



# Education (Scotland) Act 1996

## 1996 CHAPTER 43

### PART I

#### THE SCOTTISH QUALIFICATIONS AUTHORITY

##### *Establishment*

#### **1 The Scottish Qualifications Authority.**

- (1) The Secretary of State may by order establish a body corporate to be known as the Scottish Qualifications Authority (in this Act referred to as “SQA”).
- (2) SQA shall consist of the following members—
  - (a) not less than fifteen nor more than twenty four individuals (including a chairman) appointed in accordance with subsections (3) and (4) below;
  - (b) a chief executive appointed in accordance with paragraph 15 of Schedule 1 to this Act.
- (3) The Secretary of State shall appoint not less than twelve nor more than nineteen of the members mentioned in subsection (2)(a) above including the chairman.
- (4) The number of members mentioned in subsection (2)(a) above to be appointed by SQA shall be determined in accordance with the following table where column 1 is the number of members appointed by the Secretary of State and, in relation to that number, column 2 is the minimum number of members required to be appointed by SQA and column 3 is the additional number of members SQA may appoint:—

Column 1	Column 2	Column 3
19	0	5
18	0	5
17	0	5
16	0	4

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15	0	4
14	1	3
13	2	2
12	3	0

(5) Schedule 1 to this Act shall have effect with respect to SQA.

### *Functions*

VALID FROM 01/04/1997

## **2 General functions of SQA.**

- (1) SQA shall have the following general functions—
- (a) to devise qualifications;
  - (b) to determine the entitlement of individuals to SQA qualifications and, where a person is so entitled, to award and record such a qualification;
  - (c) to keep under review and develop SQA qualifications;
  - (d) to approve education and training establishments as being suitable for presenting persons for SQA qualifications; and
  - (e) to make arrangements for, assist in or carry out the assessment of persons undertaking education and training.
- (2) The functions mentioned in paragraphs (a) and (c) of subsection (1) above include a power for SQA, in relation to a SQA qualification, to—
- (a) determine what it is that a person is required to do and the level of competence he is required to demonstrate in order to attain the qualification;
  - (b) determine the means of assessing whether he has done what is required or demonstrated the level of competence required.
- (3) Paragraph (a) of subsection (2) above includes a power to devise a programme of learning.
- (4) SQA shall not exercise any of its functions under this section or section 3 of this Act in relation to a degree.

VALID FROM 01/04/1997

## **3 Accreditation function.**

- (1) SQA shall have the function of accrediting qualifications as meeting such requirements as are specified by SQA.
- (2) SQA shall publish the requirements specified by it in pursuance of subsection (1) above.

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- (3) The function of accrediting qualifications conferred on SQA under subsection (1) above shall be carried out by a committee, to be known as the “Accreditation Committee”, established for that purpose by SQA.
- (4) The majority of members of the Accreditation Committee shall be individuals who are neither members nor employees of SQA.
- (5) At any meeting of the Accreditation Committee, a quorum shall be established only if the majority of members present at the meeting are neither members nor employees of SQA.

VALID FROM 01/04/1997

#### **4 Quality assurance.**

SQA may, in respect of education and training establishments which offer persons the opportunity to obtain SQA qualifications, make such arrangements as it considers appropriate to satisfy itself as to—

- (a) the quality of the procedures used by such establishments for assessing the standards of attainment of such persons (and, in particular, such persons with special educational needs) in relation to SQA qualifications;
- (b) the quality of the internal arrangements adopted by such establishments for monitoring and controlling the effectiveness of such procedures; and
- (c) the suitability of such establishments for presenting persons for SQA qualifications.

VALID FROM 01/04/1997

#### **5 Advisory function.**

- (1) SQA shall provide the Secretary of State with such advice in respect of any matter to which its functions relate as he may, from time to time, require.
- (2) SQA may provide the Secretary of State with such advice in respect of any matter to which its functions relate as it thinks fit.

