

FOR INFORMATION

EIS Response to the Education, Children and Young People Committee's Detailed Call for Views on the Education (Scotland) Bill

Introduction

The Educational Institute of Scotland ('EIS'), the country's largest teaching union, representing almost 65,000 members across all sectors of Education and at all career levels, welcomes the opportunity to respond to the Education, Children and Young People Committee's detailed call for views on the Education (Scotland) Bill.

The introduction of this legislation is the culmination of years of consultation on Education Reform and marks the first concrete step in progressing key recommendations, to which the Scottish Government committed back in 2021.

Over this time, the Institute had repeatedly called for an end to the delay and for action to implement change, starting with the dissolution of the SQA, a body whose reputation is irreparably damaged, having become distant from and unresponsive to the professional viewpoints of teachers and lecturers. We have been clear that in establishing a new qualifications body, there must be genuine participation of teaching professionals at all levels of governance and that a simple rebranding of the old organisation will not be acceptable to our members who expect real and meaningful change. Similarly, we have highlighted the imperative for independence from the Scottish Government within the provisions to create a new Inspectorate and for the proposed structural changes to be accompanied by cultural change around the inspection process.

In determining whether the recommendations arising from the extensive consultations on Education Reform will be implemented through this measure, it is essential to consider the Bill in detail. We, therefore, welcome the scrutiny which the Committee will give both to the principles of the Bill and to its drafting. To assist in this process, we have the following comments to offer:

- 1. Several reports, including the OECD Review of the Curriculum for Excellence and Professor Ken Muir's report "Putting Learners at the Centre. Towards a Future Vision for Scottish Education", have recommended reforming the current Scottish Qualifications Authority. How well do you think the Bill addresses the concerns raised in those reports?**

The EIS is not satisfied that the Bill, as currently framed, addresses the concerns raised in the OECD Review of the Curriculum for Excellence or in Professor Muir's report, 'Putting Learners at the Centre'.

Both reports were clear that significant change had to be implemented if the concerns expressed by education stakeholders, including teachers and learners, are to be addressed. Professor Muir commented:

'Overall, it was evident to me in my engagements that there are significant relationship issues within the current SQA. Feedback from some of my engagements with PSAG¹ members and others also questioned the effectiveness of leadership, the culture, accountability, and appropriateness of current governance structures within SQA.'

Reflecting this, both reports signalled a number of key features of reform which would require to be implemented if the Scottish qualifications system is to be 'trusted and respected by all'.

- *Separation of Accreditation and Regulation from the Awarding Function*

Understandably, both reports recognised the central role which accreditation and regulation play in maintaining high standards of qualifications in Scotland, with the current process being the subject of intense debate in the reviews conducted over the last four years.

The OECD acknowledged the concerns which many stakeholders had expressed, stating that it was not appropriate for both functions to be carried out by a single body. Ultimately, it suggested that:

*'consideration should be given to a separate body that might be responsible for the regulation and quality of qualifications which is currently part of the remit of the Scottish Qualifications Authority (SQA).'*²

In endorsing the OECD's recommendation, Professor Muir went further, citing the need to restore the trust and confidence of the public, practitioners and learners in a revitalised single qualifications body, saying:

*'When taken together with what many saw as the organisation's poor record of communication and ineffective engagement with the teaching profession, it was suggested that allowing SQA to 'mark its own homework' in this way further called into question its credibility ... Separating the SQA's functions will help ensure that the proposed qualifications, examination and awarding body is able to give increased attention to those functions.'*³

¹ Practitioner and Stakeholder Advisory Group

² [Scotland's Curriculum for Excellence: Into the Future | en | OECD](#) (page 123)

³ [Putting Learners at the Centre: Towards a Future Vision for Scottish Education - gov.scot \(www.gov.scot\)](#)

Despite the recommendations emerging from these two independent reports and initial indications that the Scottish Government would accept this aspect of the Muir Review, the Scottish Government in December 2022 issued a statement, indicating that on further reflection, it intended to maintain the *status quo*, retaining accreditation, regulating and awarding functions within the remit of the new qualifications agency. It sought to provide some reassurance that separation and independence would be 'emphasised and strengthened through specific governance measures'⁴.

However, on review of the Education (Scotland) Bill, it is difficult to see how it will provide the necessary separation of functions to deliver the independence, and importantly the perception of independence, required to build professional and public trust in the new body.

Section 4 of the Bill makes specific provision that the accreditation of qualifications and regulation of bodies offering qualifications will be functions of Qualifications Scotland. These functions will co-exist with the awarding powers outlined in section 2 of the Bill, with the new qualifications body having responsibility to discharge all these duties.

The Bill seeks to provide some separation between these functions by creating an Accreditation Committee to discharge the accreditation function and making express provision that the Committee 'is not subject to the direction or control of Qualification Scotland' and 'must act independently of Qualifications Scotland'.⁵

Whilst ostensibly, this seems helpful, we would question the reality of this separation in practice. On further examination of the provisions of the Bill, it is apparent that the Accreditation Committee is to be established and maintained by Qualifications Scotland⁶, with the convener of the Committee being a member of Qualification Scotland and appointed by Scottish Ministers.⁷ With the convener sitting on the main body of Qualification Scotland as well as the Accreditation Committee, there is an apparent conflict of interest. The dual nature of the role of the Convener and the potential for them to intervene in an awarding function, lacks the necessary transparency and independence, which the Reform Reports called for.

