

**Education, Children and Young People Committee**

**Education (Scotland) Bill**

**30 August 2024**

1. The NASUWT welcomes the Education, Children and Young People Committee's call for views on the Education (Scotland) Bill.
2. The NASUWT is the largest UK-wide teachers' union representing teachers and school leaders in all sectors of education.

**SPECIFIC COMMENTS**

**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?**

3. Consistently, and across several national inquiries, the Union has called in evidence for the SQA and Education Scotland's actions to be placed under greater scrutiny. Indeed, the Education and Skills Committee shared the NASUWT's frustration that in the aftermath of the 2020 exam results there was a lack of transparency around decision-making, a reluctance to release data, and a significant disconnect between the evidence received

from these bodies and what parents, pupils and teachers were saying. Having pushed for public accountability, NASUWT was pleased to note the committee's legacy report which stated:

*'We also continue to hold particular concerns about the communication from the SQA and Education Scotland, including both the quality of information shared with the Committee (for example in oral evidence sessions) as well as the way in which decisions and discussions were held with key stakeholders, including pupils and teaching staff... We remain unconvinced that these bodies in their current form are fit for purpose. Confidence among practitioners in these organisations also appears low and it is clear that structural reform is now required.'*

4. It is inescapably true that some of the decisions made by the SQA led to an erosion of trust and confidence in the organisation amongst teachers and a significant appetite for reform. In equal measure, teachers were highly critical of the quality and clarity of support provided by Education Scotland. These concerns were also well reflected in both the OECD review and Ken Muir's report.
5. The two main changes within the proposals to create Qualifications Scotland is firstly the addition of structures to increase the influence of educators and learners and secondly to create greater independence of the accreditation function.
6. It remains an unusual position to have one body undertaking both a regulatory and awarding function, which the NASUWT has repeatedly advocated should not be replicated in any revamped structures. The SQA is very unusual in that it is a regulator and an 'awarding body' at the same time. In Wales, the regulator/awarding body roles are split between two bodies. In Northern Ireland, CCEA has two very separate wings that have clear boundaries between them to avoid 'self-marked homework'. NASUWT notes the decision taken within the Bill to ignore Professor Muir's recommendations that Qualifications Scotland should include the

awarding functions of SQA, but not the accreditation function in this area and would reiterate our belief that this is unwise.

7. Looking at the wording of the policy memorandum accompanying this consultation, it is hard to avoid the conclusion that this decision has been a purely financial one: *'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'.*
8. By comparison, Professor Muir's recommendation that the new body's governance structures *'should be revised to include more representation from, and accountability to all learners, teachers, practitioners and the stakeholders with whom it engages'* has been more positively reflected in the Bill.
9. The National Discussion also agreed that *"There was a general view that while national direction, strategy and resources are necessary, top-down change being driven onto the education profession is inappropriate and there needs to be a genuine move to let the education profession lead the way forward, in collaboration with all staff, learners, parents, and families... The new national agencies require careful consideration and design within this context – there are structural considerations of not centralising control and resources but rather working collaboratively with professionals throughout the education system who have responsibility and expertise for leading educational improvement. However, these are not simply structural issues, this requires unleashing deep cultural change and leadership for human-centred educational improvement placing learners at the heart, valuing professional expertise and judgement, and engaging parents/carers, families, communities, employers, and all relevant partners and stakeholders."*
10. It is important to stress during consideration of SQA reform, there remains a wealth of knowledge and expertise within that body currently that should

not be lost. It is also important to reflect that there have been some positive steps recently undertaken by the organization to address criticisms in relation to communication.

11. NASUWT have also criticized the fact that there has been insufficient delineation between the SQA and the Scottish Government, and often the SQA has absorbed criticism for decisions which were taken by Ministers, such as the removal of unit assessments from national qualifications. These comments should not be read as underplaying the concerns publicly expressed regarding the SQA's communication to teachers. Indeed, some decisions looked more to protect their own organisational interests rather than being focused on the interests of learners. A nuanced approach to reform is required which will not lose the positive skills and experience of staff employed therein but which will also increase transparency and improve communication.

**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?**

12. NASUWT has strongly advocated that classroom teachers, plural, must be represented on the Board and, given our democratic structures, have suggested that NASUWT supplies one of these. As our original submission to the Muir Review stated: *'NASUWT is clear that there needs to be a very strong focus on the practitioner voice in any new agency and that this must explicitly include the voice and perspectives of practising classroom teachers'*.

13. Part 2 of Schedule 1 of the Bill sets out the requirements for membership of Qualifications Scotland and it is positive to note that this must include *'two or more members who are providing teaching or training as a registered teacher'*. Furthermore, it is noted that within the Policy Memorandum accompanying the consultation that: *'Scottish Ministers will have expectations and supporting guidance that makes it clear that these members should include members from the teaching profession who are*

*not in promoted or leadership posts*'. While it is understood additional guidance will support the overarching legislative requirement, it is disappointing this is not explicitly set out within the Bill.