VALID FROM 01/04/1997

#### **6 Incidental functions.**

- (1) SQA shall have power to do anything whether in Scotland or elsewhere which, in its opinion, is calculated to facilitate or is conducive or incidental to the carrying out of its functions.
- (2) The powers of SQA shall include power, for the purposes of or in connection with the carrying out of its functions—

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- (a) to fix and recover charges for services provided by it in accordance with criteria determined from time to time by the Secretary of State;
  - (b) subject to subsections (3) and (4) below, to enter into contracts including contracts for the employment of staff;
  - (c) to acquire, hold and, subject to paragraph 18 of Schedule 1 to this Act, to dispose of land and other property;
  - (d) subject to subsections (5) and (6) below, to borrow such sums as it thinks fit including such sums for the purpose of meeting any liability or obligation transferred to it under or in pursuance of any provision of this Part of this Act and in connection with such borrowing to grant such security or give such guarantee or indemnity as it thinks fit;
  - (e) subject to subsection (8) below, to raise funds, accept gifts of money, land or other property and apply them or administer them in trust;
  - (f) subject to subsection (8) below, to invest any sums not immediately required by it for the purpose of carrying out its functions or for the purpose of meeting any liability or obligation transferred to it in pursuance of this Part of this Act;
  - (g) to carry out, commission or assist in the carrying out of research;
  - (h) to promote or assist in the promotion of publicity;
  - (j) to publish or assist in the publication of material;
  - (k) to confer fellowships and other awards on persons whom it considers to have made an outstanding contribution to the advancement of education or training;
  - (l) subject to subsection (7) below, to form or promote, or to join with any other person in forming or promoting, companies (within the meaning of the <sup>M1</sup>Companies Act 1985).
- (3) The consent of the Secretary of State is required before SQA enters into any contract under paragraph (b) of subsection (2) above which is of such a value, or commits it to expenditure of such amount, as the Secretary of State may from time to time determine.
- (4) Consent under subsection (3) above may be given in respect of a particular contract or in respect of a class or description of contracts and may be given subject to such conditions as the Secretary of State may determine.
- (5) The consent of the Secretary of State and the Treasury is required in respect of any borrowing made and any related security, guarantee or indemnity granted or given under paragraph (d) of subsection (2) above.
- (6) Consent under subsection (5) above may be given in respect of a particular transaction or in respect of a class or description of transactions and may be given subject to such conditions as the Secretary of State may, with the consent of Treasury, determine.
- (7) The consent of the Secretary of State is required before SQA forms a company under paragraph (l) of subsection (2) above.
- (8) SQA shall use its funds, land or other property only in connection with the exercise of its functions and shall not distribute any of its funds, land or other property to its members.

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### Marginal Citations

M1 1985 c. 6.

VALID FROM 01/04/1997

### 7 Regard to certain considerations.

In the exercise of its functions in pursuance of this or any other enactment SQA shall—

- (a) endeavour to promote and advance education and training; and
- (b) have regard to the interests of persons using its services.

VALID FROM 01/04/1997

### 8 Services to others, collaboration, agency etc.

- (1) SQA may provide services (including advice or assistance), whether in or outwith Scotland, for any person in respect of any matter to which its functions relate.
- (2) SQA may collaborate with other persons, whether in or outwith Scotland, in respect of any matter to which its functions relate.
- (3) SQA may, whether in or outwith Scotland, carry out any of its functions or do anything incidental or related to the carrying out of its functions as agent for another person.
- (4) SQA may with the consent of the Secretary of State arrange for the discharge of any of its functions by another person on such terms as may be agreed between SQA and that person.
- (5) Any arrangement made under subsection (4) above shall not prevent SQA from exercising the delegated function.

### 9 Secretary of State's directions to SQA.

- (1) The Secretary of State may, after consultation with SQA, give SQA directions of a general or specific character with regard to the discharge of its functions and it shall be the duty of SQA to comply with such directions.
- (2) The Secretary of State may give to the Accreditation Committee directions of a general or specific nature and it shall be the duty of the Accreditation Committee to comply with such directions.
- (3) A direction given under subsection (1) or (2) above may be varied or revoked by a subsequent direction so given.

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### *Information*

#### **10 Provision of information by SQA.**

- (1) SQA shall provide the Secretary of State with all such information as he may reasonably require relating to the carrying out or proposed carrying out of its functions.
- (2) For the purposes of subsection (1) above, SQA shall—
  - (a) permit any person authorised for the purpose by the Secretary of State or the Comptroller and Auditor General to inspect and make copies of the contents of any accounts or other records of SQA; and
  - (b) give such explanation of them as that authorised person may reasonably require.