Any apparent separation is diluted further with the provision of paragraph 12(3)(b) which initially seeks to preserve the independence of the Accreditation Committee but then goes on to state that there is nothing to prevent the Committee or any of its

⁴ [A Consultation on the provisions of the Education Bill \(www.gov.scot\)](https://www.gov.scot)

⁵ Schedule 1, Part 4, Chapter 1, paragraph 12(3)

⁶ Schedule 1, Part 4, Chapter 1, paragraph 12(1)

⁷ Schedule 1, Part 2, Paragraph 2(1)(b).

Sub-Committees from sharing information with Qualifications Scotland and vice versa. In what circumstances would such data sharing be envisaged and how would this compare with the data sharing agreements with any other awarding bodies, being regulated by the Committee?

The fact that the Accreditation Committee is established by Qualifications Scotland with the convener having the authority to appoint Committee members further dispels any notion that there is, in reality, a separation between the main body and the Committee. The Bill is otherwise silent on the appointments' process and how it will be conducted. We also note that whilst there is little information about who would be eligible for selection, members of Qualifications Scotland and indeed, members of staff of Qualifications Scotland can be appointed to the Committee, albeit that they cannot form the majority of membership.⁸ The interface between the discharge of the accreditation, regulation and awarding functions is clear, perpetuating the concerns which currently exist in this regard and which have been highlighted consistently in Education Reform reports.

This gives rise to a number of questions about how the accreditation and regulation function will be discharged in relation to the awarding function of the new body. How could members of the Accreditation Committee fairly and impartially accredit qualifications which they are involved in awarding? What would happen if the Accreditation Committee had concerns about the standards being applied by Qualifications Scotland in terms of its awarding function? How can there be complete confidence that there will be parity of approach in the accreditation of qualifications for all providers? Given the close relationship potentially between the membership of Qualifications Scotland and the Accreditation Committee, we believe these arrangements lack transparency and independence, with the clear potential for conflict of interest.

The EIS has been clear that if there is to be renewed trust and confidence in the new qualification agency, it must also be seen to be independent of the Scottish Government. With Scottish Ministers having the power to direct the Accreditation Committee, we would question whether the Bill, as currently drafted, meets this objective.⁹

There is also a lack of clarity in relation to the reporting requirements of the Accreditation Committee and Qualifications Scotland. Section 20 provides that the Accreditation Committee must prepare and publish an annual report for Scottish Ministers which will be laid before the Scottish Parliament. Section 15 places an obligation on Qualifications Scotland to publish an annual report but then goes on to state that it 'need not' report on the functions of the Accreditation Committee. This looseness of language would tend to suggest that

⁸ Schedule 1, Part 4, Chapter 1, Paragraph 12(4)

⁹ Section 21

whilst there is no requirement for Qualifications Scotland to report on the Accreditation Committee's functions, it could do so if it wished. How would this interface with the separate reporting requirements under section 20 and the assertion that they operate independently of each other?

If there is to be transparency, equity and fairness in the discharge of these functions, then we believe that accreditation and regulation should be separate from the awarding function and a new national body created for this purpose, as recommended by the OECD and Professor Muir, and initially accepted by the Scottish Government.

We would urge the Scottish Government to reconsider its decision in this regard, particularly if the remit of Qualifications Scotland in terms of accreditation, regulation and awarding is to cover all qualifications, other than degrees.

- Restoring Trust and Confidence

The imperative for reform is underpinned by the need to build renewed confidence and trust in the new qualifications agency. The EIS has been clear that Qualifications Scotland cannot simply be an exercise in the rebranding of the SQA.

Professor Muir acknowledged this in his report stating:

'It was argued by some that in such a small education system as we have in Scotland, there are advantages of integration and cost benefits in having SQA's current awarding and accrediting/regulating functions within a single body. However, it is my view that these advantages are significantly outweighed by the need to restore the trust and confidence of the public, practitioners and learners in a revitalised single qualifications, examination and awarding body for Scotland. Separating the SQA's functions will help ensure that the proposed qualifications, examination and awarding body is able to give increased attention to those functions.'

Clearly, therefore the arguments which are currently being advanced in favour of the practical and cost benefits of integration were fully canvassed by Professor Muir as part of his review and conclusively dismissed by a recognition that failure to separate these functions would incur a much more fundamental cost to the reform process, by sacrificing the opportunity to build professional and public trust and confidence in the qualifications system.

Trust and confidence are central to the integrity of any education system and the decision to ignore this clear and considered advice

jeopardises confidence that reform will be effective. The decision to retain both functions within one body may leave teachers, lecturers and learners wondering what, if anything has changed, and will do little to deliver the culture change necessary to provide reassurance that the new body will be truly responsive to and engage meaningful with key education stakeholders.

- Listening and responsive to the needs of users

Professor Muir in his report made it clear that the needs of users of the new qualifications agency had to be central to its operation, to help foster the requisite change of culture and generate the confidence that it would be truly responsive to users' needs.