14. Section 9 of the Bill enables Scottish Ministers to set up a 'Strategic Advisory Council' to scrutinize and advise Qualifications Scotland. While welcoming this in principle, there is concern around the influence (or lack of) that such a body would have as there is currently limited detail on the status of any 'advice' provided by it and if this would be binding on the Board or not? Again, while it is understood that the proceedings, processes, structure and governance of this Council will be placed within regulations by Scottish Ministers, the lack of tangible details or proposals at this stage of policy development remains unhelpful.

15. In relation to the Teacher and Practitioner Interest Committee, the Policy Memorandum states: *'The knowledge and expertise Scotland's teaching profession holds is integral to the delivery of high-quality qualifications in Scotland. This is why it is essential they have a central role in supporting, shaping and making decisions within Qualifications Scotland.'* It is therefore welcome that there is a statutory role for the teaching profession in Qualifications Scotland's decision-making structures, though, of course, the devil will be in the detail of the governance structures put in place.

16. Moving forward from a turbulent number of years and ensuring the system learns from those experiences, will also mean that it is important that equalities and routine impact assessments form part of any revised assessment and modification process and approach under a new qualifications body. The SQA did not routinely collect equality data, which meant, for example, it could not truly examine the 2020 approach to National Qualifications to identify the possible impact on protected characteristics. This approach to data-gathering around equalities must change under any new qualifications body, which must pay more than lip service to its Public Sector Equalities Duty, and make monitoring and data collection a core part of supporting curriculum and assessment issues.

**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?**

17. As has already been clearly articulated above, the most crucial relationship for any new qualifications body will be that between it and teachers (or their representatives). Beyond that, the new qualifications agency should robustly defend itself from any political interference. Any new qualifications agency should also be willing to robustly challenge local authorities or individual schools which do not follow agreed national guidance on qualifications and assessment. There are numerous examples of some local authorities and schools indulging in variations in practice which ignore national guidance and are difficult to explain or justify. It will be important that more effective steps are taken by any new qualifications body to intervene in such circumstances.

18. While supporting the intention behind creating an additional accountability tool to assess the performance of Qualifications Scotland, it remains unclear to what extent the charters will support the hopes and aims of the profession, as articulated in paragraph 17 above, nor indeed what legal weight they will carry.

**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?**

19. Professor Muir agreed that *“Education Scotland having an inspection function within the same body charged with supporting improvement created potential conflicts of interest and compromised the organisation’s ability to perform both roles well”* and therefore the broad disentanglement of curriculum support from inspection functions has been well received from practitioners.

20. NASUWT supports the proposed role of HM Chief Inspector of Education in Scotland: taking forward legislation to establish the role of 'HM Chief Inspector of Education for Scotland' in law as an independent office-holder will establish more separation between the Inspectorate and Scottish Ministers, which is welcome, although we are cognisant of the fact that sometimes legislation carries with it the potential for unintended consequences.
21. 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. So, while Ministers retain the ability to direct the Chief Inspector to secure the inspection of specific or types of educational establishments, NASUWT is content that the legislation will provide the Chief Inspector with greater autonomy over the inspection regime compared to the 1980 Act.
22. The Union is pleased the Bill includes a requirement for an Advisory Council under section 35. While membership of the Advisory Council sits with the Chief Inspector, it is important there remains, as a minimum, a duty to have regard to the desirability of ensuring the Council as a whole is representative of those affected by the functions of the Inspectorate, although it would be preferable to go further and mandate explicitly that the Advisory Council should contain a majority of teacher members.
23. Equally, NASUWT is pleased that there will be in place a legislative duty on the Chief Inspector to have regard to any advice provided by the Council and, where advice was not followed, to set out the reasons why.

**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?**

24. As publicly funded institutions, schools should be held accountable for the contribution they make to children and young people's educational progress and achievement: however, it is important that they are held to account for the right things and in the right ways. Inspection and

accountability systems should respect the professionalism of teachers, not impose excessive and unnecessary workload burdens, and provide genuine support to the work of schools in raising standards and promoting educational achievement.

25. NASUWT notes that within the Bill the Chief Inspector is to prepare and publish annual reports on the performance of the education system, as a new statutory duty. Education Scotland currently publishes only summaries of its inspections findings and thematic national reviews.

26. The quality of education depends on the government and others, not just schools and it is important that the Chief Inspector is empowered to recognise the role played by others, especially the Government, in establishing and maintaining a framework of investment and support for schools to deliver high-quality educational standards. Too often, inspection remains viewed as punitive because our system allows blame to fall on schools and lets others off the hook. Against a decade of real-terms cuts to school funding, teachers and headteachers have battled to deliver the very best education possible for children and young people. Our members report that they are increasingly swimming against a tide of cuts and a lack of resources.

27. A pre-requisite for the successful completion of an inspection plan, as per section 36(2), is ongoing open and transparent dialogue with stakeholders, including teachers and their representatives. While it is not set out within legislation, the Union is already engaging positively with the Inspectorate around the current inspection review. It would be preferable to see the need for reflective, open and transparent communication set out within this legislation.

