

# APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8: the Qualifications and Curriculum Development Agency**

##### *Chapter 5: General*

##### *Section 192: Minor and consequential amendments*

537. This section introduces Schedule 12, which contains minor and consequential amendments resulting from the establishment of Ofqual and the revised regime for the QCDA. The changes to section 87 of the Education Act 2002 and to section 41 of the Childcare Act 2006 are particularly relevant to the QCDA's role, in that these Acts (and regulations made under them) along with the Education Act 1997 contain the full range of the QCA's current statutory functions. In other words, a significant amount of the QCA's work relates to functions conferred under the 2002 and 2006 Acts, and potentially this will also be the case for the QCDA.

##### *Schedule 12: Ofqual and the QCDA: minor and consequential amendments*

538. The amendments in this Schedule fall into eight categories:  
(1)

##### **Those that relate to the establishment of Ofqual as a new Non-Ministerial Department and to the change of name and charitable status of the Qualifications and Curriculum Authority (paragraphs 1-10, 20, 25, 30 and 43).**

539. In this category there are amendments to the following Acts: the Public Records Act 1958; the Parliamentary Commissioner Act 1967; the Local Authorities (Goods and Services) Act 1970; the Superannuation Act 1972; the House of Commons Disqualification Act 1975; the Northern Ireland Assembly Disqualification Act 1975; the Race Relations Act 1976; the Charities Act 1993; the Education Act 1996 (see also below); the Education Act 1997 (see also below); the Freedom of Information Act 2000; and the Safeguarding Vulnerable Groups Act 2006.

540. Ofqual does not need to be named explicitly as falling under some of these Acts, because its status as a Non-Ministerial Department means that no explicit provision is needed for these Acts to apply to it.

541. Additionally, the QCDA, unlike the QCA, will not be a charity, so there needs to be an amendment to the Charities Act 1993 to remove the reference to the QCA being an exempt charity.

542. [Paragraph 20](#) updates the reference to the QCA in section 35 of the 1997 Act.  
(2)

### **Amendments to the Education Act 1996 (paragraphs 9 to 11)**

543. These amendments make changes to the Education Act 1996 in consequence of the provisions in the Act about the set-up of the QCDA and the amendments to the Learning and Skills Act 2000 (see below). Paragraph 11 also limits the duty under section 408 of the 1996 Act (which concerns the provision of information about the education provided in maintained schools) to those qualifications that have been approved for public funding.

(3)

### **The repeal of sections 21 to 26A, section 36 and Schedule 4 to the Education Act 1997 (paragraphs 13 and 21-24)**

544. Sections 21 to 26A and Schedule 4 to the Education Act 1997 establish the QCA, make provision for its constitution, governance and proceedings, and confer functions on it. These provisions are repealed in consequence of the provisions of the Act in relation to Ofqual and the QCDA.

545. Section 36 provided a power for the Secretary of State to provide by regulations for the QCA and the Welsh Ministers to receive payment from persons who award vocational qualifications accredited by these authorities. The statutory levy on an awarding body for National Vocational Qualifications accredited by the QCA was replaced by direct grants to Sector Skills Councils from autumn 2008, and the relevant regulations have been revoked. The power has therefore become redundant.

(4)

### **Amendments to the provisions in the Education Act 1997 governing the regulation of qualifications in Wales, keeping the regulatory powers of Welsh Ministers broadly in step with those of Ofqual (paragraphs 14-19)**

#### **Paragraph 15**

546. Paragraph 15(2) amends section 30 of the Education Act 1997 to provide revised functions for the Welsh Ministers in relation to vocational and academic qualifications. The new subsection (1) for section 30 reflects the Welsh Ministers' existing functions, except in the following cases: the Welsh Ministers now have a function of determining whether a relevant qualification, or a description of qualification, is to be subject to a requirement that it be accredited. The Welsh Ministers also have an additional function of publishing and disseminating (or assisting in the publication or dissemination of) information relating to recognised bodies. The qualifications falling within the Welsh Ministers' remit have also changed. As a result of the amendments, the provisions will refer to "relevant qualifications", replacing the reference to "external qualifications". A definition for relevant qualifications is provided in paragraph 15(6), as outlined below.

547. Paragraph 15(3) makes consequential amendments to update references to subsections in section 30 of the 1997 Act. This reflects the insertion of new functions and the re-numbering of the paragraphs in section 30(1).

548. Paragraph 15(4) replaces section 30(1B) and paragraph 15(5) repeals section 30(1C), (1D) and (2) as a consequence of the Welsh Ministers having made an order under the existing section 30(2) transferring all remaining functions under section 30 to their sole exercise. In other words, the QCA's role in Wales has ceased by virtue of the order (and so the QCDA will have no functions in relation to Wales).