Prof Muir stated:

'I propose that a new executive Non-Departmental Public Body (NDPB) should be set up. NDPB status would recognise the specialist expertise required to conduct its proposed role, set out below, and would maintain the appropriate distance from government that provides public confidence. This new body should take on board SQA's current awarding functions, i.e. chiefly the responsibility for the design and delivery of qualifications, the operation and certification of examinations and the awarding of certificates. The make-up of the new organisation's board of management should be reviewed to ensure the involvement of a wider range of stakeholders.'

'The creation of the proposed public body, Qualifications Scotland, provides an opportunity for its culture and engagement arrangements with all stakeholders to be set positively from the outset. It also provides an opportunity to ensure its governance structures reflect and represent the range of stakeholders it serves and users of its services; those to whom it should be accountable. Overall, creating this body will provide the opportunity for all users of its services and the public in general to have increased trust and confidence in qualifications and assessments, including examinations.'

The EIS welcomed wholeheartedly Professor Muir's recommendation that a new qualifications body had to have greater representation from, and accountability to, the teaching profession in its governance.¹⁸ This was, in the EIS's view, a recognition that the SQA has become distant from, and unresponsive to, the professional viewpoints of teachers, and that this failure had contributed

significantly to the difficulties experienced in the Senior Phase. These reached their nadir in the 2020 Alternative Certification Model, which required decisive political intervention.¹⁰ The EIS is clear that in an empowered system, as Scotland has claimed to aspire to be, the genuine participation of teaching professionals in governance at all levels is essential. To this end, we would contend that there should be teacher trade union representation as a permanent feature in its governance structures to ensure that the teacher voice is central to the decision-making function. This is essential if the 'greater sense of ownership of educational policy and greater sensitivity to the realities of implementation', envisaged by ICEA is to be achieved, with a view to 'embedding responsibility for the quality of educational experience in schools and classrooms.'¹¹

The EIS, therefore, welcomes the proposed increased representation of teachers and lecturers in Qualifications Scotland outlined in the Bill but believes that the current proposals do not go far enough. As currently drafted, the final composition of the new agency is unclear. Schedule 1, Part 2, Paragraph 2 provides that in addition to the Chief Executive, a chairing member and the convener of the Accreditation Committee, Scottish Ministers can appoint 'at least six but no more than ten other members'. Of those members, there must be inter alia, '2 or more registered teachers' and '2 or more college teaching staff'.¹² In the absence of definitive numbers and the reference to 'or more' throughout this provision, it is unclear what the final composition of Qualifications Scotland will be. This will be key to governance arrangements, yet the lack of certainty prohibits a firm assessment of the fairness of the proposed arrangements which is concerning. Furthermore, it would appear that teachers and lecturers could still be in the minority of the membership of the new governance body. If this is the case, then in our view, they will not play the central role in governance as envisaged in by Professor Muir and the risk will be that the same governance-related problems prevail.

If the necessary culture change is to be effected, we would recommend the adoption of a robust structure of governance, such as that of GTCS Council, where teacher and lecturer voice is truly represented or with an additional provision inserted to ensure that Qualifications Scotland must comprise of a majority of teachers and lecturers.

Furthermore, governance processes should ensure that teacher and

¹⁰ [Coronavirus \(COVID-19\) - replacement of National Qualifications exams in 2021 session: child rights and wellbeing impact assessment - gov.scot \(www.gov.scot\)](#)

¹¹ [Supporting documents - International Council of Education Advisers: third report 2021-2023 - gov.scot \(www.gov.scot\)](#)

¹² Schedule 1, Part 1, Paragraph 3

lecturer membership of Qualifications Scotland and of the Teacher and Practitioner Interest Committee are genuinely and democratically representative of the voices of the profession. Professional Associations (in the EIS's case, representing over 60,000 teachers and lecturers, in all sectors and at all career levels) have carefully considered positions based on democratically agreed policy, proper research and structured member consultation. Within the Bill, the reference to 'registered teachers providing relevant teaching or training'¹³ is alarming in its neglect of this context. To be clear, teachers require a representative, informed, collective voice, not an atomisation of their experiences. The Institute is also concerned about the current drafting of Schedule 1, Part 2, paragraph 3(2). Paragraph 3(2)(b) states that Qualifications Scotland must include two or more persons who are 'registered teachers providing relevant teaching or training', whilst paragraph 3(2)(c) makes similar provision for 'college teaching staff'. Paragraph 3(7) defines 'registered teacher' by reference to section 135(1) of the Education (Scotland) Act 1980. This means a 'teacher registered under the Public Services Reform (General Teaching Council for Scotland) Order 2011'. As such, it would appear that this could include college lecturers who are now obliged contractually to register with the GTCS in a separate category from school teachers. Given the reference to the inclusion of 'college teaching staff' in paragraph 3(2)(c), we assume that this is not the legislative intent and would suggest that further clarity is provided in this regard.

Similarly, paragraph 3(7) defines 'college teaching staff' as persons employed as teaching staff by colleges of further education within the meaning of section 35 of the Further and Higher Education (Scotland) Act 2005. It is unclear to whom this relates. We would assume college lecturers as they are responsible for the delivery of teaching and learning. In this case, we would recommend that the interpretation provision is amended to reflect this. The National Working Practices Agreement which sets out college lecturers' national terms and conditions refers to them as 'lecturing staff' and given the link to employment, this terminology might be more definitive. Clarity in this regard will be important as the definition will determine with whom the duty to consult will apply in terms of paragraph 3(3).