#### **11 Annual report.**

- (1) By such date as the Secretary of State shall determine in each financial year, SQA shall prepare a report on its activities during the preceding financial year and shall send a copy of that report to the Secretary of State.
- (2) Every such report shall set out any directions issued by the Secretary of State under section 9 above during the preceding financial year.
- (3) The Secretary of State shall lay a copy of every such report before each House of Parliament.

### *Financial provisions*

#### **12 Financial duties of SQA.**

- (1) After consultation with SQA, the Secretary of State may determine the financial duties of SQA; and different determinations may be made in relation to different functions.
- (2) The Secretary of State shall give SQA notice of every determination under subsection (1) above; and such a determination may—
  - (a) relate to a period beginning before the date on which it is made;
  - (b) contain incidental or supplemental provisions; and
  - (c) be varied by a subsequent determination under that subsection.

#### **13 Payment of grants etc. to SQA.**

- (1) The Secretary of State may pay to SQA in respect of any expenditure incurred or to be incurred by it in connection with its functions, grants or other payments of such amounts as he may determine.
- (2) A grant or other payment paid under this section may be made subject to such conditions as, with the consent of Treasury, the Secretary of State thinks appropriate and such conditions—
  - (a) may be imposed before, after or at the time such grant or other payment is made; and
  - (b) may relate to any time, whether before or after such time.

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- (3) The terms and conditions on which the Secretary of State may make any grants or other payments under this section may include in particular conditions—
  - (a) enabling him to require the repayment, in whole or in part, of sums paid by him if any other condition subject to which the sums were paid is not complied with; and
  - (b) requiring the payment of interest in respect of any period during which a sum due to him in accordance with any other condition remains unpaid.
- (4) A condition imposed in pursuance of subsection (2) above shall not have effect as regards anything done, or omitted to have been done, before the date the condition was imposed.

#### **14 Secretary of State's power to make loans.**

- (1) For the purposes of the exercise of any of its functions SQA may, subject to such conditions as, with the consent of the Treasury, the Secretary of State thinks fit to impose, borrow from him, and he may lend to it out of money provided by Parliament, sums of such amounts as he may with such consent determine.
- (2) Any loan made in pursuance of subsection (1) above shall be repaid to the Secretary of State at such times and by such method, and interest on the loan shall be paid to him at such times and at such rates, as he may from time to time, with the consent of Treasury, direct; and all sums received by the Secretary of State in pursuance of this section shall be paid into the Consolidated Fund.

#### **15 Secretary of State's guarantees of SQA's borrowing.**

- (1) The Secretary of State may, with the consent of the Treasury, guarantee, in such manner and on such conditions as he thinks fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which SQA borrows from a person other than the Secretary of State.
- (2) Immediately after a guarantee is given under this section, the Secretary of State shall lay a statement of the guarantee before each House of Parliament; and where any sum is issued for fulfilling a guarantee so given, he shall lay before each House of Parliament a statement relating to that sum, as soon as possible after the end of each financial year, beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.
- (3) Any sums required by the Secretary of State for fulfilling a guarantee under this section shall be paid out of money provided by Parliament.
- (4) If any sums are issued by the Secretary of State in fulfilment of a guarantee given by him under this section, SQA shall make to him at such time and in such manner as, with the consent of the Treasury, he from time to time directs, payments of such amounts as, with such consent, he so directs in or towards repayment of the sums so issued and payments of interest, at such rate as, with such consent, he so directs, on what is outstanding for the time being in respect of sums so issued.
- (5) Any sums received by the Secretary of State in pursuance of subsection (4) above shall be paid into the Consolidated Fund.

