said that there was appetite among parents/carers "to be much more involved in inspections": It highlighted a survey that informed its response to Professor Muir's consultation in 2021 which found:

- The families at nurseries and schools should feel involved and listened to in the inspection process. 97 per cent of responses either agree or agree strongly.
- Families' views should lead to positive change and improvement. 97 per cent of responses either agree or agree strongly.
- Parents/carers and young people should be able to share their views openly with the inspection team. 98 per cent of responses either agree or agree strongly.

[Education Scotland's website describes](#) the expectations that: schools need "to set aside weeks to prepare for an inspection"; that "all paperwork needs to be in order and all policies updated"; and that "inspectors don't take account of the context of the school" as myths. It says—

"Inspectors do not expect teachers to be doing anything differently in advance of an inspection. Inspectors assume that you are providing high-quality provision for children every day and therefore we are happy to observe what you would be doing on an ordinary day without any special changes for an inspection. ...

"The Scottish approach to bringing about improvement in schools is based on the idea that schools will evaluate their own work and then take action to share good practice and plan for any necessary improvements. In doing this, they are supported and challenged by their local authorities and by the inspection team. So inspection should not be seen as an isolated event, but rather part of an ongoing process which ensures school improvement.

"Inspections have three main purposes: to give reassurance to parents and other stakeholders that a school is providing the high-quality education expected for Scotland's children and young people; to support improvement through professional discussion and sharing good practice; and to inform national policy on education."

[Education Scotland is undertaking a review of school inspections](#). This will "look at the current inspection framework and approaches with the aim to develop a new quality framework, and adapt and enhance approaches to school inspections." Janie McManus said that this would include schools' self-evaluation tools, how findings are reported and how success is celebrated and support is directed when required. She said that her organisation is working with stakeholders as part of this process.

Coverage of the inspectorate

The inspection function will cover “relevant educational establishments”. The Bill defines “relevant educational establishments” as:

- schools (including local authorities’ provision of ELC)
- funded ELC provided by a partner provider
- a provider of further education
- a school of education providing initial teacher education (only to the extent that it provides such education)
- residential accommodation connected to a school (only in relation to the welfare of the pupils)
- an education authority (only in relation to its school education functions).

The Bill sets out “excepted establishments” which are a sub-set of “relevant educational establishments”, which are the types of relevant educational establishments that may be inspected only at the request of Ministers. These are:

- funded colleges
- schools of education providing initial teacher education.

One of the issues the Committee has explored is whether the inspectorate should have the power to inspect national agencies. Last week the panel from the current national agencies appeared to be comfortable with the suggestion.

ELC and FE

The Bill would mean that the new inspectorate would retain the power to inspect ELC establishments. Members will be aware that Education Scotland and the Care Inspectorate are developing a joint framework for inspections in the sector.

Professor Muir said that reform should be considered from the “perspective of children and young people”, he continued—

“Part of the cultural shift that is required is about recognising the value of what happens in preschool education and in primary, and seeing the learner journey as a continuous journey from the learner perspective.” ([18 Sep 24](#), Col 7)

The FDA’s submission said—

“Few learners only experience one aspect of Scottish education throughout their lives. ... FDA members would value the Bill providing more clarity on aspects such as initial training for teachers or other education practitioners, early learning and childcare (ELC), out of school learning such as community learning and development (CLD) and lifelong learning, further and higher education, and national agencies.”

Last week, Janie McManus said that the function of the inspectorate is to improve education through a learner's journey and this should include ELC, school and beyond.

Independence

The structure of the inspectorate will be based around the Chief Inspector of Education in Scotland ("Chief Inspector"). The Policy Memorandum states that this position will "separately be designated an office-holder in the Scottish Administration [and this will be] taken forward by subordinate legislation of the UK Parliament" under powers in the Scotland Act 1998. (Para 104)

A key aim of the Bill is to strengthen the independence of the inspectorate. Schedule 2 of the Bill states that the Chief Inspector is "not subject to the direction or control of a member of the Scottish Government" other than where this is explicitly set out in legislation.

Ministers retain the ability to direct the Chief Inspector to secure the inspection of specific or types of educational establishments and a power to specify the intervals at which inspections take place. These broadly reflect the current powers of Ministers contained in the Education (Scotland) Act 1980 ([s66](#)) and, in relation to Education Authorities, section 9 of the [Standards in Scotland's Schools etc. Act 2000](#).

The RSE's Learned Societies Group submission said—

"One of the key recommendations from Professor Muir's report was to introduce a new inspectorate body with '*its independence enshrined in legislation*'. The LSG is disappointed that the Bill still has the Chief Inspector reporting to Scottish Ministers instead of Scottish Parliament at large and would recommend amending this provision to adequately reflect Professor Muir's recommendation."

The FDA said in its submission—

"There is also a need for greater clarity about the level and extent of the independence of the new inspection agency. For example, Section 31 implies Scottish ministers directing what is covered. More needs to be said about how independence would be established and maintained, whilst allowing Scottish ministers to seek the information they require to inform policy. This will be important to enable FDA members who are HM Inspectors to understand their role and the expectations around this."