- Culture Change

Professor Muir also highlighted the importance of the structural changes proposed being accompanied by cultural change:

¹³ Schedule 1, Part 2, Paragraph 3(2)(b)

'Following the decision by the Cabinet Secretary for Education and Skills to replace SQA, a number of those with whom I engaged offered the reminder that altering structures alone would not, in itself, bring about the changes needed.'

He went on to conclude that:

'the establishment of a new body, Qualifications Scotland creates the opportunity for the new body to ... rebuild the trust and reputation in the examination system by resetting the organisational culture and the relationship with the users of the services they provide... and develop new governance arrangements that take better cognisance of the views and expertise of those the body is designed to serve.'

The Institute is concerned that in retaining accreditation and regulation within Qualifications Scotland and in failing to provide sufficiently for representative teacher and lecturer voice in terms of governance, the Bill will do little to effect practical change in the examination and qualifications system and so, will fail to deliver the culture change which is so urgently required. The right of Scottish Ministers to amend or reject the corporate plan developed by Qualifications Scotland, ostensibly allowing the Scottish government arms' length control over the agency, perpetuates these concerns.¹⁴

2. The Bill sets out measures designed to better involve learners, teachers and others in the new body's decision-making. What do you think about these measures?

Involvement of Teachers and Lecturers in decision-making

Since the 2017¹⁵ governance review, 'teacher agency' and 'empowerment' have been watchwords in education, yet teachers continue to be frustrated by top-down decision-making, external data demands, unresponsive national education bodies and pressure to continuously improve in an environment of rising additional support needs in our schools and unprecedented financial cuts. Secondary teachers identify the current qualifications body as the key driver of workload in the Senior Phase and as an organisation which has been completely unresponsive to their concerns, and indeed has, in its public pronouncements, previously cast aspersions on teacher professionalism.

Against this backdrop, the EIS has been clear that teachers must have a greater role in decision-making of the new qualifications body. This concurs

¹⁴ Section 14 (4) of the Education (Scotland) Bill

¹⁵ [Education Governance: Next Steps: Empowering Our Teachers, Parents and Communities to Deliver Excellence and Equity for Our Children \(www.gov.scot\)](https://www.gov.scot/publications/education-governance-next-steps-empowering-our-teachers-parents-and-communities-to-deliver-excellence-and-equity-for-our-children/pages/110-112.aspx)

with not only with Professor Muir's recommendations but also with that of ICEA, which stated:

'the teaching profession... should be given a more central place in the internal governance arrangements of national organisations and local structures.'¹⁶

We are clear, however, that the acid test is how this commitment translates into reality and how this is framed within the Education (Scotland) Bill.

In response to question 1, we have outlined our concerns about the composition of Qualifications Scotland and emphasised the importance of majority representation of teachers and lecturers in the decision-making function. As currently drafted, the Bill fails to guarantee this majority and we are therefore not satisfied that it will adequately involve teachers and lecturers in the body's decision-making processes and governance arrangements.

Schedule 1, Part 4, Chapter 1, paragraph 11 of the Bill makes provision for the creation and maintenance of the Teacher and Practitioner Interest Committee. However, in the absence of strong, representative teacher-voice in the membership and governance of Qualifications Scotland, the creation of this advisory committee does not allay our concerns. It is clear from the Bill that the function of the Committee is to 'advise Qualifications Scotland' in relation to the exercise of its functions from the perspective of teachers and practitioners. There is no provision for the Committee to challenge decision-making or to hold Qualifications Scotland to account. Indeed, Schedule 1, Part 4, Chapter 1, paragraph 9(4) states that 'a committee or sub-committee **must** comply with any directions given to it by Qualifications Scotland' (emphasis added). It would appear, therefore, that the Committee has no meaningful involvement in governance arrangements. The EIS has been clear that a situation where, once again, the professional voice of teachers is merely 'advisory' and can be ignored when decisions affecting teachers, learners and the wider system are made, will not be acceptable.

It is of further concern that the Bill does not even provide that the membership of this Committee, which has as its focus 'teacher and practitioner interest', will be comprised principally of teachers and lecturers. Paragraph 11(3) makes it clear that the Committee can comprise of members of Qualifications Scotland as well as members of staff of Qualifications Scotland, although they cannot form the majority of the membership of the Committee. There is nothing prescribing who the other members may be, other than to state that of those comprising the majority of membership, a further majority must be persons providing teaching or training in respect of Qualifications Scotland qualifications.¹⁷ Accordingly, there is no guarantee that teachers and lecturers will even form the majority

¹⁶ [Supporting documents - International Council of Education Advisers: third report 2021-2023 - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents-international-council-of-education-advisers-third-report-2021-2023)

¹⁷ Schedule 1, Part 4, Paragraph 11(4)

membership of this advisory Committee. Thus, representative teacher-voice is diluted in this context also.

The Institute also notes the requirement for Qualifications Scotland to consult the Scottish Ministers before appointing a person as a member of the Committee. This is concerning as it strengthens government influence and dilutes the independence of the new qualifications agency. We would suggest that the consultation and representation should more appropriately be with and from the teacher professional associations, given the central role of the Committee in representing the views of the profession.

