

These notes relate to the Scottish Qualifications Authority Act 2002 (asp 14) which received Royal Assent on 6 June 2002

SCOTTISH QUALIFICATIONS AUTHORITY ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE ACT

3. The Scottish Qualifications Authority (“the SQA”) is established under the [Education \(Scotland\) Act 1996 \(c.43\)](#) (“the 1996 Act”).

Section 1 - Scottish Qualifications Authority: members

4. [Section 1](#) makes new arrangements for the appointment of members to the SQA board and changes the number of members required for meetings of the board to be quorate.
5. Subsection (4) amends section 1 of the 1996 Act to provide that the SQA board must comprise—
 - between 8 and 10 members, including a chair; and
 - a chief executive.
6. Subsection (4)(b) requires that one of the members appointed under the amended section 1 of the 1996 Act must be a person appearing to the Scottish Ministers to have special knowledge of the interests of the employees of the SQA. Subsection (4)(b) also provides that Scottish Ministers shall consult the employees of the SQA or their representatives, as they think fit, to establish what knowledge of staff interests or other attributes the person to be appointed should possess.
7. Section 1 of the 1996 Act requires the SQA board to have between 16 and 25 members. Subsection (1) therefore provides that the current members of the board (other than the chief executive) will cease to hold office on the day on which this section comes into force. The Act does not preclude members who so cease to hold office from being re-appointed to the board.
8. Subsection (5) amends paragraph 2 of Schedule 1 to the 1996 Act to remove the provision limiting appointments to the SQA to a maximum four-year term. Appointments will continue to be governed by the non-statutory guidance issued by the Office of the Commissioner for Public Appointments, or by any Scottish commissioner for public appointments that may be appointed.
9. All board members, other than the chief executive, are to be appointed by the Scottish Ministers. Paragraph 15 of Schedule 1 to the 1996 Act will continue to apply in relation to the chief executive. That paragraph provides that the chief executive is to be appointed by the SQA, with the approval of the Scottish Ministers. The amendment made by subsection (7) will also allow the SQA to pay remuneration and other allowances to all members of the Board, including the chair. Under the current provisions remuneration may be paid only to the chief executive and the chair.

10. In line with the reduction in the size of the board, the quorum for a meeting of the SQA will, by virtue of the amendment made to the 1996 Act by subsection (8), be reduced from nine to six.
11. Paragraph 3 of Schedule 1 to the 1996 Act requires the Scottish Ministers to satisfy themselves that members of the SQA have no interests likely to affect prejudicially performance of their duties. As the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(asp 7\)](#) and the Code of Conduct for members of the SQA prepared under that Act make provision in relation to these issues, the provisions of the 1996 Act are no longer necessary. Subsection (6) therefore repeals paragraph 3 of Schedule 1.
12. Subsection (9) amends paragraph 11(4) of Schedule 1 to the 1996 Act, which deals with members' avoidance of conflicts of interest. The provision introduced at subsection (4) (b) of the Act for the appointment of a person with special knowledge of the interests of SQA employees allows such a person to be an employee of the SQA. Subsection (9) therefore supplements the existing provision to ensure that the conflicts of interest provision in the 1996 Act applies to any member who is appointed under the new section 1(2A) of the 1996 Act and is an employee of the SQA.

Section 2 - Power to regulate SQA procedures

13. [Section 2](#) gives the Scottish Ministers a power to make regulations about the procedure of the SQA and its committees. Among other things, these regulations may make specific provision for a representative of the Scottish Ministers, other than a member of the SQA, to participate at meetings of the SQA and its committees.
14. By virtue of section 35 of the 1996 Act, such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

Section 3 - Advisory Council: power to establish

15. [Section 3](#) gives the Scottish Ministers a power to make regulations to establish an Advisory Council. The purposes of the Council will be to consider and advise on matters relating to the qualifications which are devised or awarded by the SQA, or to the functions and procedures of the SQA. The Council may provide advice to the SQA or to the Scottish Ministers on these issues (either at the request of the SQA or Ministers or on the Council's own initiative). Subsection (2) sets out particular matters that may be provided for by regulations under this section, including the appointment of a convener of the Council. Subsection (3) provides that only a member of the SQA may be appointed as convener of the Council. Subsection (1) enables incidental or supplementary provisions relating to the Council to be included in any regulations that the Scottish Ministers make.
16. Regulations made under this section will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

Section 4 - SQA and Advisory Council: consultation

17. [Section 4](#) deals with consultation. Subsection (1) places a duty on the Advisory Council, having regard to any advice issued by the Scottish Ministers in that connection, to consult with other parties that have an interest in the matters it considers, as it thinks fit, and to have regard to their views in its consideration and provision of advice. Subsection (3) places a duty on the SQA to consult the Advisory Council on all appropriate issues relating to carrying out its functions; and a corresponding duty on the Advisory Council to consult the SQA. The Scottish Ministers can issue guidance to the SQA and the Advisory Council as to how this duty should be carried out.

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Section 5 - Advice to SQA

18. This section amends section 7 of the 1996 Act and requires the SQA, in carrying out its functions, to have regard to advice from the Advisory Council.