

# **APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 7: Office of Qualifications and Examinations Regulation**

##### *Chapter 2: Functions in relation to qualifications*

##### **Recognition of awarding bodies**

##### *Section 132: Recognition*

405. This section requires Ofqual to “recognise” awarding bodies in respect of specific qualifications or descriptions of qualification (or in respect of credits for components of qualifications). Ofqual could use a “description of qualification” in two ways. The first is to make more general provision (for example, to catch a class of qualifications, covering a number of different subject or sector areas. Examples would include ‘A-level’ or ‘National Vocational Qualification (NVQ)’). The second is to make more specific provision, for example, to limit what is caught to a particular form of a type of qualification. For example, ‘history GCSEs assessed 100% by course work’ is a description of a qualification.
406. By recognising a body Ofqual confirms that the body is fit to award or authenticate the qualifications or qualifications of a description for which it is recognised, in other words that it has the appropriate systems, expertise and organisational robustness to allow it to do so effectively. Ofqual must recognise a body to award or authenticate particular qualifications or categories of qualification (or credits in respect of components of qualifications) only where a body applies for recognition and meets Ofqual’s criteria for recognition. The terms “awarding body”, “recognised body” and “recognition” are defined at section 132(9).
407. Ofqual may not charge for recognition of an awarding body.
408. Recognition may be subject to three types of condition: general conditions, an accreditation condition, and other conditions imposed by Ofqual on individual recognitions. General conditions are dealt with in section 134 (see paragraphs 412 to 415 below). Accreditation conditions apply to recognition in respect of qualifications, or descriptions of qualifications, subject to the accreditation requirement – that is a requirement imposed by Ofqual that any form of the qualification or of qualifications of the relevant description is, or are, required to be accredited. An accreditation condition prohibits the recognised body from awarding a particular form of that qualification or of a qualification of that description, until accreditation for that form of qualification has been obtained. A recognition in respect of the award or authentication of a credit in respect of a component of a qualification cannot be subject to an accreditation condition.

409. Conditions may be imposed either when recognition is granted or at a later time. In the case of general conditions, these may be disapplied in individual cases, either at the time of recognition or later.

***Section 133: Criteria for recognition***

410. Ofqual will have discretion to set the criteria it will use to decide whether to recognise an awarding body. It must consult with such persons as it considers appropriate before setting or revising the criteria and must publish those criteria.
411. In exercising this function, Ofqual is to be able to set different criteria for recognition of different descriptions of awarding bodies, for recognition in respect of different qualifications (or credits in respect of different components of qualifications) or different descriptions of qualifications (or credits in respect of different descriptions of components of qualifications). Examples of criteria may include requirements as to the evidence to be provided to give adequate assurance of organisational stability; the existence of adequate processes for quality assurance; financial soundness of the organisation concerned; and the appropriateness of the processes of the awarding body for developing the qualifications for which recognition has been sought. Criteria may also cover factors such as the previous history of an awarding body prior to any application.

***Section 134: General conditions of recognition***

412. This section allows Ofqual to impose general conditions on recognition. Conditions are general in the sense that they are able to apply to all recognised bodies or particular descriptions of recognised body. Under *subsections (3), (4) and (5)*, these conditions may be changed at any time, provided Ofqual publishes them following consultation with such persons that it considers appropriate.
413. The conditions in section 134 will be central to Ofqual's regulatory role – it is through the setting of conditions (and where necessary enforcing compliance with those conditions) that Ofqual will be able to achieve its objectives in relation to qualifications.
414. Under the current regime, the QCA can impose conditions on accreditation and recognition. Under the provisions of the Act conditions will be imposed only on recognition, but in doing so Ofqual will be able to impose conditions which relate to particular qualifications or even to specific versions of a particular qualification, including conditions that flow from the accreditation process where it applies.
415. Examples of the general conditions Ofqual might impose under this power include:
- conditions requiring those awarding bodies offering GCSEs and A-levels to work together to ensure consistency of standards, to notify Ofqual by a specified date where there are problems with agreeing the standard and to accept Ofqual's judgment about that standard in that event;
  - broad regulatory principles, such as a condition that awarding bodies must deal with Ofqual in an open and cooperative way, including for example an obligation to disclose any information about changes to the awarding body of which Ofqual could reasonably expect notice; or
  - the specific requirements that apply in relation to the award of a particular qualification or class of qualifications – for example that vocational qualifications must meet the requirements of the relevant Sector Skills Council.

***Section 135: Other conditions of recognition***

416. Ofqual has a broad power to impose other conditions in relation to a recognition (see section 132(3)(d)). This section makes provision about two such types of condition:

- conditions limiting the amount a recognised body may charge for the award or authentication of a qualification in respect of which the body is recognised or for a service provided in connection with such a qualification (a “fee capping condition”). This is one of the main mechanisms by which Ofqual may pursue its efficiency objective. A fee capping condition may in the circumstances described in section 136, be applied to any charge levied in relation to the award or authentication of a qualification or any other service provided in relation to such a qualification. It might include, for example, fees charged by the recognised body to recognise a school or college wishing to offer the qualification;
- conditions requiring a recognised body to permit Ofqual to enter the body’s premises so far as is necessary for the purposes of inspecting and copying documents (an “entry and inspection condition”). However such a condition may be imposed only to enable Ofqual to investigate the maintenance of standards in relation to the award by a recognised body of a qualification in respect of which the body is recognised or the need for a fee capping condition.

417. Further provisions about these conditions are in sections 136 and 137.

### ***Section 136: Fee capping conditions: supplementary***

418. This section sets out the test that must be met before Ofqual can impose a fee capping condition, and the process that must be used where Ofqual proposes to do so. Ofqual can only impose such a condition limiting the amount of a particular fee if this is necessary for securing value for money. Before doing so Ofqual must give notice of its intention to impose a fee capping condition, and it must take account of any representations made by the recognised body in question before reaching a decision. Where Ofqual decides to impose a fee capping condition it must establish arrangements for an independent review of the decision if requested to do so by the relevant recognised body. In performing its functions in relation to fee capping conditions, Ofqual must have regard to any guidance from the Secretary of State, guidance that has to have been published. This provision over guidance reflects the fact that a significant proportion of the bodies which will be paying fees for many qualifications will be publicly funded. The current legislation gives the QCA a power to impose a fee capping condition, but the exercise of the power is subject to the consent of the Secretary of State.

### ***Section 137: Entry and inspection conditions: supplementary***

419. This section limits what Ofqual may require under an entry and inspection condition. Under the current legislation the QCA has a power to set a similar condition, but in the context of this legislation the safeguards in *subsection (1)* have been added. *Subsection (3)* refers to Ofqual having the power to do anything mentioned in section 58 of the Education Act 2005 in relation to the inspection of documents by an authorised person. In summary, this provision enables such a person to inspect records or other documents to which they are entitled at any reasonable time to have access, including checking the operation of any computer and associated apparatus or material relating to these records or documents. *Subsection (3)* will also enable an entry and inspection condition to require the user or person in charge of the computer, apparatus or material to give Ofqual any assistance that it may reasonably require.