The FDA's submission also highlighted that "civil service pay has not kept pace with teachers' pay increases in recent years. The majority of those who become HM Inspectors have been teachers and have to take a pay cut to join the inspectorate. This has implications for the reputation of the new agency and its ability to attract candidates of a sufficiently high calibre."

Advisory Council and engagement with learners and parents

The Bill provides that the Chief Inspector must establish an advisory council. The Chief Inspector would have a duty to endeavour to ensure that the council be representative of the “interests of persons likely to be affected by the Chief Inspector’s functions”. The Chief Inspector would have a duty to have regard to any advice provided by the council and provide reasons should he or she not act on the advice given.

The Policy Memorandum states—

“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” (PM Para 113)

Janie McManus, the current Chief Inspector of Education for Scotland, said that the formal processes suggested in the Bill cannot be the only way that organisations can seek views. She said that engagement should take place during and after activities, such as inspections. Janie McManus described the establishment of the advisory council as a key change to allow feedback from stakeholders to the inspectorate.

CYPCS’s submission stated—

“Whilst we support the proposal for HMIE to be reinstated as an independent body we are disappointed that the opportunity to embed children’s rights and views in the new body has been missed. As with other aspects of education, children have a right to participate in school inspections at both a local and national level. For example, we would welcome statutory guarantees that children will be involved in governance arrangements for HMIE and requirements for engagement with children and young people as part of school inspections. We would also support children being given the opportunity to participate in inspections, along the lines of the role played by the Care Inspectorate’s young inspection volunteers. This would require a commitment of resource to properly facilitate participation, which is not visible in the financial memo accompanying the proposals for any of the agencies.”

Remainder of Education Scotland

The removal of the inspection function from Education Scotland will mean that there is a new-look curriculum support agency. A [Parliamentary Question \(S6W-28044\) answered on 5 June 2024 explained:](#)

“The primary purpose and focus of Scotland’s national education agency will be to lead curriculum design, delivery and improvement, including the provision of resources to support high quality learning and teaching.

“The national agency will also have an important role in supporting a thriving professional learning sector through a national framework for professional learning and will build on the existing and well-regarded national leadership professional learning programmes.”

Education Scotland’s submission noted that in November 2023 the Cabinet Secretary had set out her priorities for Education Scotland and these included, “sharper focus on Curriculum support and the Scottish Attainment Challenge, as well as a shift from regional working”. It also said—

“To support this refocussed remit, we are extending our corporate planning cycle by a year to align with the reform timetable and so have developed an action plan setting down clearly the key areas that Education Scotland will focus on over the coming year. We remain committed to supporting the Scottish Government to deliver an ambitious reform of education in Scotland.”

Barry Black told the Committee that the Bill should have included provision for the establishment of the national curriculum support agency. He said—

“There is a perception at least that Education Scotland is somehow like the Department for Education in Scotland, rather than a curriculum-supporting delivery body. That speaks of the independence elements that we talked about earlier. Governance arrangements that ensure its independence and clearly set out its purpose would be of benefit to the system as a whole.” ([18 Sep 24](#), Col 53)

On 18 September 2024, the Professor Muir told the Committee that the “complexity of the education system in Scotland is quite remarkable for such a small country” ([18 Sep 24](#), Col 5). Professor Priestley said---

“Currently, we have a lot of issues with agencies that have overlapping functions and a lack of clarity about function. There are demarcation issues and boundary issues. There are agencies that do operational and strategic stuff and that also evaluate their own work, so there are conflicts of interests. The system is set up to justify itself and to celebrate its success, rather than take a critical look at what happens, and that is seen very clearly by practitioners working on the ground. There is a lack of connection as well. I would like to see a much more coherent middle layer in the system that actively connects policy and practice, and that involves practitioners as active members of the community in, for example, developing policy and materials and resources. That does not happen as much as it could.” ([18 Sep 24](#), Col 7)

Gillian Hamilton, Chief Executive of Education Scotland, told the Committee last week that the future relationships and collaboration between the three future bodies – Qualifications Scotland, the inspectorate and the new-look Education Scotland – will be fundamental to the desired outcomes.

The FDA's submission said—

“The Bill should ensure that the education agencies created, and those that continue to exist, work together well to best support the education system. This must include clear, planned coherence and cooperation, and effective communication between these national bodies. A duty to work together, supported by a Memorandum Of Understanding, would be a helpful addition to the Bill.”

Transitions to the new organisations

A number of elements of reform to both the qualifications body and the separation of the inspectorate and curriculum support body are currently taking place. These include the recent appointment of the current chair of the SQA who is expected to be the Chair of Qualifications Scotland. Fiona Robertson last week said that further new appointments to the board are expected shortly.

Janie McManus said that there has been a huge amount of uncertainty for staff through the process so far. She said that the focus has been to deliver the transition as well as the core functions. Alongside this she said that there is a focus on developing new methods of working, such as new inspection models.

