



Scottish Qualifications Authority  
Ùghdarras Theisteanas Na H-Alba

3 September 2020

Lynn Welsh  
Head of Scotland  
EHRC Scotland Legal and Compliance

By email: [Lynn.Welsh@equalityhumanrights.com](mailto:Lynn.Welsh@equalityhumanrights.com)

Contact: [Fiona.Robertson@sqa.org.uk](mailto:Fiona.Robertson@sqa.org.uk)

Dear Lynn,

### **SQA compliance with the public sector equality duty (PSED)**

Thank you for your email of 14 August outlining the views of the EHRC on our duties, following the Ministerial direction announced by the Deputy First Minister to the Scottish Parliament on Tuesday 11 August regarding this year's SQA results. Please accept my apologies for the slight delay in replying to you.

In compliance with the Deputy First Minister's direction, SQA has changed the previous approach to certification this year – the Alternative Certification Model – and is awarding candidate results based solely on the estimated grades provided by schools and colleges. The Ministerial direction also confirmed that the results of those learners who were awarded a higher grade than their estimated grade as a result of the process will have that higher grade maintained. Revised attainment statistics were published on 31 August 2020.

Responsibility for producing a new Equality Impact Assessment lies with the Scottish Government following its decision and I understand this work is underway. We have provided the Scottish Government with all the data it needs to enable it to carry out this duty. We are also of the view that the scope, and range of this new Equality Impact Assessment is now a matter for the Scottish Government.

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Chair: David Middleton CBE  
Chief Executive: Fiona Robertson

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On Tuesday 18 August, we published updated grounds for centres to appeal final grades following the Ministerial direction. Schools and colleges will be able to proceed with an appeal if they believe there has been:

- i) an error within SQA's internal processes for reinstating the original centre estimate;
- ii) an administrative error within the centre leading to provision of estimate information to SQA which did not accurately reflect the centre's intention at the time of submission; and/or
- iii) discrimination or other conduct contrary to the Equality Act 2010 identified within the centre relating to protected characteristics, leading to the provision of estimate information to SQA which does not accurately reflect the centre's view following investigation of the circumstances carried out by the centre.

Only the head of centre, or their nominated representative, using their professional judgement and discretion can submit an appeal using SQA's 'Request for Consideration by Exception' form. Candidate consent must be obtained by the centre before submitting a request. This is in line with our post-results services every year.

Following receipt of the form, the request will be considered by a panel of senior SQA officers, with the final outcome signed off by an SQA Director. Centres will be notified of the outcome in writing. The outcome will be either that the appeal is unsuccessful for which SQA will provide reasoning, or the appeal is successful, and the revised estimate provided by the centre will be awarded.

Information regarding the updated appeals process has been shared with the heads of centre and SQA coordinators at schools and colleges, as well as Directors of Education, Heads of Education, and Quality Improvement Officers at local authorities. The information was also published on our website – [www.sqa.org.uk/appeals](http://www.sqa.org.uk/appeals) – and shared across our social platforms. Our stakeholders, including learner and parent organisations, were also informed.

In response to the EHRC's views on collecting equality monitoring data, we have looked at the data that is available to us through the agreement with the Scottish Government, and determined that the Pupil Census covers all local authority candidates, not just those in mainstream schools, which is the vast majority of SQA's candidates. In addition, the pupil census provides us with a sufficient dataset to allow us to review the impact of any certification method on candidates with protected characteristics. We will continue to use our own data to review sex, age, and socioeconomic factors – these cover all candidates no matter their centre.

Our position on special category data remains unchanged. We will not be collecting special category personal data as part of the appeals process.

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It is our view that Schedule 1, Part 2, paragraph 8 of the Data Protection Act 2018 is concerned with article 9 of GDPR. It is our understanding that before SQA, or any data controller, gets to the processing of article 9 data, it must have an article 6 justification for the processing of the data. This is clearly explained in the terms of article 9 of the GDPR, and also from ICO guidance that says "*In order to lawfully process special category data, you must identify both a lawful basis under Article 6 of the GDPR and a separate condition for processing under Article 9*".

The paragraph on equality of opportunity that is in Schedule 1 does not create the legal basis (for article 6 purposes) of entitling SQA to collect the special category data in the first place.

SQA does not have a free-standing justification for doing so; the gathering of this kind of special category data is not necessary for the discharge of the public tasks that give SQA the article 6 justification for processing personal data.

As such, we maintain our position that we do not have a lawful basis to collect and process special category personal data for SQA candidates. By not doing so, we are complying with our obligations as a data controller.

Thank you again for your engagement with us throughout this extraordinary time. We have greatly appreciated your assistance and advice and I am grateful for your recognition in your letter regarding how we have taken on board the helpful advice and support provided.

I am copying this letter to Graeme Logan, Director of Learning at the Scottish Government.

Yours sincerely

**Personal Data**

Fiona Robertson  
Chief Executive