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

28. The Bill provides that the Chief Inspector must establish an Advisory Council which is one mechanism through which the voice of the profession can be strengthened. It is important however that this Council is a



springboard to wider engagement rather than providing a tick box, self-limiting hot house for engagement.

29. Transparency around funding arrangements will be very important. Looking at the SQA as a quick comparison: while it was recognised they faced a gargantuan task, in a rapidly changing environment during the pandemic, members queried why they nevertheless relinquished funds back to the Scottish Government rather than investing this money to support the provision of greater and better communication and clarification to teachers and schools, along with practical support for assessment and marking.

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

30. Inspection should be the responsibility of a body independent of Education Scotland and should not be based on How Good is Our School 4 (HGIOS4) which is an overly bureaucratic system that was never agreed with teachers or trade unions. Inspections should be based on criteria agreed with teachers and their representatives and include areas such as pupil behaviour, teacher workload and teachers' mental health.

31. The Scottish Government needs to grasp this opportunity to develop a genuinely collegiate approach going forwards, ensuring these reforms are not a cosmetic exercise and that the perspectives of classroom teachers are placed at the heart of any reform. The NASUWT has been clear that there needs to be a very strong focus on the practitioner voice in any new agency and that this must explicitly include the voice and perspectives of practising classroom teachers.

32. There has been a tendency to prioritise the voices of those who are not practising teachers throughout many Scottish Education bodies. Given the tremendous problems with COVID-19, we have to be clear that without proper engagement with classroom teachers and the voice of teachers firmly embedded therein, any new body is simply not going to have the support of the profession.

## **Do you have any other comments on the Bill?**

33. The Union would signal a cautionary note about structural reform. In the experience of the NASUWT across the whole of the UK, education policymakers often set too much store and spend too much time on the creation of new structures rather than on ensuring that the appropriate support is provided to enable and develop teachers to concentrate on their core role of teaching and learning. Fundamentally, without sufficient time and resourcing, learning communities will not reach empowerment and will therefore be unable to use the autonomy provided by CfE to design a curriculum that meets the needs of their learners.

34. Whilst it has been accepted by the Government for some time that it must work to create the culture and capacity for teachers and practitioners to improve the learning outcomes in their classrooms, there has been a consistent absence of any concrete proposals to support cultural, as opposed to structural, change. It is worth recalling the report of the initial findings of the International Council of Education Advisers as far back as July 2017 which stated: *'[t]he Council advised against becoming too focussed on changing the structure of the education system when, arguably, the more important aspects are the culture and capacity within the system'*. System change will not automatically lead to cultural change, and transformative cultural change will take time. In addition to structural reform, some attention and time needs to be given to foster and engender cultural change in Scottish education.

35. As always change must not be instituted for the sake of change itself, to satiate short-term demands for individual accountability, to distract from institutional or structural inequality, or to mask issues of underfunding. We must maintain a steadfast focus on the purpose of public education and ensure the needs of teachers and learners are placed at the centre of reform. The principles or factors on which the Scottish Government should evaluate reform strategies remain:

- Is the reform needed?

- Is it democratically accountable?
- Will it enhance the teaching and learning of pupils?
- Will it add to workload burdens of schools?
- Will it require additional resource?

Any reform must enhance the teaching and learning experience of pupils and improve their life chances.

36. In short, while structures are important we should not be blind to the other aspects of good governance which include good leadership and strong relationships.

37. When the inspection function is removed from Education Scotland, this will leave a third new national agency whose functions will be to provide curricular guidance and support. It is a concern that this third body will be overlooked or neglected in terms of a refresh or renewal, given there is no need for legislation, and therefore it may not be considered through Parliament - yet this is an area of national support which also very clearly needs attention. As part of the engagement process with the OECD, all key stakeholders, including the NASUWT, were clear that schools and teachers should hold responsibility for the conception, implementation and outcomes of their own curricula, provided other education bodies fulfil their own responsibilities to support schools and the profession within a clear policy framework. Yet this aim was widely recognised as not being met, with CfE ownership often described as fragmented and an absence of clarity on whose responsibilities lie where.

38. The constant churn of educational edicts from central government and agencies is an additional unwelcome and unnecessary distraction and is overwhelming to teachers who are trying to focus on teaching and learning. This repeated production and recycling of documentation has been recognised by the OECD as not only creating workload and bureaucracy but also muddying the waters to the extent that there is no clarity on where the responsibilities for the strategic direction, review and updates for CfE lie.

39. If reform of Education Scotland structures, approaches and engagement does not take place, it will be impossible to address the recommendations and concerns set out inter alia by the OECD.

For further information, please contact:

[nasuwt@mail.nasuwt.org.uk](mailto:nasuwt@mail.nasuwt.org.uk)

[www.nasuwt.org.uk](http://www.nasuwt.org.uk)

Dr Patrick Roach

**General Secretary**