Gillian Hamilton said that for the past year, Education Scotland has been looking to create more separation between its inspection and other functions within the organisation.

Equality

A number of submissions highlighted some issues in relation to equality policies.

The submission from the ECHR said, “any new qualification or inspection bodies should be listed for the PSED and Scottish specific duties, as their current equivalents are.” Close the Gap's submission argued that more focus should have been placed on how the Bill could support gender equality.

CRER said, “all developments and actions should be subject to equality impact assessment, including the development and operation of the Advisory Council, to ensure that decisions do not disproportionately affect Black and minority ethnic groups.”

The [EQIA prepared alongside the Bill and published on the Government's website](#) stated—

“There is no evidence to suggest that there will be a negative impact on any individual with a protected characteristic. However, we will continue to work with our internal and external stakeholders to ensure that we collectively undertake full and ongoing consideration of equality. ... We will continue to engage with stakeholders to share our thinking and test ideas and consider any equality aspects as they arise. ... The EQIA will be updated as the Bill progresses through the Scottish Parliament, and we will continue to consider arrangements for monitoring the impact of the Bill.”

ECYP/S6/24/25/1

Ned Sharratt, Senior Researcher (Education, Culture), SPICe Research
26 September 2024

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.
The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot

Appendix: Selected Articles of UNCRC

The following are the articles of the [UN Convention on the Rights of the Child](#) cited in the submission of the Children and Young People's Commissioner Scotland.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds,

regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others; or
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Annexe B

Children and Young People’s Commissioner Scotland response to the Education (Scotland) Bill Call for Views

Question 1 - What are your views on the proposals for Qualifications Scotland?

Background

During the Covid pandemic, our office was actively involved in discussions on the cancellation of SQA exams and the Alternative Certification Model used in 2020 and 2021 (<https://www.cypcs.org.uk/coronavirus/exams-and-assessments/>). This included supporting our (then) Young Advisors to give evidence to the Education and Skills Committee in March 2021 (<https://www.cypcs.org.uk/news-and-stories/young-voices-at-the-scottish-parliament-our-young-advisers-session-with-the-education-and-skills-committee/>). Their evidence highlighted not only concerns about the experiences they had, but also about Scotland’s overall approach to examinations and assessments.

One of our conclusions was that the approach taken to the ACM and to the SQAs lack of communication with children and young people was, in part, caused by a culture which failed to acknowledge children as both rights-holders and as key stakeholders in the SQA’s provision of qualifications. This resulted in a lack of attention to children’s views, a failure to provide opportunities for children to participate in decision-making and at times a failure to communication directly with children.

A number of education reviews have taken place in the years since the beginning of the Covid-19 pandemic. In particular, Professor Mark Priestley undertook a rapid review of the National Qualifications Experience in 2020 and Professor Ken Muir made recommendations on the future of Education Scotland and the SQA.

“Fundamentally, my recommendations place children, young people and those teachers and practitioners who support their learning more firmly at the heart of the education system. Unashamedly, they place them and their interests ahead of those organisations that make up the educational infrastructure.” – Professor Ken Muir (<https://www.gov.scot/publications/putting-learners-centre-towards-future-vision-scottish-education/>)

What our current Young Advisors told us about exams this year

We met with our Young Advisors in July to discuss wider issues in education and were able to spend some time with those who sat exams this year, discussing their experiences. This session was during the school holidays and 13 attended. 5 took part in the conversation about exams.

Our Young Advisors told us about their experiences of exams. They described the run up to exams as “awful” and high pressure. In addition to SQA exams, some also experienced two sets of Prelims during the year. In some cases they were tested on

material they hadn't yet learned. They felt that it was more a test on memory and ability to write rather than the subject material, especially for subjects like art.

Several of our Young Advisors had experience of more than one exam on the same day. This made for a very long day and they were worried they did less well on the second exam. For those allowed extra time as a special accommodation this meant either no break between exams or a very late finish.

They raised concerns about provision of support to children with additional support needs for example children missing out on support and special accommodations due to having no formal diagnosis; extra time in exams being missed.

The Young Advisors also had some suggestions for improving exams and assessments. They thought that portfolio pieces or an investigation should be part of assessment in more subjects. And they thought that it should be possible to study a wider range of subjects into the Senior Phase.

What our current Young Advisors told us about the Bill

We also discussed the proposals in this Bill with the whole group. In particular, we asked them for their views on the proposals to increase children's participation in the governance of the new Qualifications Scotland. They strongly supported the need for children and young people to be listened to and felt that this was not the case with the SQA.

They were critical of the proposals for the Learner Interest Committee, particularly that it was possible that the majority of people on the Committee would be adults (and that it was possible there would be no children). They also felt strongly that disabled children and those with ASN should be represented and that children and young people should be supported to participate. They thought there should be something like (our) Young Advisors Group set up to influence the SQA's fundamental workings.