The Institute is not, therefore, satisfied that the provisions of the Bill will ensure adequate representation from the profession, either in terms of the governance of Qualifications Scotland or in terms of the advisory role discharged by the Teacher and Practitioner Interest Committee.

Involvement of Learners in decision-making

In previous consultation responses, the EIS has been clear that learners should have greater involvement in decisions affecting their education and specifically, in how qualifications are developed and delivered. We would reference the political intervention to over-rule the SQA's approach to certification in 2020 which was occasioned, in large part, by learners, outraged at the perception that their individual achievements were being nullified by a faceless algorithm.¹⁸ We would further highlight the pressure and stress placed upon learners (and teachers) the following year, when the 2021 Alternative Certification Model generated a tsunami of 'exams in all but name', which brought to the fore the wider issues of the health and well-being impacts and the counter-educational effects of a high-stakes approach to qualifications.

Undeniably, qualifications are important to young people and to society, but if we want to change the high-stakes culture around qualifications, we must change the language to reflect the fact that qualifications are but one part of learners' education and that not all learners' life choices are determined by qualifications. Further, in capturing the voices of learners, it is critical that they are representative of the whole gamut of experiences and that the necessary steps are taken to enable a genuine diversity, as opposed to reinforcing participation by those for whom the current system works. We would highlight the importance of including learners with Additional Support Needs who now constitute 37% of all learners in our schools. Some of these learners have very specific requirements which must be heard. The Institute, therefore, supports the ICEA report's recommendation to 'develop additional mechanisms' to ensure the voices of children, young people and communities, with particular attention to those 'experiencing the greatest challenges', can be heard and affect change.¹⁹ We would also reinforce the ICEA's call for parents, carers and families – as well as learners themselves

¹⁸ [SQA results - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2021/04/SQA_results_-_gov.scot)

¹⁹ [International Council of Education Advisers Third Formal Report 2021-2023 \(www.gov.scot\)](https://www.gov.scot/resources/documents/2021/04/International_Council_of_Education_Advisers_Third_Formal_Report_2021-2023)

– to have a strong understanding of the opportunities and learning pathways available for them.²⁰ The ‘Choice, Attainment and Positive Destinations’ report highlighted a counter-educational culture whereby schools, geared to boosting attainment data and restricted by a narrowing curriculum and depleted resources, placed learners in courses to which they were poorly suited. Whilst this is concerning in itself, more worrying is that some learners and their families were unaware of the impact on their future progression.²¹ With the implementation of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, it is vitally important that the voices of learners are heard and can actively influence the decision-making process of the new agency.

Schedule 1, Part 2, Paragraph 3(2)(a) of the Education (Scotland) Bill makes provision for ‘one or more persons who appear to the Scottish Ministers to have knowledge of the interests of persons undertaking a relevant qualification’ to be appointed as a member of Qualifications Scotland. This affords some assurance that the interests of learners will be represented in the governance of the new body. However, in the absence of clarity about total membership numbers and uncertainty as to how many such representatives will be appointed, we are unable to make more meaningful comment on the balance of interests.

Schedule 1, Part 4, Chapter 1, Paragraph 10 of the Bill makes provision for the creation of a Learner Interest Committee. The function of this Committee is purely advisory, with Qualifications Scotland having the authority to direct the Committee.²² Paragraph 10(3) would suggest that members of Qualifications Scotland and members of staff of Qualifications Scotland can be appointed to this Committee, although they cannot form the majority. Of the majority remaining, a further majority must be of persons ‘undertaking, or have recent experience of undertaking, a Qualifications Scotland qualification’. The Bill provides no further information about people who, otherwise may be eligible. It is unclear, therefore, who will be adjudged as suitable contributors to this Committee and whether teachers, as advocates of young people, will also be included. In these circumstances, it is difficult to assess how meaningfully, learner voice will be able to influence the decision-making process of the new agency.

The intended influence of the Scottish Government in determining governance arrangements, is again clear, in that Qualifications Scotland must consult with the Scottish Ministers prior to appointing a person to the Learner Interest Committee.

Interface of these Committees with the Strategic Advisory Council

²⁰ Ibid.

²¹ Choice, Attainment and Positive Destinations: Exploring the impact of curriculum policy change on young people (nuffieldfoundation.org)

²² Schedule 1, Part 4, Chapter 1, paragraph 9(4)

The EIS is unclear as to how the Teacher and Practitioners Interest Committee and the Learner Interests Committee will interface with the Strategic Advisory Council.

Section 9 of the Bill provides that Scottish Ministers will establish a Statutory Advisory Council. The Strategic Advisory Council has an extensive remit in considering matters relating to Qualifications Scotland qualifications; the functions and procedure, of Qualifications Scotland; and can provide advice in relation to those matters to Qualifications Scotland and Scottish Ministers. Membership, tenure and the procedure of the Advisory Council will all be stipulated by regulation and are not included on the face of the Bill, making comment in this regard challenging.

