

Paper 1 - New Qualifications Body – Legislative Intent

This paper provides a summary of the key policy proposals for the part of the Education Reform Bill which will establish a new qualifications body for Scotland. It is being shared on a confidential basis and reflects developing policy proposals. Further stakeholder feedback will support the finalising of those policy proposals prior to final Ministerial decisions being made.

Awarding Functions

Professor Ken Muir recommended the Qualifications Body should *“take on board SQA’s current awarding functions, chiefly the responsibility for the design and delivering of qualifications, the operation and certification of examinations, and the awarding of certificates.”* Muir also recommended that *“income-generating contract services currently provided by SQA for organisations, governments, and businesses, should be included in the remit of the new NDPB. SQA’s current international work should also be part of the NDPB’s remit.”*

It is intended that the Bill will seek to establish a new Qualifications Body with a set of functions that means it can assume all of the SQA’s Awarding responsibilities, including the quality assurance of education and training establishments offering the Qualification Body’s qualifications. It is intended the Bill will also seek to allow the Qualifications Body to provide income-generating contract services in a commercial capacity to support the sustainability of the organisation. The Qualifications Body should have the ability to continually innovate their qualifications and assessment services, as well as respond to present or future changes in the curriculum and in the qualifications and assessment system. This will make the Qualifications Body able to implement any required outcomes from the reform to qualifications and assessment following the Hayward Review, as well as the Withers’ Skills Delivery Review or future reforms.

Accreditation

The Scottish Government announced that the current Accreditation and Regulatory functions of the SQA will be located within the new Qualifications Body, and it is intended the Bill will seek to enable the new Qualifications Body to accredit and regulate qualifications and awarding bodies as currently carried out by the SQA.

It is intended the Bill will seek to create a more independently governed accreditation and regulation function. This can be achieved by establishing a statutory Accreditation and Regulation Committee, with its Convenor directly appointed by Scottish Ministers, and that individual would also be a member of the Board. The Convenor would appoint members of the committee, and the majority of these would not be members nor staff of the Qualifications Body. The Accreditation and Regulation Committee would have separate planning and annual reporting requirements from the awarding functions, such as publishing their own corporate plan and annual reports. The Convenor of the committee would also be able to provide advice to Scottish Ministers on any matters relating to their accreditation and regulation functions. This means the Convenor would be able to provide advice relating to any assessment and review of accreditation and regulation, as well as highlighting to Ministers where the Convenor has intervened in matters of dispute or conflict of interest between accreditation and regulation functions and the awarding functions of the Qualifications Body.

It is intended the Bill will seek to ensure decisions made by the Accreditation and Regulation Committee are not influenced nor directed by decisions made by the rest of the organisation in relation to the awarding functions. To do so, the Convenor would excuse themselves from all matters

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in relation to awarding throughout the organisation, and that the Board would not be able to direct the Accreditation and Regulation Committee in relation to carrying out its functions.

Governance

Professor Ken Muir recommended that “*the governance structure of the proposed Qualifications Scotland body should be revised to include more representation from, and accountability to all learners, teachers, practitioners and the stakeholders with whom it engages.*”

In addition to the wider education, qualifications and employment sector, the Qualifications Body requires a strong focus on learners, teachers and other practitioners having clear roles in how qualifications are devised, delivered, supported, awarded, and recognised. We want the Qualifications Body to have a culture that embodies this focus. A strengthened role of learners’ and teachers and practitioners voices in the governance arrangements will support this.

The intention of the Bill therefore seeks to create a governance model for the Qualifications Body that emphasises the focus on learner and teacher and practitioner voices. To achieve this, there is a need to have members of the Board who have specialist knowledge in the interests of learners, and of teachers and other practitioners. This knowledge would be in addition to the broader corporate governance, education and qualifications system knowledge and skills composition expected on the Board. Similarly, the interests of employees working in the new body need to be appropriately reflected in this governance model.

It is intended the Bill will seek to further strengthen these voices by including measures that will mean the perspectives of learners, and of teachers and practitioners, can better influence the decisions the Qualifications Body makes. By establishing a ‘Learner Interest Committee’ and a ‘Teacher and Practitioner Interest Committee’ to advise the body on the exercise of its functions from the perspectives of learners, teachers, and practitioners, this would be achieved.

The intention of the Bill is to seek to enhance the role of other qualifications sector stakeholders and service users of the Qualifications Body by providing Ministers with the power to establish an independent strategic stakeholder advisory council. Its role would be to advise the Qualifications Body and Scottish Ministers on matters relating to the Qualification Body’s functions. It is expected that membership would include and reflect the breadth of system leaders and stakeholders with a vested interest in the Scottish education system and the qualifications sector.

To implement provisions that make the Qualifications Body more accountable to learners, as well as other stakeholders and service users, it is intended that this would be achieved by the Qualifications Body creating a Learner Charter, in consultation with the sector, to serve as a framework for learners and their representatives that can set the expectations between learners and the Qualifications Body, and provide a tool to assess how these have been met. Clearer requirements on the Qualification Body’s planning and reporting in relation to its performance alongside the Learner Charter, and the effectiveness of its communications and engagement with learners and all other stakeholders, would enhance the level of accountability for the Qualifications Body.