"Most children and young people would feel better in a space only for children and young people" – Young Advisor

They also thought that both schools and the new QS should do more to speak to individual children and young people taking exams – for example by schools asking how they found the exam (some schools did this already) or holding a focus group afterwards and that being passed on to QS.

The Young Advisors were sceptical about the potential for the new QS to be different from the SQA, particularly given that most leadership positions will be filled by existing SQA staff.

Priorities from children and young people

We have extensively consulted with children and young people across Scotland over the last year, to understand what their priorities are. The need for education reform is one of top issues raised with us, regardless of where and what type of group we are meeting. While we do continue to hear comments about SQA, very few talk to us about agency reform. They are focussed on how they experience education on a day-to-day basis. We hear more about homework, what things the curriculum covers,

course choice, exam stress, bullying, access to support, levels of anxiety, school buildings and other issues. Children and young people want to see fundamental change, particularly to the way they experience secondary education. In order to fulfil children's rights to an education which develops them to their fullest potential, this Bill must be the first of many steps in a programme of reform.

Specific proposals

Effecting culture change

The need for substantial culture change has been a theme of both the various reviews into education over the last five years and discussions around incorporation of the UNCRC in Scotland. It is also an inherent part of Curriculum for Excellence.

It is unclear whether the changes proposed will effect that culture change in the new Qualifications Scotland.

Culture change will need in-depth, regular participation work with children; most importantly children's participation must have an impact on what decisions are made. We continue to be disappointed that children's UNCRC Article 12 rights are spoken about in terms of hearing views - Article 12 also includes an obligation for children's views to be given due weight and General Comment 12 makes it clear that Article 12 is a right to participate, not just a right to be consulted. There is no detail about how children will be involved in the governance of the new Qualifications Scotland.

Respect for children's rights also requires consideration of the full breadth of children's rights in the UNCRC. Consideration of the best interests of children (Article 3) and the principle of non discrimination (Article 2) are particularly relevant, as is Article 13 on the right to information. In terms of the right to education this must include both Article 28 and Article 29, the latter is particularly important in terms of changing culture across the education system.

Yet this Bill contains no requirement for the new body to have regard to the needs, interests, views or rights of children. We would welcome an amendment to require this, on the lines of the requirement in Section 7 to have regards to children in Gaelic medium education.

Learner Interest Committee

We find the proposals for the Learner Interest Committee disappointing in their lack of ambition. As currently drafted the Bill would permit the Learner Interest Committee to include no children at all. In his review, Professor Priestley called for "the development of more systematic processes for working with and engaging young people, as stakeholders and rights holders in education" (<https://www.gov.scot/publications/rapid-review-national-qualifications-experience-2020/>). Yet these proposals appear to embed existing power relationships rather than creating a child-friendly mechanism to put children at the centre of decision making, as called for by Professor Muir. These proposals simply slot children into an adult-centred governance structure in a way which is tokenistic and risks creating a forum that silences children rather than empowers them.

We have some concerns about the use of the term "learner" throughout the proposals and indeed more broadly in education. We acknowledge that a proportion

of those doing SQA qualifications in Scotland are adults, but the majority are children. There is an inherent risk that, through the use of terms like learner, the status of children as rights holders under the UNCRC may be diminished. Securing the involvement of learners, will not secure the involvement of children unless this is specified.

It is also important to ensure that a diverse range of views and experiences are reflected, including children (and adult learners) with additional support needs, care experienced children, those attending colleges, home educated children and those in rural areas.

There is an extensive range of research available on participation models which are child-friendly and effective in ensuring that children are able to influence decision making in line with their rights under Article 12 of the UNCRC (as articulated in General Comment 12). In our frequent discussions with Scottish Government officials around appropriate ways to ensure children's participation in decision making, we continue to make it explicitly clear that adding children to adult-dominated committees is not appropriate. Instead, resource needs to be invested in creating a child-friendly model along the lines of Audit Scotland's Inform 100 group (<https://www.youthscotland.org.uk/news-article/audit-scotland-and-youth-scotland-launch-inform-100-to-engage-young-people-in-public-services/>) and the Inclusion Ambassadors (<https://childreninscotland.org.uk/inclusion-ambassadors/>).

Learner Charter

We welcome the intent behind the Learner Charter but again the use of the word learner in section 10 of the Bill means that the opportunity to guarantee children's involvement in the development of the Charter has been lost. We would welcome an amendment to section 10 to require Qualifications Scotland to work with children and young people when developing the Charter.

Appeals

In 2020 and in 2021, we raised concerns over the approaches taken by SQA on appeals. We have called for a fair, children's rights-based appeals and extenuating circumstances processes, at no cost to candidates and on a no-detriment basis. We also argued that appeals should be based on a range of evidence of attainment (<https://www.cypcs.org.uk/resources/sqa-consultation-2021/>). This would ensure a level playing field for children who are affected by ill health or other extenuating circumstances on the day of the exam or during the school year and will also provide flexibility to properly reflect the attainment of groups of children affected by extenuating circumstances. We believe this should be the case even outwith the context of significant disruption to learning caused by the pandemic.

