

## **Direction given to the Scottish Qualifications Authority under section 9 of the Education (Scotland) Act 1996**

1. The Scottish Ministers in exercise of their powers conferred by section 9(1) of the Education (Scotland) Act 1996 (c.43) (“the 1996 Act”), and in recognition of their duty under section 3A of the Standards in Scotland’s Schools etc. Act 2000 (asp 6), give the following Direction to the Scottish Qualifications Authority (“the SQA”), the body corporate established by the Scottish Qualifications Authority (Establishment) (Scotland) Order 1996 (S.I. 1996/2248) which is made under section 1 of the 1996 Act.
2. In accordance with section 9(1) of the 1996 Act, the Scottish Ministers have consulted with the SQA before giving this Direction.

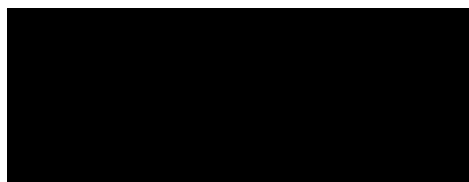
### **The Scottish Ministers direct as follows:**

3. Paragraph 4 of this Direction applies only in respect of learners—
  - a. who, but for the cancellation of the 2020 diet of examinations for National 5, Higher and Advanced Highers, would have been presented for an examination for an SQA qualification, and
  - b. who were, as a result of the moderation process applied by the SQA, awarded a lower refined band than that estimated by the centre that presented them.
4. The SQA is required, in respect of those learners and those awards referred to in paragraph 3, to revise each such award so as to conform to the centre estimate and, as soon as reasonably practicable, confirm and certificate each such revised award.
5. The SQA is required to make no change to awards where the refined band awarded to a learner is the same as or higher than the refined band estimated by the centre that presented them.
6. The SQA is required to submit to the Scottish Ministers by 5pm on 13 August 2020 its proposals for adaptation of its appeal processes in consequence of paragraphs 4 and 5.

### **Commencement and duration**

7. This Direction has effect from 22:00 on 11 August 2020.
8. This Direction has effect until it is revoked by a further Direction given by the Scottish Ministers.

Signed by **Redacted - section 38(1)(b)**



**John Swinney MSP**  
**Deputy First Minister and Cabinet**  
**Secretary for Education and Skill**  
11 August 2020

Redacted - section 38(1)(b)

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**From:** [REDACTED]@gov.scot [REDACTED]@gov.scot> **On Behalf Of** [DFMCSE@gov.scot](mailto:DFMCSE@gov.scot)  
**Sent:** 11 August 2020 21:56  
**To:** Fiona Robertson <[fiona.robertson@sqa.org.uk](mailto:fiona.robertson@sqa.org.uk)>  
**Cc:** [DFMCSE@gov.scot](mailto:DFMCSE@gov.scot)  
**Subject:** Letter of Direction from the Deputy First Minister and Cabinet Secretary for Education and Skills

Dear Fiona

Please find attached a letter of direction from the Deputy First Minister and Cabinet Secretary for Education and Skills.

Kind regards

[REDACTED]

[REDACTED] | Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House | Edinburgh | EH1 3DG | Tel: 0131 244 3650/07824482427 | E: [DFMCSE@gov.scot](mailto:DFMCSE@gov.scot)

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necessarily reflect those of the Scottish Government.

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Redacted - section 38(1)(b)

**From:** [Fiona Robertson](#)  
**To:** [Paul.Johnston@gov.scot](#)  
**Cc:** [DirectorofLearning@gov.scot](#); [REDACTED]@gov.scot; [REDACTED]@gov.scot;  
[REDACTED]@gov.scot; [DGEJ@gov.scot](#); [Steve Bonney](#); [Michael Baxter](#)  
**Subject:** RE: CONFIDENTIAL - Scottish Ministers - SQA  
**Date:** 10 August 2020 23:10:00  
**Importance:** High

Redacted - legal  
privilege

Paul

Many thanks for this. I also refer to the related email from Graeme Logan (Director of Learning) at 16:28 and my response to him at 22:28.

I attach revisions (clean copy) of the draft direction which also constitute our response to the consultation.

You will note that there is a substantive change in relation to appeals at paragraph 6. It is our preference that the appeals mechanism is included in the direction in the terms outlined. I do not think this should cause you any difficulty.

Redacted - legal privilege

Very happy to speak tomorrow. Many thanks.