Paper 2 - New Inspectorate – Legislative Intent

This paper provides a summary of the key policy proposals for the part of the Education Reform Bill which will establish a new inspectorate body for Scotland. It is being shared on a confidential basis and reflects developing policy proposals. Further stakeholder feedback will support the finalising of those policy proposals prior to final Ministerial decisions being made.

Functions

Professor Ken Muir's recommendation, drawing on the responses to his wide consultation, was that an independent body should be set up to take forward the functions of inspection within the Scottish education system. Inspection can and does take many different forms, we therefore believe the new body must be configured in legislation to meet current needs but also must be flexible to meet new requirements.

The inspection of standards and quality of education provision in Scotland is currently carried out by His Majesty Inspectors of Education in Scotland (HMIE), as part of Education Scotland – it is intended that the Bill seek to establish a new independent inspectorate, that will take on this function.

Professor Muir suggests the independent inspectorate “*be responsible for the inspection of education at all levels of the system – from early years to adult learning, including thematic inspections required by Ministers, for example in Initial Teacher Education*”

It is intended that the Bill will seek to ensure that the inspection of education provision can continue to be carried out in the full range of establishments and services as is currently inspected, from early years to adult learning and be carried out by Inspectors appointed by His Majesty, who are civil servants, as recommended by Professor Muir. It is intended the Bill will seek to require the Chief Inspector to publish inspection reports as soon as reasonably practicable following inspection.

Given the focus on independence for the new inspectorate, it is intended that the HM Chief Inspector have power to set the schedule, frequency and focus for inspections, as opposed to this remaining under the control of Scottish Ministers. It is intended that the legislation will seek to require the inspectorate body to set out these aspects of its operations. It is expected that this will include the quality and improvement standards to evaluate and report on (applied to different sectors and services), different models for how inspections should be carried out, the circumstances and schedule of when inspections are to be carried out, and how frequently.

To give clarity to the system and confidence that there is a regular, planned and systematic approach in place, it is intended that the Bill will seek to set an expectation on how often this should be reviewed, with a power for Ministers to set a specific review period if necessary, in the future.

Additionally, whilst we have not yet found direct evidence pointing towards an optimum frequency of inspection for schools, and early learning and childcare settings, given the need to ensure future agility in legislation, it is intended that the Bill contain provision for Ministers to provide structure around this if necessary, in the future.

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Governance

The new inspectorate requires a policy shift to enable more learner and service user representation. It is considered that this may be achieved, not just in the models of how inspection is carried out (which will be for the new HM Chief Inspector to set out), but with a strengthened role of learner and parent / carer voices in governance arrangements, which can be included in the legislative framework.

Professor Muir reports “*Clear legal, structural and governance arrangements should be in place to ensure transparency and public confidence in the inspection body and its processes.*”

It is intended that the Bill will therefore seek to require the Chief Inspector to establish an Advisory Council (which would be expected to include user interests), for that Council to be consulted on its operations (i.e. in relation to setting the schedule, frequency and focus for inspections) and for the Chief Inspector to have regard to its views.

Funding / Reporting

It is intended that the inspectorate should be funded by Scottish Government, staffed by civil servants and report directly to the Scottish Parliament.

Professor Muir suggested in his report that: “*Critical roles of the independent Inspectorate will be to ...report annually and over longer periods, on the performance of Scottish education*” and “*be staffed by civil servants and inspectors, the latter of which are appointed with the approval of His Majesty via the Privy Council.*”

It is intended that the Bill will therefore seek to set out a specific requirement for the Chief Inspector to report annually on the carrying out of their functions, to include activities carried out during the period the report relates to, and to detail its approach and evidence why it has taken the course it has.

Additionally, it is intended that there be a specific requirement to report annually to the Scottish Parliament on the ‘Performance of Scottish Education’, as recommended by Professor Ken Muir. In addition, it is intended that the Chief Inspector be required to publish and lay before the Scottish Parliament all of these reports.

It is intended that the Bill also seek to give power to the Chief Inspector to report about any matters relating to the inspector’s functions. If they do so, we are of the view that they must send a copy of any such report to Ministers; and may (if appropriate) publish the report and lay it in Parliament.

Securing Improvement

The Bill is intended to mirror the current position, that HMI Inspectors must make a reference to Scottish Ministers if they consider that, following an inspection, an establishment or education authority is failing or has failed to secure improvement despite having been given sufficient opportunity to do so. As currently, it would then be for Scottish Ministers to give preliminary notices and, where necessary, enforcement directions thereafter.

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Further, given the Scottish Ministers' shared responsibility to endeavour to secure improvement in the quality of school education, and other statutory functions such as the registration and regulation of independent schools, it is intended the Bill seek to continue Scottish Ministers' current power to request inspection of any kind.

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