



The Scottish Parliament  
Pàrlamaid na h-Alba

## Delegated Powers and Law Reform Committee

Jenny Gilruth MSP  
Cabinet Secretary for Education and Skills  
via email

**12 September 2024**

Dear Cabinet Secretary

### Education (Scotland) Bill

The Delegated Powers and Law Reform Committee considered the above Bill at its meeting on Tuesday, 10 September, and agreed to write to you to ask the following questions in relation to delegated powers contained in the Bill.

#### **Section 8(2): Power to issue guidance on consultation with the Strategic Advisory Council**

#### **Section 9(3)(b)(iii): Power to issue guidance to the Strategic Advisory Council**

In relation to the ‘powers to issue guidance’ in sections 8(2) and 9(3)(b)(iii), the [Delegated Powers Memorandum](#) (“DPM”) explains that requiring the Scottish Parliament to scrutinise guidance would not be the best use of parliamentary time, as it does not have the force of law. However, Qualifications Scotland (“QS”) and the Strategic Advisory Council (“SAC”), “must have regard to” such guidance and will be expected to follow it. Such guidance will inform QS and the SAC as to how they will be expected to meet their consultation duties and there may be consequences for a failure to have regard to the guidance without good reason. Guidance issued under these sections would not be subject to any parliamentary procedure.

As such, in relation to sections 8(2) and 9(3)(b)(iii), the Committee asks the Scottish Government (in responding, it would be helpful if the Scottish Government could respond with an individual answer for each power):

- a) to clarify the nature of the guidance proposed, and in particular, whether it is intended to assist or direct Qualifications Scotland and the Strategic Advisory Council, i.e. is it administrative or legislative?**

Contact: Delegated Powers and Law Reform Committee, The Scottish Parliament, Edinburgh, EH99 1SP.

Email: [dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot).

We welcome calls through Relay UK and in BSL through Contact Scotland BSL.

- b) If it is administrative, why is it considered necessary to place a duty on Qualifications Scotland and the Strategic Advisory Council to have regard to it?**
- c) If it is legislative, why it is not subject to any parliamentary procedure?**

## **Section 17: Scottish Ministers' power to direct Qualifications Scotland**

Part 1 of the Bill lays out the functions and duties of QS over 25 sections. Section 17 proposes that Scottish Ministers should also have a power to give directions to QS relating to these functions and duties and QS "must comply" with any such directions, while remaining operationally independent. Mechanisms are already built into the Bill for Scottish Ministers to consider the strategy of QS through the SAC and for QS to consult with and provide advice and information to Scottish Ministers; as well as to hold QS accountable through its corporate plan, annual report and accounts. Section 24 also provides for QS to do "anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the performance of its functions," allowing it to react to priority, crucial, unforeseen matters.

As such, the Committee asks the Scottish Government:

- a) what consideration it has given to the need for this direction making power in the circumstances, given Scottish Ministers' input to the Strategic Advisory Council, and given that Qualifications Scotland will already have to comply with its duties and consultation requirements under part 1 of the Bill?**
- b) how it envisages using this direction making power, including practical examples of the circumstances, and the types of direction it has in mind?**

## **Section 21: Scottish Ministers' power to direct the Accreditation Committee**

Section 21 of the Bill provides that the Accreditation Committee ("the AccCom") must comply with any written direction issued to it by Scottish Ministers, while remaining operationally independent. The AccCom and its functions are established by paragraph 12 of schedule 1 to the Bill and it must publish a corporate plan as to how the committee intends to exercise its functions and an annual report on its activities.

As such, the Committee asks the Scottish Government:

- a) **what consideration it has given to the need for this direction making power in the circumstances, given that the Accreditation Committee will already have to comply with its duties in the exercise of its functions under part 1/schedule 1 of the Bill?**
- b) **how it envisages using this direction making power, including practical examples of the circumstances, and the types of direction it has in mind?**

### **Schedule 1, paragraph 2(2): power to alter the number of members of Qualifications Scotland**

In relation to this power, the Committee asks the Scottish Government:

- a) **why the flexibility already provided for in the Bill – between 6 and 10 other members - is not sufficient to meet changing circumstances?**
- b) **to provide some practical examples as to what changing circumstances are envisaged that would require more than 10, or fewer than six other members?**
- c) **whether it envisages that there would be a cap on the number of other members altered under this power?**
- d) **whether the negative procedure provides an appropriate level of parliamentary scrutiny given this is a change to primary legislation; and whether this gives the parliament sufficient opportunity to scrutinise why an increase in other members is considered necessary and the impact on areas such as public finances should membership increase?**

### **Schedule 1, paragraph 13(6): power to regulate the procedure of Qualifications Scotland and its committees**

In relation to this power, the DPM explains that the regulations will be subject to the negative procedure as it is the Scottish Government's view that this power will have limited effect in that it can only prescribe the governance procedures of QS. However, this power allows Ministers to make further provision "as Scottish Ministers see fit" in relation to the procedure of QS and its committees. As such, it could be seen as a wide power, which could include changes to their memberships, quorums and remits.

The Committee therefore asks the Scottish Government that **given the width of this power for Scottish Ministers to regulate the procedure of Qualifications Scotland and its committees as they see fit, including their memberships, quorums and remits, whether the negative procedure provides an adequate level of scrutiny in the exercise of this power to make regulations?**

I would be grateful if you could please email your response to these questions to: [dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot) by **Monday, 23 September**.

Yours sincerely

**Stuart McMillan MSP**  
**Convener**