Fiona

Fiona Robertson

Chief Executive

Scottish Qualifications Authority

t: 0345 213 5000 | w: <http://www.sqa.org.uk>

The Optima Building, 58 Robertson Street, GLASGOW G2 8DQ | 24 Wester Shawfair, Lowden, Dalkeith, Midlothian EH22 1FD

**From:** Paul.Johnston@gov.scot <Paul.Johnston@gov.scot>

**Sent:** 10 August 2020 18:53

Redacted - section 38(1)(b)

**To:** Fiona Robertson <fiona.robertson@sqa.org.uk>

**Cc:** DirectorofLearning@gov.scot; [REDACTED]@gov.scot; [REDACTED]@gov.scot;

[REDACTED]@gov.scot; [DGEJ@gov.scot](#)

**Subject:** FW: CONFIDENTIAL - Scottish Ministers - SQA

Redacted - legal privilege

Dear Fiona

I would welcome your comments on the draft. In particular, we spoke about the provisions in relation to appeals. My thinking on this is that the SQA will be best placed to judge what is needed by way of a fair and reasonable appeals process following on from the implementation of this direction, and would want to engage with key partners before finalising any process (or confirming elements of the existing process).

I would therefore prefer that we do not seek to set out the detailed appeal process between now and tomorrow afternoon, though am happy that we have further engagement on this.

I recognise that you will want to be assured that any process has the full support of the Scottish Government before it is confirmed.

Happy to speak further at any stage.

Best wishes

Paul

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[REDACTED]

[illegible]

[REDACTED]

Redacted - section 38(1)(b)

**From:** [Fiona Robertson](#)  
**To:** [DirectorofLearning@gov.scot](#); [David Middleton](#); [David Middleton](#)  
**Cc:** [Paul.Johnston@gov.scot](#); [REDACTED]@gov.scot; [REDACTED]@gov.scot; [REDACTED]@gov.scot;  
[Steve Borley](#); [Michael Baxter](#)  
**Subject:** RE: Consultation on proposed direction  
**Date:** 10 August 2020 22:27:00  
**Sensitivity:** Private

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Graeme

Thanks for this.

I now have the draft direction under cover of Paul Johnston's email of today's date at 1853. Our response to this consultation will be combined with our comments on the draft direction.

With best wishes.

Fiona

Fiona Robertson

Chief Executive

Scottish Qualifications Authority

t: 0345 213 5000 | w: <http://www.sqa.org.uk>

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Fiona

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**From:** Graeme.Logan@gov.scot <Graeme.Logan@gov.scot> **On Behalf Of**

[DirectorofLearning@gov.scot](#)

**Sent:** 10 August 2020 16:28

Redacted - section 38(1)(b)

**To:** Fiona Robertson <[fiona.robertson@sqa.org.uk](mailto:fiona.robertson@sqa.org.uk)>; [davidmiddletonsqa@gmail.com](mailto:davidmiddletonsqa@gmail.com)

**Cc:** [Paul.Johnston@gov.scot](#); [REDACTED]@gov.scot; [REDACTED]@gov.scot; [REDACTED]

[REDACTED]@gov.scot

**Subject:** Consultation on proposed direction

**Importance:** High

**Sensitivity:** Private

Dear Fiona

The purpose of this letter is to consult you on the proposed exercise by the Scottish Ministers of their power to issue a direction to the SQA under section 9(1) of the Education (Scotland) Act 1996.

For the 2020 exam diet only, the Scottish Government propose to require the SQA to re-issue awards based on the estimates submitted by teachers, in cases where the award issued was lower than the teacher estimate. There would be no need for any adjustment where the award reflected the teacher estimate or where the award was higher than the teacher estimate.

We would wish the SQA to re-issue these awards as soon as possible.

We would also wish the SQA to work with its key partners (including local authorities and the Scottish Government) to consider the need for an appeals mechanism that reflects the change of circumstances and confirm any necessary arrangements.

The rationale for the proposed direction relates primarily to the impact that the approach taken to date has had on some learners who face socio-economic disadvantage. In particular, those learners from the most deprived backgrounds have been shown to be more likely to have their teacher estimates adjusted downwards than learners from less deprived backgrounds. This is not acceptable to Ministers given their duty to reduce inequalities of outcome for those facing socio-economic disadvantage, and their policy in relation to closing the poverty related attainment gap.

Ministers recognise that the circumstances in which the direction is proposed are truly

exceptional, given the closure of schools and colleges and the cancellation of the exam diet due to COVID-19. They are also grateful to the SQA for all the work that has been done to develop an alternative certification model.

I would be grateful for comments on the proposed approach by 9am on Tuesday 11 August.

Our lawyers in SGLD are developing a draft direction in the course of the day and would welcome the opportunity to share it with you and your lawyers for comments at this stage.

Graeme Logan

Director of Learning

The Scottish Government

Tel: [REDACTED] Redacted - 38(1)(b)

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