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Rt Hon Bridget Phillipson MP
Secretary of State for Education
Department for Education
Sanctuary Buildings
Great Smith Street
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6 June 2025

Dear Bridget

I refer to my letter of 10 October 2024 and your reply of 27 March 2025 agreeing in principle to the proposed provisions of a draft Order under section 104 of the Scotland Act 1998 to make provision in consequence of the Education (Scotland) Bill, once passed. I am writing to seek your further agreement in principle to additional provisions to be included in the Order currently being prepared.

The Education (Scotland) Act 1996 (“the 1996 Act”) provides the Scottish Qualifications Authority (“SQA”) with a set of general functions that enables it to devise, assess and award qualifications. It also provides the SQA with a set of functions relating to the accreditation of qualifications. Under section 8 of the 1996 Act the SQA has power to deliver these awarding and accreditation functions within or outwith Scotland. It is the Scottish Government’s policy objective that Qualifications Scotland, the replacement body being created by the Education (Scotland) Bill, can fulfil the same functions and remit as the SQA.

The SQA was established and given functions that enable it to deliver services outwith Scotland by the 1996 Act, a pre-devolution Act of the UK Parliament, which was not subject to the restrictions on devolved legislation in the Scotland Act 1998.

The Education (Scotland) Bill will confer on Qualifications Scotland general functions which broadly mirror the SQA’s current awarding and accreditation functions including the power to exercise these functions within or outwith Scotland. The purpose of this provision is to ensure services and products currently delivered by the SQA can be transferred and delivered by Qualifications Scotland when it is established. As our policy objective is to ensure Qualifications Scotland takes on the SQA’s full functional remit, which is not restricted by the limitations of the Scotland Act 1998, the Scottish Government requests that provisions be added to the draft section 104 Order to provide Qualifications Scotland with that same remit.

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While it would have been my preference to continue with the Bill as introduced in June 2024 and allow Qualifications Scotland to deliver the full suite of the SQA's current services and products outside of Scotland, I understand through conversations with the UK Government that there are concerns that the current devolution arrangements may not allow for this in relation to a small number of specific qualifications delivered in England and Wales. In the interests of ensuring that the Scottish Government's policy aims can be delivered, I am seeking to include these additional provisions in the section 104 Order.

It is also our intention to be able to dissolve the SQA after the Education (Scotland) Bill (once it has been passed by the Scottish Parliament and received Royal Assent) has established Qualifications Scotland. To achieve our desired outcome additional provisions relating to the dissolution and repeal of the section within the 1996 Act which provides for the SQA to deliver functions outwith Scotland will require to be included in the section 104 Order. These provisions reflect the importance of Scottish Parliament being able to enact legislation that allows for Scottish Ministers to dissolve Scottish public bodies.

Accordingly, I am seeking your agreement in principle to the additional provisions as set out above.

Final Ministerial agreement for the section 104 Order to be laid in draft in the UK Parliament will be sought in the usual manner, when the draft Order is ready to begin its Parliamentary scrutiny.

I am copying this letter to Ian Murray MP, Secretary of State for Scotland and the Convener of the Scottish Parliament's Education, Children and Young People Committee.

Yours sincerely

JENNY GILRUTH

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