

# EDUCATION ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4: Qualifications and the Curriculum**

#### **Ofqual**

#### ***Section 21: The Chief Regulator of Qualifications and Examinations***

128. *Section 21* gives effect to Schedule 7.

#### ***Schedule 7***

129. *Paragraph 2(2)* amends Schedule 9 to ASCLA 2009 to provide that the chief executive of Ofqual will be appointed by Her Majesty by Order in Council and will be known as the Chief Regulator of Qualifications and Examinations (“the Chief Regulator”). Provision is made so that the person appointed as chair of Ofqual will be appointed by the Secretary of State rather than (as ASCLA 2009 provides at present) Her Majesty, and for the chair of Ofqual no longer to be known as the Chief Regulator.
130. The amendments made by *paragraph 3* of the Schedule have the effect that the provisions set out in paragraph 3 of Schedule 9 to ASCLA 2009, relating to the arrangements for appointing the Chief Regulator (who is currently the chair), will apply under the new arrangements in relation to the Chief Regulator who is also the chief executive.
131. *Paragraph 4* inserts a new paragraph into Schedule 9, setting out the arrangements for appointing the chair of Ofqual and for setting the terms of his or her appointment.
132. *Paragraphs 7* and *10* provide that the Chief Regulator may benefit from a scheme for pensions, allowances or gratuities under the Superannuation Act 1972.
133. *Paragraph 7* also amends paragraph 5 of Schedule 9 to include provision for the Secretary of State to have responsibility for determining the remuneration, allowances and expenses of the Chief Regulator who is also the chief executive.

#### ***Section 22: The qualifications standards objective***

134. *Section 22* replaces section 128(2) of ASCLA 2009 with a new subsection, which sets out Ofqual’s qualifications standards objective. The new objective is for Ofqual to secure that regulated qualifications: (a) give a reliable indication of knowledge, skills and understanding; and (b) indicate a consistent level of attainment (including over time) between comparable regulated qualifications, and, in addition, (c) indicate a consistent level of attainment (but not over time) between regulated qualifications and comparable qualifications which Ofqual does not regulate, including qualifications awarded outside the UK.
135. The effect is to add to Ofqual’s qualifications standards objective to require that Ofqual should also perform its functions with the aim of ensuring that regulated qualifications

indicate a consistent level of attainment with comparable qualifications that Ofqual does not regulate whether from outside the UK or from other parts of the UK. It is for Ofqual to decide which qualifications are comparable, and to decide the action that they have to take in the context of the totality of their objectives, to ensure that comparable qualifications indicate a consistent level of attainment.

### ***Section 23: Enforcement powers***

136. **Section 23** amends Part 7 of ASCLA 2009.
137. *Subsection (2)* amends section 151 of ASCLA 2009 (under which Ofqual can give a direction to a recognised body to secure compliance with a condition of recognition) by removing the prejudice test that Ofqual has to apply in determining whether to give a direction. Under section 151(1) as substituted, Ofqual is able to give a direction if it appears to Ofqual that the body has failed, or is likely to fail, to comply with a condition.
138. *Subsection (3)* inserts into ASCLA 2009 new sections 151A to 151D to confer on Ofqual the power to impose a monetary penalty on an awarding body recognised by it if it appears to Ofqual that the body has failed to comply with a condition to which the recognition is subject. Ofqual must give notice of its intention to impose a penalty and have regard to any representations received in response. If Ofqual decides to impose a penalty then it must send a notice to the body setting out the information listed in new section 151A(8).
139. By new section 151B the amount of the penalty may be whatever Ofqual decides would be appropriate subject to a limit of 10% of the body's turnover, to be determined in accordance with an order made by the Secretary of State. Such an order is subject to affirmative resolution procedure.
140. New section 151C provides for appeals to the First-tier Tribunal against a decision to impose a penalty or a decision as to the amount of the penalty. When an appeal is made the requirement to pay the penalty is suspended. Section 151C(4) sets out the powers the Tribunal has on an appeal. The procedure for the conduct of appeals will be set out in the relevant procedure rules of the Tribunal.
141. New section 151D provides for interest to accrue on the unpaid balance of the penalty once the time for appealing has passed, or once an appeal has been withdrawn or determined. The total amount of interest must not be more than the amount of the penalty. Ofqual is able to recover the money owed as a civil debt owed to it.
142. *Subsection (4)* removes the prejudice test from section 152 of ASCLA 2009 (power to withdraw recognition).
143. *Subsection (5)* inserts into ASCLA 2009 new sections 152A to 152C which confer on Ofqual the power to require a recognised body on which a sanction has been imposed to pay the costs incurred by Ofqual in relation to imposing the sanction. The costs concerned include the costs of carrying out an investigation, relevant administration costs, and the costs of obtaining expert advice.
144. New section 152B makes provision for appeals against decisions to require a body to pay costs. The provision is similar to provisions in new section 151C for appeals against a penalty; and provisions in new section 152C on interest and recovery for costs are similar to those in section 151D in relation to monetary penalties. Ofqual is required to pay money it received under these new powers into the Consolidated Fund.
145. *Subsection (6)* amends section 153 of ASCLA 2009 so that Ofqual is required to consult and set out in its published qualifications regulatory framework how it intends to exercise its new powers to impose a monetary penalty and recover costs.