



# Apprenticeships, Skills, Children and Learning Act 2009

## 2009 CHAPTER 22

### PART 7

#### THE OFFICE OF QUALIFICATIONS AND EXAMINATIONS REGULATION

#### CHAPTER 2

#### FUNCTIONS IN RELATION TO QUALIFICATIONS

#### *Recognised bodies: monitoring and enforcement*

#### **149 Review of activities of recognised bodies**

- (1) Ofqual may keep under review any connected activities of a recognised body.
- (2) An activity of a recognised body is a connected activity if Ofqual considers that it is connected or otherwise relevant to—
  - (a) the body's recognition (including, in particular, the compliance by the body with the conditions to which the recognition is subject), or
  - (b) the award or authentication by the body of any qualification in respect of which it is recognised.

#### **150 Investigation of complaints**

- (1) Ofqual may investigate, or make arrangements for the investigation of, complaints in relation to the award or authentication of a regulated qualification.
- (2) Arrangements made under subsection (1) may in particular include arrangements for the referral of complaints to an independent party.
- (3) "An independent party" means—

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- (a) an individual who is not a member of Ofqual or Ofqual's staff, or
- (b) a body none of whose members is a member of Ofqual or Ofqual's staff.

### **151 Power to give directions**

- (1) Subsection (2) applies if it appears to Ofqual—
  - (a) that a recognised body has failed or is likely to fail to comply with any condition to which the recognition is subject, and
  - (b) that the failure prejudices or would be likely to prejudice—
    - (i) the proper award or authentication by the body of any qualification in respect of which the body is recognised, or
    - (ii) persons who might reasonably be expected to seek to obtain such a qualification awarded or authenticated by the body.
- (2) Ofqual may direct the recognised body to take or refrain from taking specified steps with a view to securing compliance with the condition.
- (3) Before giving a recognised body a direction under this section Ofqual must give notice to the body of its intention to do so.
- (4) The notice must—
  - (a) set out Ofqual's reasons for proposing to give the direction, and
  - (b) specify the period during which, and the way in which, the recognised body may make representations about the proposal.
- (5) Ofqual must have regard to any representations made by the recognised body during the period specified in the notice in deciding whether to give a direction to the body.
- (6) A recognised body must comply with a direction given to it under this section.
- (7) A direction under this section is enforceable, on the application of Ofqual—
  - (a) in England and Wales, by a mandatory order, or
  - (b) in Northern Ireland, by an order of mandamus.
- (8) A direction given under this section may be amended or revoked by Ofqual; and subsections (3) to (5) apply to the amendment of a direction as they apply to the giving of a direction.

### **152 Power to withdraw recognition**

- (1) Subsection (2) applies if a recognised body has failed to comply with a condition to which the recognition is subject.
- (2) Ofqual may withdraw recognition from the recognised body in respect of the award or authentication of a specified qualification or a specified description of qualification if it appears to Ofqual that the failure mentioned in subsection (1) prejudices or would be likely to prejudice—
  - (a) the proper award or authentication by the body of the qualification or a qualification of the description in question, or
  - (b) persons who might reasonably be expected to seek to obtain the qualification or a qualification of the description in question awarded or authenticated by the body.

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- (3) Before withdrawing recognition from a recognised body in any respect Ofqual must give notice to the body of its intention to do so.
- (4) The notice must—
  - (a) set out Ofqual’s reasons for proposing to withdraw recognition from the recognised body in the respect in question, and
  - (b) specify the period during which, and the way in which, the recognised body may make representations about the proposal.
- (5) Ofqual must have regard to any representations made by the recognised body during the period specified in the notice in deciding whether to withdraw recognition from the body in the respect in question.
- (6) If Ofqual decides to withdraw recognition from a recognised body Ofqual—
  - (a) must give notice to the body of its decision and of the date on which the withdrawal is to take effect, and
  - (b) may make saving or transitional provision.
- (7) At any time before a withdrawal takes effect Ofqual may vary the date on which it is to take effect by giving further notice to the recognised body.
- (8) Ofqual must establish arrangements for the review, at the request of a recognised body, of a decision to withdraw recognition under this section.
- (9) The arrangements established under subsection (8) must require the decision on review to be made by a person who is independent of Ofqual.
- (10) A person is independent of Ofqual for the purposes of subsection (9) if the person is—
  - (a) an individual who is not a member of Ofqual or Ofqual’s staff, or
  - (b) a body none of whose members is a member of Ofqual or Ofqual’s staff.

### **153 Qualifications regulatory framework**

- (1) Ofqual must prepare and publish—
  - (a) a statement of how Ofqual intends to perform the monitoring and enforcement functions, and
  - (b) guidance to recognised bodies in relation to the award and authentication of qualifications in respect of which they are recognised.
- (2) The statement and guidance mentioned in subsection (1) are together referred to in this section as “the qualifications regulatory framework”.
- (3) Guidance under subsection (1)(b) must include guidance for the purpose of helping to determine whether or not behaviour complies with the general conditions to which a recognition is subject (see section 134).
- (4) The guidance may in particular specify—
  - (a) descriptions of behaviour which Ofqual considers complies with a general condition;
  - (b) descriptions of behaviour which Ofqual considers does not comply with a general condition;
  - (c) factors which Ofqual will take into account in determining whether or not a recognised body’s behaviour complies with a general condition.

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- (5) Ofqual—
  - (a) may revise the qualifications regulatory framework, and
  - (b) if it does so, must publish the revised version.
- (6) Before publishing the qualifications regulatory framework or a revised version of it, Ofqual must consult such persons as it considers appropriate.
- (7) A recognised body must have regard to guidance under subsection (1)(b) in awarding or authenticating a qualification in respect of which it is recognised.
- (8) In subsection (1) “the monitoring and enforcement functions” means—
  - (a) Ofqual’s power under section 132(3)(d) (power to impose other conditions);
  - (b) Ofqual’s functions under sections 132(4) and 134 (functions in relation to general conditions);
  - (c) Ofqual’s functions under an entry and inspection condition to which a recognition is subject (see section 135);
  - (d) Ofqual’s functions under section 138(1) (power to determine that a qualification is subject to the accreditation requirement);
  - (e) Ofqual’s functions under sections 149 to 152.