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## **16 Accounts, records and audit.**

- (1) It shall be the duty of SQA to—
  - (a) keep proper accounts and proper accounting records; and
  - (b) prepare in respect of each financial year a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of SQA.
- (2) Every statement of accounts prepared by SQA in accordance with this section shall comply with any requirement which the Secretary of State has, with the consent of the Treasury, notified in writing to SQA and which relates to any of the following matters, namely—
  - (a) the information to be contained in the statement;
  - (b) the manner in which that information is to be presented; and
  - (c) the methods and principles according to which the statement is to be prepared.
- (3) SQA shall send copies of the statement of account to the Secretary of State and the Comptroller and Auditor General by such date following the end of the financial year as the Secretary of State so directs.
- (4) The Comptroller and Auditor General shall examine, certify and report on each statement of account received under subsection (3) above and shall lay copies of each statement and his report before each House of Parliament.

### *Property*

## **17 Transfer of property etc. to SQA.**

- (1) On such date as the Secretary of State may, by order, prescribe (in this Part of this Act referred to as the “transfer date”) there shall be transferred to and vest in SQA all property, rights, liabilities and obligations mentioned in subsection (2) below.
- (2) The property, rights, liabilities and obligations referred to in subsection (1) above are—
  - (a) all land or other property (including corporeal and incorporeal moveable property) which immediately before the transfer date was owned by either the Scottish Examination Board or the Scottish Vocational Education Council (in this Part of this Act referred to as the “existing bodies”); and
  - (b) all rights, liabilities and obligations which, immediately before the transfer date, subsisted in respect of either of the existing bodies.
- (3) Any reference in this Part of this Act—
  - (a) to property of either of the existing bodies is a reference to such property whether situated in the United Kingdom or elsewhere;
  - (b) to rights, liabilities and obligations of either of the existing bodies is a reference to rights to which the body in question is entitled or as the case may be to liabilities or obligations to which the body is subject, whether under the law of the United Kingdom or of any part of the United Kingdom or under the law of any country or territory outwith the United Kingdom.
- (4) The vesting of property, rights, liabilities and obligations under this section shall have effect notwithstanding—
  - (a) anything to the contrary in; or



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- (b) any condition relating to the transfer of such property, rights, liabilities and obligations contained in,  
any enactment, rule of law or obligation.

### *Staff*

## **18 Transfer of staff to SQA.**

- (1) This section applies to any person (in this section referred to as a “qualifying person”) who, immediately before the transfer date, is employed by an existing body.
- (2) The contract of employment between a qualifying person and the existing body shall have effect from the transfer date as if originally made between him and SQA.
- (3) Without prejudice to subsection (2) above—
  - (a) all the existing body’s rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this paragraph be transferred to SQA on the transfer date; and
  - (b) anything done before that date by or in relation to the existing body in respect of that contract or the qualifying person shall be deemed from that date to have been done by or in relation to SQA.
- (4) Subsections (2) and (3) above are without prejudice to any right of a qualifying person to terminate his contract of employment if the terms and conditions of his employment are changed substantially to his detriment; but such change shall not be taken to have occurred by reason only of the fact that his employer is changed by virtue of this section.
- (5) Where a person—
  - (a) has, prior to the transfer date, entered into a contract of employment with an existing body which is to come into effect on or after that date; and
  - (b) would, if the contract had come into effect before that date, have been a qualifying person,he shall be treated for the purposes of this section as if he were a qualifying person.
- (6) In this section references to the terms and conditions of a person’s contract of employment with an existing body shall be construed as including references to any rights (whether accrued or contingent) under any pension or superannuation scheme of which he was a member by virtue of his employment with the body.

### *Dissolution of the Scottish Examination Board and of the Scottish Vocational Education Council: the Winding Down Period*

## **19 Dissolution of the Scottish Examination Board and of the Scottish Vocational Education Council.**

- (1) The Scottish Examination Board and the Scottish Vocational Education Council shall continue in existence after the transfer date until the body in question is dissolved under subsection (3) below.
- (2) The period of each of the existing body’s continued existence is, in relation to that body, referred to in this Part of this Act as its “winding down period”.