Future reform of Qualifications and Assessments

At the time of writing the Scottish Government has yet to respond to the Independent Review of Qualifications and Assessment (the Hayward report), more than a year after its publication. We are concerned at reports in the press that suggest some of the recommendations of the report may not be taken forward. The Independent Review was very clear about the importance of changes to qualifications and assessment in the Senior Phase. This reflected the recommendations of previous

reviews, including those by Professor Ken Muir, by Angela Morgan and the OECD review of Curriculum for Excellence, which highlighted a disconnect between the intentions of CfE and the exam system.

The Independent Review also laid out a framework for qualifications that will equip children and young people for the 21st century (<https://www.gov.scot/publications/future-report-independent-review-qualifications-assessment/>). Recent reports around dual presentation of children for both National 4 and National 5 qualifications in S4 further illustrate the problems with the current qualification system.

Whilst the reforms introduced by this Bill will address some of the key recommendations in Professor Muir's review, it will not achieve the changes needed to Scotland's approach to qualifications and assessments. Professor Hayward, the OECD and Professor Muir were clear that broader change, including significant culture change, is needed. Our Young Advisors views also reflect this.

Children across Scotland have asked our office to prioritise work on education reform. They want an education system which helps them all to develop to their fullest potential, and at the very least does not actively disadvantage them. Agency reform is not the priority issue they talk to us about. We therefore hope that this Bill is only the start of a process of education reform.

Question 2 - What are your views on the proposals for a new HM Chief Inspector of Education in Scotland?

HMIE

Whilst we support the proposal for HMIE to be reinstated as an independent body we are disappointed that the opportunity to embed children's rights and views in the new body has been missed. As with other aspects of education, children have a right to participate in school inspections at both a local and national level. For example, we would welcome statutory guarantees that children will be involved in governance arrangements for HMIE and requirements for engagement with children and young people as part of school inspections. We would also support children being given the opportunity to participate in inspections, along the lines of the role played by the Care Inspectorate's young inspection volunteers. This would require a commitment of resource to properly facilitate participation, which is not visible in the financial memo accompanying the proposals for any of the agencies.

As with the proposals for the Learner Interest Committee at Qualifications Scotland, there is no guarantee in the Bill of representation of children in the governance arrangements of HMIE, although as a public authority, the Inspectorate will have a duty to act compatibly with the UNCRC. In section 35, membership of the Advisory Council is only required to ensure that it is "representative of the interests of persons like to be affected by the Chief Inspector's functions". In section 36, the Chief Inspector is required to consult on the Inspection Plan with Scottish Ministers and the Advisory Council, as well as "such other persons as the Chief Inspector considers appropriate". This is despite these sections being highlighted by the Children's Rights and Wellbeing Impact Assessment

(<https://www.gov.scot/publications/education-scotland-bill-child-rights-wellbeing-impact-assessment-crwia/documents/>) as “strengthening the role for the voice of children and young people”. We would welcome amendments to these sections to explicitly achieve that aim.

HMIE also play a role in inspecting aspects of school life beyond education. Inspections currently include consideration of the school’s inclusion and child protection policies. This is an important part of ensuring that children’s wider rights are respected within schools. We have been raising concerns for some time over the lack of guidance and monitoring of the use of restraint and seclusion in school and would welcome additional attention being paid to this. The Bill’s proposals for annual reports to parliament from HMIE could help to address this.

Finally, HMIE will play an important part in implementing incorporation of the UNCRC in Scottish schools. We have already undertaken some work with HMIE staff to build their expertise in children’s rights and hope to continue to work with the new body on this.

Connect response to the Education (Scotland) Bill call for views

About your organisation

Connect is a long-standing independent parents' organisation and the only Scottish charity which is dedicated to supporting parental engagement in education. We provide membership services to Parent Councils and PTAs, as well as offering advice and information to individual parents/carers about any aspect of the education of their child or the wider education system. We support education professionals in developing their skills and understanding around effective partnership working with families and the wider community through online professional learning via the Connect Family Engagement Academy. Our evidence-based approaches reflect both the recognised significant role of families in the learning of their children and young people, and the stated policies and legislation which pertain in Scotland.

Question 1 - What are your views on the proposals for Qualifications Scotland?

While we welcome the progress made to set up a new qualifications body as recommended by Professor Muir, we are concerned this could end up simply a rebranding exercise. We believe there has been institutional defensiveness over the years and a focus on 'the qualifications system', and those who work in it, rather than on those who are the purpose of our education system – young people and those who undertake qualifications. This prevailing culture of protecting the qualifications brand and the supposed integrity of qualifications above all else has created a major barrier to improvement and change at every level. Qualifications Scotland must be different. It is vital that parents and carers are fully involved in the Strategic Advisory Council and in the creation and delivery of the Learners' Charter. It is also vital that a cultural and attitudinal change takes place: the new qualifications organisation must have service and improvement at the heart of what it does. An openness to improvement is encouraged in education and young people's positive attitudes to learning, and the new body must embrace this too. That is, serving the public, especially young people at a particularly challenging time in their lives, is imperative.