549. Paragraph 15(6) provides a description of the qualifications (the "relevant qualifications") that fall within the Welsh Ministers' remit. Qualifications that are foundation, first or higher degrees are excluded from that remit. A qualification is to be considered as awarded or authenticated in Wales where there are (or may reasonably be expected to be) people in Wales seeking to obtain that qualification who will be assessed wholly or mainly in Wales. References to "externality" are removed which

means that the Welsh Ministers will be able to recognise bodies which both teach and award qualifications, for example, employers or colleges.

550. Paragraph 15(7) repeals section 30(6) of the 1997 Act which has the effect of disapplying the definition of external qualifications contained in section 24(7), which will be repealed, see comment on paragraph 15(2) above.

### **Paragraph 16**

551. Paragraph 16(2) and (5) substitutes “persons with learning difficulties” for “persons with special learning needs”, mirroring the change made in relation to the QCDA. The word “reasonable” is also added, so section 32 of the 1997 Act will provide that the Welsh Ministers must have regard to the reasonable requirements of persons with learning difficulties in carrying out their functions. Paragraph 16(2)(a) also qualifies the duty to have regard to the requirements of industry, commerce, finance and the professions by reference to reasonableness.
552. Paragraph 16(3) amends the power for the Welsh Ministers to place a limit on fees charged by a recognised body for the award or authentication of a qualification. A fee capping condition may 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, any fees charged by the recognised body to recognise a school or college wishing to offer the qualification.
553. Paragraph 16(4) removes the power for the Welsh Ministers to act as agents for the QCA. It is not intended that the QCDA will exercise any functions in relation to Wales and this provision therefore becomes redundant.

### **Paragraph 17**

554. Paragraph 17 inserts into the 1997 Act a new section 32ZA containing power for the Welsh Ministers to co-operate or work jointly with a relevant authority in connection with carrying out their qualifications functions. A “relevant authority” is a person (whether or not in the UK) carrying out functions which are similar to the functions of the Welsh Ministers in relation to qualifications. The Welsh Ministers may provide information to such an authority, subject to any such disclosure not being in contravention of any other Act. The Welsh Ministers may establish joint committees where appropriate to do so for the carrying out of any of their qualifications functions and may delegate any of their qualifications functions to such a committee on such terms as they determine. The Welsh Ministers with any other person with whom they established the committee, may direct the committee as to what it may do.
555. These powers taken together will enable the continued operation of the three-country framework, whereby the qualifications regulators in Wales, England and Northern Ireland work together on the regulation of qualifications across all three countries.

### **Paragraph 18**

556. Paragraph 18(2) makes a consequential amendment to section 32A of the 1997 Act to reflect the QCA’s regulatory functions being transferred to Ofqual. Paragraph 18(3) makes a consequential amendment to reflect the insertion of new sections by paragraph 19. Paragraph 18(4) removes subsection 32A(6) from the 1997 Act, which becomes superfluous.

### **Paragraph 19**

557. Paragraph 19 inserts new sections 32B and 32C into the 1997 Act. The new section 32B (which reflects the provision made for Ofqual by section 152) provides that if an awarding body has not complied with a condition of recognition or accreditation, the Welsh Ministers may withdraw recognition in relation to some or all of the

qualifications for which it is recognised. However, the Welsh Ministers may only do this if the awarding body's breach of the condition seems likely to prejudice either the proper award of a qualification or a person expecting to be awarded with a qualification.

558. Subsections (5) to (11) of the new section 32B set out the steps that the Welsh Ministers must take before withdrawing recognition or accreditation, including giving notice of their intention, taking account of representations from the awarding body, and putting in place arrangements for the review of decisions.
559. The power for the Welsh Ministers to withdraw accreditation or recognition is currently implicit in the Education Act 1997 as amended by the Education and Skills Act 2008. The insertion of an express power in relation to recognition clarifies the scope and operation of what otherwise would have been implied powers and thereby provides greater transparency.
560. New section 32C provides for a recognised awarding body to be able to surrender its recognition, in whole or in part. A recognised awarding body may give notice to the Welsh Ministers, who then determine the date the recognition is to cease. In setting that date the Welsh Ministers must have regard to the need to avoid prejudice to those seeking to obtain the qualification in question.

(5)

**Amendments to the provisions of the Learning and Skills Act 2000 governing eligibility for public funding for qualifications in maintained schools etc (paragraphs 26-29)**

561. Under sections 96 and 98 of the Learning and Skills Act 2000, the Secretary of State has the power to approve qualifications for which a course may be taught to persons aged under 19 in a maintained school or in a provider funded by the Learning and Skills Council. The amendments to that Act in paragraph 28 allow the Secretary of State to approve a qualification only if either the qualification is a "regulated qualification" in accordance with Part 7 of this Act (and where the accreditation requirement applies, it is accredited), or if the Secretary of State consults Ofqual before approval. This ensures that, if the Secretary of State is considering granting approval for funding for a qualification which Ofqual does not regulate, he is aware of any views Ofqual has about the qualification. The change is part of implementing the Government's new qualifications strategy for 14 to 19s<sup>1</sup>. The amendments to section 96 in paragraph 27 bring the qualifications to which this approval regime applies into line with the qualifications in respect of which an awarding body may apply to be recognised by Ofqual.
562. Paragraph 29 amends section 99 of the Learning and Skills Act 2000, which is the Welsh equivalent of section 98. The amendment provides that a qualification is automatically approved for the purposes of section 96 if it is awarded by a body which is recognised by the Welsh Ministers (and, if required, the qualification is accredited).