The EIS is concerned about the paucity of information around the constitution of this body, which will have such wide-ranging functions and is unclear as to how this will interface with the Advisory Committees, which are intended to capture the interests of teachers, lecturers and learners. Will the interests of teachers, lecturers and learners be represented on the Strategic Advisory Council? Will the Council replicate the current provisions of the Advisory Council for the SQA? What is the status of the advice given by the Strategic Advisory Council? If there is a discrepancy between the advice from the Committees and that provided by the Council, which will take priority? If the Council has the ability to override decisions of the Committees, then this would further nullify the impact of the voices of key stakeholders, running counter to key recommendations of Education Reform reports. These are all important questions which currently remain unanswered and make a detailed assessment of the impact which learners, teachers and lecturers will have on decision-making, even in an advisory capacity, difficult to gauge.

Overall, the Institute believes that the governance arrangements lack the robustness and representative nature of a structure such as that of GTCS Council.

3. The Bill also creates several Charters, designed to let people know what they can expect when interacting with Qualifications Scotland. What is your view of these Charters?

The EIS strongly endorses the aim for the new qualifications body to communicate effectively and transparently with learners and to be accountable to them. This will be a fundamental element if the cultural change referred to above is to be achieved.

Learner Charter

Section 10 of the Bill seeks to advance this ambition by providing that Qualifications Scotland must prepare and publish a learner charter within 6 months of the section coming into force. The Charter will set out what those undertaking a Qualifications Scotland qualification can expect from Qualifications Scotland. In preparing the learner charter, Qualifications Scotland 'must consult such persons as it considers appropriate'. Section

10(4) expands on this, providing that consultation must include 'persons undertaking a Qualifications Scotland qualification' as well as persons appearing to Qualifications Scotland to represent the interests of those undertaking such qualifications.

Whilst the requirement to consult is welcome, the EIS would prefer to see explicit reference to a much more collaborative approach, reflective of an Empowered School system, with the learner charter being co-designed and developed by all relevant stakeholders. We would expect teachers' participation in this process. With their professional practice and standards grounded firmly in an understanding and respect for children's rights, teachers are 'advocates' for learners.²³ However, as currently drafted, it is unclear whether teachers and lecturers would fall within the definition of 'persons appearing to Qualifications Scotland' as representing the rights of those learners. Clarification of this would be welcomed.

In evaluating the charter, it would be important to understand its status. The Bill does not currently outline the status of the learner charter, either in relation to learners' rights in the event of an alleged breach of the charter or the extent to which it would impinge upon teachers' or lecturers' practice in delivering qualifications. For example, where such a charter establishes a mutuality of expectations between learners and the system, teachers and lecturers would require a clear understanding of their role in that relationship and the material requirements for such expectations to be met within a school and college context.

In a broader sense, we would echo the calls in the Third ICEA report for "a commonly agreed clear definition for what 'equity in education' actually means,²⁴ especially in relation to inclusion and well-being across the system, including in qualifications and for the charter to reflect this. Without such an understanding, there is a risk that the system continues to focus on a narrow band of attainment data in relation to the achievement and attainment gap and neglects to consider the multi-faceted aspects of equity in learners' educational experiences, including the individual and social aspects of equity.

The Teacher and Practitioner Charter

As highlighted above, the EIS strongly endorses the aim for the new qualifications body to communicate effectively and transparently with teachers and to be accountable to them. The teacher and practitioner charter, outlined in section 11 of the Bill, may be a mechanism of formalising this and embedding a more collegiate culture within what has been a tested relationship. However, notwithstanding the proposal's recognition of the requirement for consultation with 'persons providing teaching or training in respect of a Qualifications Scotland qualification' and with those representing their interests, the charter appears to originate in the new

²³ [Professional Values - The General Teaching Council for Scotland \(gtcs.org.uk\)](https://www.gtcs.org.uk)

²⁴ [International Council of Education Advisers Third Formal Report 2021-2023 \(www.gov.scot\)](https://www.gov.scot)

qualifications body; we would argue that a much more co-created approach would be appropriate. This could identify the specific problems that teachers and lecturers believe currently exist– such as circulation of information, navigation of websites, timelines and bureaucracy, provision for learners with for ASN etc. - and afford an opportunity for genuine collegiate discussion in moving forward in a responsive and solution-focused manner. Like any policy initiative, implementation will require to be supported by the allocation of sufficient resources.

However, much will depend on the status of the charter, its ability to influence and deliver change and the willingness of the new qualifications body to commit to meaningful engagement and communication. The Bill is silent on the status of the charter and its role in driving the culture change so urgently needed to build positive engagement and collaborative practice between Qualifications Scotland and the teaching profession.

4. 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?

The EIS welcomes the introduction in section 26 of the Education (Scotland) Bill of the office of His Majesty's Chief Inspector of Education in Scotland and the assurance provided in Schedule 2, Part 1, Paragraph 2 that in discharging the functions of the role, the Chief Inspector is not subject to the direction or control of any member of the Scottish Government. This reflects the recommendation in the OECD Report and the Muir Review and is necessary to ensure that the new Inspectorate will be truly independent of government.

In addition to having this independence enshrined in legislation, the Muir Review was clear that the governance arrangements for the new inspection body should reflect this independence. To that end, funding arrangements, reporting functions and staffing must all be distinct from government.

The Institute is not satisfied that the Bill as currently drafted ensures that the new Inspectorate will be sufficiently independent of the Scottish Government and believes that amendments to the Bill would be required to provide this reassurance.