It must however also remain separate and distinct from Scottish Government and political interference. The Education Bill's policy memorandum recognises parents as one of the 'groups of interest' for the Strategic Advisory Council and notes the need to engage with parents as representatives of children regarding the Learners' Charter. We would like this to be more explicit and far-reaching in the Bill proper. The new organisation must be more accountable than its predecessor, engaging meaningfully with all those who have a stake in education and young people's learning, which includes parents and carers, and especially to give space to those voices not usually heard. Qualifications must be accessible to all, and able to be delivered through a variety of high-quality methods, including remotely and in centres for those who are not registered at a school or college eg home-educated young people.

Question 2 - What are your views on the proposals for a new HM Chief Inspector of Education in Scotland?

As stated in our response to the Scottish Government's consultation, we are concerned about potential political appointments. The inspectorate must be independent of other national education bodies and of Scottish Government to carry credibility and to focus on its proper business – the improvement of our education system for all.

Parents want to be much more involved in inspections: the survey results which fed into our response to Professor Muir's consultation in 2021 highlight this:

- The families at nurseries and schools should feel involved and listened to in the inspection process. **97 per cent of responses either agree or agree strongly.**
- Families' views should lead to positive change and improvement. **97 per cent of responses either agree or agree strongly.**
- Parents/carers and young people should be able to share their views openly with the inspection team. **98 per cent of responses either agree or agree strongly.**

The Advisory Council to the Chief Inspector should be representative of those who will be affected by the Chief Inspector's functions. The Bill's policy memorandum notes this is an opportunity to strengthen learner and parent/carer voices in the governance arrangements, however this needs to be more than just theoretical opportunity but actually happen in practice. Parents', children and young people's views on the inspection process should be sought after each inspection, with a regular review and focus on improvement of the service. There should be more professional involvement of inspectors in engaging with families and the wider community, with a much stronger focus on the pastoral and support role that schools play in their communities.

Concluding Remarks

Engagement with parents and young people cannot simply be a tick box exercise for both new bodies, but instead seen as a vital and valued part of the process. Good communication is fundamental. It is important to use parent-friendly language and avoid education jargon where possible and clear explanations when it must be used. It should also acknowledge and meet the needs of education delivered in Gaelic, as well as support for those with English as a second language and those with support for learning needs.

FDA written submission on the Education (Scotland) Bill

The FDA is the trade union for managers and professionals in public service, representing more than 22,000 members across the United Kingdom. Membership includes senior civil servants, government policy advisors, prosecutors, diplomats, tax professionals, economists, solicitors, HM Inspectors, and other professionals working across the government and in the NHS.

In Scotland, our main sections and branches are in Education Scotland, the Crown Office Procurator Fiscal Service and the Scottish Government.

We will not be commenting on the role of the new qualifications agency and so the following observations all relate to the establishment of the new inspectorate, the role of the new HM Chief Inspector of Education and the wider impact of these aspects on our members in Education Scotland.

Response to consultation questions:

Part 2 of the Bill establishes the role of HM Chief Inspector of Education in Scotland, setting out what they will do and how they will operate. What are your views of these proposals? E.g. Do they allow for sufficient independence?

- Overall, FDA members in Education Scotland are concerned that the wording in this bill does not reflect Scottish education in the twenty-first century. There is a need to ensure that the new inspectorate is based on aspirations across education sectors and the reality of learners' and the workforce's experience. Few learners only experience one aspect of Scottish education throughout their lives. This relates to the wording 'relevant educational establishments' and 'schools' throughout the Bill. FDA members would value the Bill providing more clarity on aspects such as initial training for teachers or other education practitioners, early learning and childcare (ELC), out of school learning such as community learning and development (CLD) and lifelong learning, further and higher education, and national agencies.
- There is also a need for greater clarity about the level and extent of the independence of the new inspection agency. For example, Section 31 implies Scottish ministers directing what is covered. More needs to be said about how independence would be established and maintained, whilst allowing Scottish ministers to seek the information they require to inform policy. This will be important to enable FDA members who are HM Inspectors to understand their role and the expectations around this.

What are your views on the reporting requirements set out in the Bill, including the requirement to report on the performance of the Scottish education system?

- FDA approves of the requirement for the HM Chief Inspector to report regularly to the Scottish Parliament.

Are there any powers HM Chief Inspector should have that are not set out in the Bill?