(6)

**Amendments to the provisions of the Education Act 2002 and the Childcare Act 2006 governing NC and Early Years Foundation Stage assessments (paragraphs 31 to 35 and 38 to 41)**

Education Act 2002 and Childcare Act 2006

563. Paragraphs 31 to 35 and 38 to 41 amend the provisions of the Education Act 2002 and the Childcare Act 2006 respectively relating to the NC, and in particular the NC assessment arrangements, and the EYFS learning and development requirements and the EYFS assessment arrangements. The changes primarily reflect the provisions of the Act which establish Ofqual and provide for the QCA to become the QCDA.

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<sup>1</sup> *Promoting achievement, valuing success: a strategy for 14-19 qualifications*, DCSF, Cm 7354, 31 March 2008, <http://www.dfes.gov.uk/publications/14-19qualifications/pdfs/14-19Qualifications.pdf>

564. Section 87 of the 2002 Act makes provision for the NC to be set out in orders made by the Secretary of State. Paragraph 35 amends section 87 and in particular the provisions of that section relating to the Secretary of State's powers to make orders specifying assessment arrangements. The amendments relate to the powers of the Secretary of State to confer functions on specified bodies, including the QCDA, and to delegate the making of supplementary provision to the QCDA and other persons.
565. Section 87(9) of the 2002 Act currently states that provisions will be made to determine the extent to which the assessment arrangements achieve their purpose. Given that Ofqual is established to regulate assessments, section 87(9) is no longer required. Paragraph 35(4) therefore repeals this subsection.
566. Similar changes are made to the provisions of the Childcare Act 2006 relating to the learning and development requirements of the EYFS. Paragraph 40 amends section 42(2) of the 2006 Act to include the QCDA and any other person with whom the Secretary of State has made arrangements in connection with assessment arrangements, as persons on whom functions may be conferred in an order specifying assessment arrangements for the learning and development requirements of the EYFS. That paragraph also enables the Secretary of State to delegate the making of supplementary provisions in relation to assessment arrangements.
567. Section 42(4) of the 2006 Act states that provision will be made to determine the extent to which the assessment arrangements achieve their purpose. Given that Ofqual is established to regulate assessments, section 42(4) is no longer required. Paragraph 40(3) therefore repeals this subsection.

(7)

**Changes to procedures for exemptions from the National Curriculum and Early Years Foundation Stage: Education Act 2002 and Childcare Act 2006 (paragraphs 36 and 42)**

568. Section 90 of the 2002 Act gives the Secretary of State the power to direct in respect of a particular maintained school or maintained nursery school that, for a specified period, the NC does not apply or applies with modifications. This is designed to support development work or experiments that will support learning. The amendment made by paragraph 36 establishes a reviewing body for these cases, which will be the QCDA or another person assigned by the Secretary of State. The amendments give the Secretary of State the power to require any such school or nursery to report to the reviewing body, or to require the reviewing body to keep the development or experiment work of any such school or nursery under review.
569. Section 46 of the 2006 Act provides for regulations to be made allowing the Secretary of State to direct in respect of a particular early years provider or description of early years providers that, for a specified period, the EYFS does not apply or applies with modifications. Paragraph 42 of this Schedule amends section 46 to allow the regulations to include provision establishing a reviewing body for these cases, which will be the QCDA or another person assigned by the Secretary of State. The amendment will also allow the regulations to give the Secretary of State the power to impose conditions when making such a direction, or to require the reviewing body to keep the effects of the direction under review.

(8)

**Changes to streamline consultation relating to the National Curriculum: section 96 of the Education Act 2002 (paragraph 37)**

570. [Paragraph 37](#) amends section 96 of the Education Act 2002 which makes provision about the procedure for making orders relating to the NC. The amendments make changes to the way in which persons must be notified of the proposed order or regulations.

*These notes refer to the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) which received Royal Assent on 12 November 2009*

571. Under section 96(3), the QCA is required to give notice of the proposal. Notice must be given to any person with whom consultation appears desirable to the QCA. Paragraph 37(3) amends this provision so instead the QCDA is under a duty to publish notice of the proposal in a way that it considers likely to bring to the attention to those concerned with it.
572. Under section 96(6) the Secretary of State is required to publish drafts of a proposed order or regulations and a statement explaining any failure to give effect to the recommendations of the QCA. Paragraph 37(6) and (7) removes the requirement for the Secretary of State to send copies of the above statement and proposed order or regulations to every person consulted by the QCDA. Instead, the Secretary of State is required to take steps to bring the documents to the attention of those consulted. This will enable documents to be published, for example on the internet, rather than being provided to each of the persons consulted by the QCDA.