There are a number of provisions within the Bill which in our view unduly fetter the role of the Chief Inspector and as such, their independence. We would cite the following as examples of this:

- The Chief Inspector requires the approval of Scottish Ministers to appoint a Deputy Chief Inspector;²⁵
- Scottish Ministers, rather than the Chief Inspector, will make recommendations for the appointment of Inspectors;²⁶

²⁵ Section 27(2) of the Education (Scotland) Bill

²⁶ Section 28(1) of the Education (Scotland) Bill

- the number of Inspectors to be appointed is determined by the Scottish Ministers;²⁷
- the terms and conditions of appointment (other than tenure) of Inspectors must be approved by the Scottish Ministers;²⁸
- the Chief Inspector requires the approval of the Scottish Ministers to determine remuneration and allowances for those appointed to assist with inspections;²⁹
- although ostensibly the Chief Inspector can determine the intervals and extent to which establishments will be inspected, this is subject to regulations which may be made by the Scottish Ministers, to specify the intervals at which establishments can be inspected;³⁰
- Scottish Ministers can direct the Chief Inspector to inspect a relevant educational establishment, a type of relevant educational establishment and a sample of a type of relevant education establishment;³¹
- Scottish Ministers can make regulations to modify the frequency with which the Chief Inspector must review the inspection plan.³²

The Institute believes that the discharge of these functions should lie within the sole remit of the Chief Inspector to ensure independence and provide sufficient separation from government. The Inspectorate must be free to operate independently, being accountable and reporting directly to the Scottish Parliament.

As part of the recommendations for reform, Professor Muir referred to the 'possibility of relevant stakeholders being involved in the governance of the new body'. He indicated that this would support the drive towards Empowerment with a strong focus on self-evaluation and teacher voice.

In accepting Prof Muir's recommendations on the need for an independent Inspectorate, the Scottish Government said that the new body will operate 'a supportive inspection system to foster improvement across education settings, facilitating a trusting environment between our national agencies and our learning institutions'.³³

This approach aligns to a large extent with the principles underpinning the EIS's vision of inspection. The EIS would wish to see the emergence from co-creation, of a model of practitioner-led evaluation that features professional collaboration and learning across settings, with time invested to facilitate a more collegiate approach, for peer review, and for reflection on the outcomes of such collaboration, and to support any change processes that are required. Such a model would be founded on

²⁷ Section 28(2) of the Education (Scotland) Bill

²⁸ Schedule 2, Part 3, Paragraph 5

²⁹ Section 29 (2) of the Education (Scotland) Bill

³⁰ Section 30(2) and (4) of the Education (Scotland) Bill

³¹ Section 30 (2)(b) of the Education (Scotland) Bill

³² Section 36(5) of the Education (Scotland) Bill

³³ [Inspection - Putting learners at the centre: response to the independent advisor on education reform's report - gov.scot \(www.gov.scot\)](http://www.gov.scot/Inspection-Putting-learners-at-the-centre-response-to-the-independent-advisor-on-education-reform-report)

the premise that trust in teacher professional judgement extends to the improvement agenda, also and that teachers as inhabitants of school communities are best placed to work with learners, parents and other stakeholders within their communities, and colleagues outwith, to determine the priorities and the best means of achieving associated objectives. Where they judge it necessary, schools should be able to seek assistance in going about their work from national agencies.

In line with this vision, we believe that teacher voice should be represented by the inclusion of the professional associations in the composition of governance arrangements of the new Inspectorate. Although it might be argued that it is critical to public confidence that 'decision-making within the inspectorate is not unduly influenced by those it inspects', the Institute would challenge this statement which reinforces top-down accountability driven inspection processes associated with the current system. We would instead advocate a more collegiate approach to quality assurance, adopting the approach, outlined by Professors Carol Campbell and Alma Harris in the final report of the National Discussion, of 'human-centred educational improvement'³⁴ with 'the education profession leading the way forward with professional expertise and judgement informing decisions and actions'.

It is disappointing that the Bill does not embrace this vision in terms of governance arrangements and instead outlines a very limited model of stakeholder engagement through the creation of an Advisory Council. We do not believe that this provides sufficient meaningful engagement of teachers and lecturers in the governance of the new body. Although section 35(4) of the Bill places a legislative duty on the Chief Inspector requiring them 'to have regard to' any advice provided by the Advisory Council, it is clear that the Chief Inspector would not be obliged to follow the advice given.

If the Scottish Government is committed to delivering meaningful change to the inspection process, more radical reform is necessary. We would suggest a governance model, similar to that of GTCS Council, which is truly independent of government and includes representation from teachers and other stakeholders in the governance arrangements. Section 35(2) currently only requires the Chief Inspector to 'endeavour to ensure that the Advisory Council (taken as a whole) is representative of the interests of persons likely to be affected by the Chief Inspector's functions'. There is no requirement to ensure that the majority of the Council are representatives of teachers or lecturers.

5. 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?