- The scope of what can be inspected, as referenced in the Bill, does not reflect all of current HMI activity. For example, the Post-16 sector is not sufficiently specified, and neither is Community Learning and Development (CLD).
- HM Chief Inspector does not appear to have control of the inspection of post-16 establishments. This currently sits with the Scottish Funding Council and the Quality Assurance Agency (QAA), which have proposed an alternative model of evaluation. This does not include a scrutiny role for HM Inspectors.
- As a result, His Majesty's Inspectorate of Education (HMIE), and potentially Scottish ministers, will have far less or no information on one third of those undertaking education in Scotland, leaving HMIE and HM Chief Inspector with a much smaller role in the Scottish educational landscape. This limits HM Inspectors' ability to highlight issues or positive developments and to influence policy in this area.
- HM Inspectors currently work with a range of post-16 providers who have public funding, including MA providers, prisons, and private colleges. This allows a consistency of approach and expectations in adult education and enables HM Inspectors to share good practice and build capacity. In addition, as our post-16 HM Inspectors also work with schools, they bring an informed view to support the development of a joined-up senior phase. This has the potential to be lost.

In your view, what should the outcomes of the Bill be?

- The Bill should provide for a new inspectorate that can, without fear or favour, accurately access and report on all aspects of Scottish education. This would provide stakeholders, including learners, parents, the wider both the public and ministers with reassurance that learners experiences are understood. This requires ensuring the Bill makes clear the roles extend beyond school and local authorities but into other sectors, such as post-16 provision, ELC and CLD, which are integral parts of the education system.
- It is important that existing Education Scotland staff, both those moving to the new inspectorate and those remaining in Education Scotland, are empowered to respond quickly to the needs of the education sector.
- The staff and volunteers working in Education Scotland and HMIE should have appropriate terms and conditions that support their wellbeing so that they can support the education system well. This would include appropriate terms and conditions, comparable to the terms and conditions, including pay, of other staff in Scottish education.
- The Bill should ensure that the education agencies created, and those that continue to exist, work together well to best support the education system. This must include clear, planned coherence and cooperation, and effective communication between these national bodies. A duty to work together, supported by a Memorandum Of Understanding, would be a helpful addition to the Bill.

Do you have any other comments on the Bill?

- Whilst the discussion about the structure of the new inspection agency is important, FDA members who are HM Inspectors are understandably more concerned with what it will be like to work for. As the management consultant Peter Drucker observed, “culture eats strategy for breakfast”. There are currently significant, unresolved issues around different aspects of terms and conditions for HM Inspectors.
- For example, civil service pay has not kept pace with teachers’ pay increases in recent years. The majority of those who become HM Inspectors have been teachers and have to take a pay cut to join the inspectorate. This has implications for the reputation of the new agency and its ability to attract candidates of a sufficiently high calibre.
- For example, expenses and allowances for civil servants, including those for subsistence and car mileage, have not been increased since 2009. It is becoming increasingly common for HM Inspectors to have to subsidise their own meals when working away from home as the allowance will not cover a main course.
- For example, working hours. From 1 October, the working week for colleagues in Bands A to C will reduce to 35-hours per week without any reduction in pay, as part of the Scottish Government’s 2023-2025 pay award. However, HM Inspectors are working significantly beyond the 35 hours they will be paid for and there is no plan from senior managers to address this disparity. Instead, the same number of inspections are planned for as last year, along with 12 additional initiatives, including thematic inspections of all local authorities between September and November 2024.
- The impact of the Bill on staff who will remain at Education Scotland needs to be better explained and communicated. Currently, FDA members in Education Scotland who are not HM Inspectors have very little clarity on what these changes will mean for their jobs. The prolonged period of reform over the past three years, with several changes of approach, extensions to timescales and minimal communication from Scottish Government, has been extremely stressful for all FDA members. Similarly, the lack of guidance in regard to Education Scotland once the inspectorate is established is creating a stressful working environment for those who will remain. FDA members require more clarity, Those without clear curriculum roles feel that their jobs and remits are in jeopardy. This clarity is required for staff wellbeing and to enable them to continue to support the education sectors through this period of change. This includes staff whose remits are not so explicitly linked to curriculum areas such as those supporting inclusion, wellbeing, equality, and Developing the Young Workforce (DYW).

FDA appreciates the opportunity to submit evidence to the Committee and looks forward to discussing these matters further.

Unite the union Scotland response to the Education (Scotland) Bill Call for Views

Information about your organisation:

Unite at SQA represent over 400 members of staff at SQA, representing all grades across the organisation and are the largest trade union in SQA.

More widely Unite the Union Scotland represents around 150,000 working people and their families throughout Scotland. Unite is the UK's largest general trade union with 1.4 million members in a range of industries including transport, education, construction, financial services, aerospace and shipbuilding, manufacturing, automotive industries, energy, print and media, the voluntary and non-profit sectors, chemicals and pharmaceuticals, local government, health and the NHS.

Unite would welcome the opportunity to provide oral evidence to the Education, Children and Young People Committee in order to expand on the key points contained within our submission.

1. What are your views on the proposals for Qualifications Scotland?

The current version of the Education (Scotland) Bill sets out provision for “one or more persons who appear to the Scottish Ministers to have knowledge of the interests of the staff of Qualifications Scotland. This must be a person(s) as the Scottish Ministers consider representative of the interests of staff of Qualifications Scotland.”