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- (3) The Secretary of State may by order, on a date so specified in the order—
- (a) after consulting the Scottish Examination Board and SQA, dissolve the Scottish Examination Board (such date being referred to in this Part of this Act as the “SEB dissolution date”);
  - (b) after consulting the Scottish Vocational Education Council and SQA, dissolve the Scottish Vocational Education Council (such date being referred to in this Part of this Act as the “SCOTVEC dissolution date”),
- as soon as he is satisfied that nothing further remains to be done by the Scottish Examination Board or, as the case may be, the Scottish Vocational Education Council (whether under this section or Schedule 2 to this Act or otherwise).
- (4) The same date may be appointed as the SEB dissolution date and the SCOTVEC dissolution date.
- (5) The Secretary of State may by order vary—
- (a) the SEB dissolution date; and
  - (b) the SCOTVEC dissolution date;
- at any time prior to the date in question.
- (6) During the winding down period an existing body shall, subject to Schedule 2 to this Act, have such functions as are necessary or expedient—
- (a) to facilitate the transfer of its property, rights, liabilities, obligations and staff to SQA in pursuance of sections 17 and 18 of this Act; and
  - (b) to facilitate or enable the effective carrying on by SQA of its functions after the transfer date.
- (7) Subject to paragraph 1 of Schedule 2 to this Act, nothing in this section shall authorise an existing body to enter into a contract of employment with any person.
- (8) Schedule 2 to this Act shall have effect in relation to the existing bodies and SQA during the winding down period.
- (9) Any expenses incurred by an existing body in pursuance of this section or Schedule 2 to this Act shall be met by SQA.

### *Transitional*

## **20 Transitional provisions as regards SQA.**

- (1) During the transitional period SQA shall have such of the functions to be conferred on it by this Part of this Act as are necessary or expedient—
- (a) to facilitate the transfer of property, rights, liabilities, obligations and staff to it under sections 17 and 18 of this Act; and
  - (b) to facilitate or enable the effective carrying on by it of its functions after the transfer date.
- (2) In this section and in Schedule 3 to this Act, the “transitional period” in relation to SQA is the period beginning with such date as the Secretary of State may by order prescribe for SQA and ending on the transfer date.
- (3) Schedule 3 to this Act, which makes provision for the transitional period as regards SQA, shall have effect.

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### Subordinate Legislation Made

P1 S. 20(2) power fully exercised (22.8.1996): 18.9.1996 appointed day by S.I. 1996/365.

## Interpretation of Part I

### 21 Interpretation of Part I.

In this Part of this Act, unless the context otherwise requires—

“degree” means a degree which is awarded by any university or institution specified as competent to grant such a degree by virtue of section 48 of the <sup>M2</sup>Further and Higher Education (Scotland) Act 1992;

“enactment” includes an enactment contained in a subordinate instrument whether passed or made before or after the coming into force of this Act;

“existing bodies” has the meaning given by section 17(2) of this Act;

“financial year” means such period as the Secretary of State may from time to time determine;

“SCOTVEC dissolution date” has the meaning given by section 19(3)(b) of this Act;

“SEB dissolution date” has the meaning given by section 19(3)(a) of this Act;

“special educational needs” has the meaning given by section 1(5)(d) of the <sup>M3</sup>Education (Scotland) Act 1980;

“SQA” means the Scottish Qualifications Authority;

“SQA qualification” means any qualification devised or awarded by SQA;

“transfer date” has the meaning given by section 17(1) of this Act;

“transitional period” has the meaning given by section 20(2) of this Act;

“winding down period” has the meaning given by section 19(2) of this Act.

### Marginal Citations

M2 1992 c. 37.

M3 1980 c. 44.

## Service of documents

### 22 Service of documents.

- (1) Any notice required or authorised by virtue of this Part of this Act to be served (whether the expression “serve” or the expression “give” or “send” or any other expression is used) on any person may be served—
  - (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
  - (b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary of that body.
- (2) For the purposes of this section and of section 7 of the <sup>M4</sup>Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section,

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the proper address of any person on whom a document is to be served shall be his last known address, except that in a case to which paragraph (b) of subsection (1) above applies, it shall be the address of the registered or principal office of the body; and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a firm carrying on business outside the United Kingdom is its principal office within the United Kingdom.

- (3) If a person to be served by virtue of this Part of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purposes of this section and for the purposes of the said section 7 in its application to this section.
- (4) This section shall not apply to any document in relation to the service of which provision is made by rules of court.
- (5) In this section “serve” shall be construed in accordance with subsection (1) above.

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**Marginal Citations**

**M4** 1978 c. 30.

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