³⁴ [All Learners in Scotland Matter: The National Discussion on Education Final Report \(www.gov.scot\)](http://www.gov.scot)

The EIS asserts that 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. Teachers will, therefore, be frustrated at the lack of ambition shown in the Education (Scotland) Bill. They are told they work in an Empowered system which is poised for radical change for the future; yet they will continue to be subjected to an antiquated and disempowering process of top-down accountability which is culturally specific and for which there is scarce evidence of positive impact.³⁵ The ICEA has recommended "leadership approaches that emphasise distributed responsibility and engagement, professional judgment and agency, robust collaborative professionalism, local energy and ownership leading school improvement and continued learning by school leadership and the teaching profession."³⁶ The EIS believes that school inspection, as currently operated, does not achieve this, but moreover, contributes to a culture which militates against this. This is evident in the proposals in relation to reporting for individual establishments. Reporting, combined with publication of the scoring attributed to the establishment, can be disempowering and have significant detrimental impacts on the health and wellbeing of staff. The bald system of scoring fosters an ethos of competition and fear of failure rather than of confidence, innovation and collaboration; and encourages misinformed critique of how schools and other educational establishments are going about their work. If scoring continues to feature in the publication of reports, then the Institute believes that the culture change which is so badly needed in the context of inspection will not be achieved. We welcome the provisions of section 37(4) of the Bill which will allow the Chief Inspector to determine the form and content of each report. This presents an opportunity to put an end to the insidious practice of labelling schools through simplistic grading processes and to reframe the narrative around publication, with an emphasis on support and the agreed outputs from collaborative engagement.

Section 39 makes provision for the publication of an annual report on the performance of the Scottish Education system. There is certainly an argument for evaluating and reporting on the extent to which government at national and local levels, through the provision of proper financial resources, staffing and professional collaboration, support schools to maintain quality provision and to move forward in the interests of young people and school communities. It is highly questionable as to whether annual reporting of the kind proposed would provide sufficient useful

³⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/905496/School_improvement_systems_in_high_performing_countries.pdf

³⁶ [Supporting documents - International Council of Education Advisers: third report 2021-2023 - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents-international-council-of-education-advisers-third-report-2021-2023)

information on meaningful, consistent system-level progress which by its very nature would take longer to enable and embed than 12 months.

The EIS is clear that the current models of inspection need to be rationalised and reformed, rather than being extended and expanded. Imposing yet another layer of top-down accountability and performativity drivers on the system, in lieu of addressing the chronic resourcing crisis in education, will only hamper the efforts to improve children and young people's educational experiences, and the outcomes of these. The EIS view is that time, money and resources could be better spent in the current climate.

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

We would refer to the comments made above in relation to the need for greater independence from the Scottish Government and the extension of the powers of the Chief Inspector to facilitate this aim.

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

Overarching Outcome

There has been a considerable investment both of time and public resources on the range of consultations focusing on Education Reform over the last four years. The consensus reached in the changes required and identified in Muir, Hayward and through the National Discussion cannot be ignored. As ICEA have highlighted, the time for commissioning reviews is over and now is the time for action.

An overarching outcome of the Bill must, therefore, be clear evidence of demonstrable change in the operation of the new national bodies, particularly Qualifications Scotland.

The deep distrust that the teaching profession holds towards the SQA cannot be ignored. The actions of the SQA have inflicted significant damage upon its relationship with the profession, which now largely views the organisation with cynicism and suspicion. If the Bill is to be successfully implemented to deliver the meaningful reform outlined in the OECD and Muir Reports, then teachers, lecturers, learners and parents must be satisfied that the Bill is more than a rebranding exercise. Failure to address such a perception with action will render the reform process a vain endeavour and will be an opportunity missed.

Specific Outcomes

- The creation of a new qualifications agency with the sole responsibility to focus more closely on the core business of awarding qualifications;
- The creation of an independent national body to discharge the accreditation and regulation functions, currently part of the remit of the SQA;

- Robust governance arrangements for each body to ensure transparency, equity and fairness in the discharge of their functions, with teacher-voice as a central feature and clear independence from government;
- Teachers, lecturers and learners participating meaningfully in decision-making within the new qualifications agency;
- A departure from top-down accountability approaches to collaborative engagement between the new national agencies and the teaching profession as part of an Empowered school system, built upon professional trust and respect;
- Effective communication between the new qualification agency and the teaching profession, with evidence of the former being responsive to the needs of teachers, lecturers and learners;
- Streamlined processes to reduce bureaucracy and resultant workload;
- The creation of an independent Inspectorate, accountable to the Scottish Parliament and free to act without interference from the Scottish Government;
- The development through co-creation of a model which is based on practitioner-led evaluation that features professional collaboration and learning across settings, with time invested to facilitate collaborative processes, to enable reflection on the outcomes of such collaboration, and to support any change processes that are required;
- An end to grading schools and a focus on support and agreed outcomes from collaborative engagement in reports published;
- Robust governance arrangements for the new Inspectorate, with teacher-voice as a central feature.

8. Do you have any other comments on the Bill?

The Institute hopes that the introduction of the Education (Scotland) Bill will mark the impetus for the Scottish Government to continue the journey of Education Reform and will provide the momentum to drive forward the necessary and meaningful change to qualifications and assessment in the Senior Phase which are set out so compellingly in the Hayward Review. Significant time and resources have already been committed to numerous consultations on reform. It is now time for action to ensure that the vision for Scottish Education, set out in Curriculum for Excellence, can be realised and that the future assessment and qualification system meets the needs of learners, removes barriers to participation and inequality and recognises individual achievements.

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