Unite wish to make very clear that the member representing staff should be selected from the staff body of Qualifications Scotland (excluding Senior Managers and Directors) and should be elected by the entire staff body; this is critical to ensuring legitimacy. Equally, we wish to stress that one member of the Board representing staff interests is completely insufficient. It is very important that the proportion of worker members on the board is sufficient to make a real difference to the culture, discussions and decisions of the Board. There is a danger that minimal worker representation could undermine the effectiveness of the policy. It is particularly important to ensure that workers do not find themselves in the position of a lone voice on a board, which will inevitably increase the challenges of the role and make it harder to contribute effectively. “There is considerable variation on this point across Europe, but the most common requirement is that workers should comprise one third of the board.” (TUC, 2016).

Unite therefore assert that the current provision in the Bill simply does not go far enough to ensure effective staff voice is embedded into the new governance structure of Qualifications Scotland in line with the Fair work Framework. SQA's recognised Trade Unions (Unite and Unison) have been seeking representation on the SQA Board of Management for some time. As such, we are now seeking an amendment to the bill, one that explicitly and legally enshrines the importance of Qualifications Scotland's recognised Trade Unions being represented on its Board of Management. This would equate to three seats in total with Qualifications Scotland staff representation as their focus. We see this as a fundamental necessity that is

required to improve the culture, governance and decision making of the SQA to ensure the benefits of the organisations' replacement are realised in practice. This amendment would make a clear and demonstrable commitment to real change.

With regard to specific concerns from the SQA Regulation/Accreditation Team the Education Scotland Bill does not recognise the importance of Qualification Regulation in relation to the protection of the learner. There is nothing in the Bill that would strengthen regulation of qualifications in Scotland and this is a missed opportunity.

Scotland should have its own Qualification Regulator with equal standing of that of the other Qualification Regulators in each of the nations of the UK – i.e. Ofqual, CCEA, Qualification Wales. The fact that many hundreds of publicly funded qualifications are not regulated in Scotland should be a concern to the Scottish Government. This Bill will do nothing to protect the learner or the taxpayer.

The Bill does not deliver on the recommendations of the various reviews/reports (Muir, Hayward & Withers) commissioned by the Scottish Government.

The Regulation function will still be part of the Awarding Body, to be named Qualifications Scotland (QS) and it will still share a Chief Executive with the Awarding Body. This represents a failure to deliver on the specific recommendations of the Muir report regarding independence from the Awarding Body and, in addition, does not recognise or implement the changes required to the skills landscape in Scotland as recommended in the Withers report.

The Bill has not seized the opportunity to make changes, improvements and extend the function to Regulation/Accreditation (currently there is very little statutory regulation in relation to qualifications and this Bill does not propose to change that).

There is a failure to recognise that 'accreditation' is an aspect of the overarching function of regulation as the Bill refers to accreditation throughout as evidenced in this section of the Bill 'Qualifications Scotland has the function of— (a) accrediting qualifications as meeting such requirements as are specified by it'. There are no references made to qualification regulation in the Bill.

There are very minor changes in the make up of the Accreditation Committee (AC), therefore little change to the governance arrangements for Regulation/Accreditation. There should at least be parity with the QS Board. Currently the AC members are not paid for their time and are not required to have specific knowledge of Regulation. The voluntary nature of these positions does currently produce difficulties in bringing this group together to make decisions – this will only be exacerbated by the increased responsibilities for AC in the Bill without any change to the voluntary nature of the role.

There also needs to be a consideration of what else can be put in place to ensure separation and Unite urges the Scottish Government to explore that further with our members.

There is a reliance in the Bill that a Regulation/Accreditation Committee with slight changes to the committee structure will provide reassurance of independence from the Awarding Body. These current proposals in the Bill will not achieve this. It is not even clear if there will be a new name or clear branding for the

Regulation/Accreditation function. The Regulation/Accreditation function is not being extended (from the discussions to date this seems to be the mostly likely outcome as no additional resource has been committed). Therefore, it appears that there will be very little statutory regulation and there will be a continued reliance on voluntary regulation.

By retaining the Regulation/Accreditation function within the rebranded Awarding Body, it will be viewed as no change by those external to the organisation and indeed to the Accreditation staff. This will inevitably have a negative impact on our members as stakeholders have an expectation of change and improvement. The staff will need to manage those expectations and there will be inevitable criticism directed at them. In addition, opportunities to improve and enhance services to learners will be missed.

Despite our members providing numerous papers to multiple Scottish Government officials setting out the current functions of accreditation, providing suggestions for extending the accreditation function, addressing the recommendations in the various reports, including the issue of independence, as well as seeking recognition as the Qualification Regulator for Scotland, this Bill does not recognise or address any of this. Our members in Regulation/Accreditation firmly believe that this Bill as it is currently drafted, is a wasted opportunity.

2. What are your views on the proposals for a new HM Chief Inspector of Education in Scotland?

No comment