

APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: the Qualifications and Curriculum Development Agency

Chapter 1: The QCDA, objective and general duties

The QCDA

Section 175: The Qualifications and Curriculum Development Agency

489. This section provides for the renaming of the QCA, which was established under the Education Act 1997 and will now be known as the Qualifications and Curriculum Development Agency. The section also gives effect to Schedule 11, which contains detailed provisions with respect to the constitution and proceedings of the QCDA. The QCDA will remain a Non-Departmental Public Body (NDPB), accountable to Ministers.
490. The QCDA will retain the QCA's non-regulatory functions, including supporting Ministers on developing the curriculum and related qualifications and delivering National Curriculum assessments. Regulatory functions will instead be exercised by Ofqual, established under Part 7.

Schedule 11: The Qualifications and Curriculum Development Agency

491. This Schedule makes detailed provisions relating to the QCDA, particularly in relation to its constitution and proceedings.

(1)

Status

492. [Paragraph 1](#) provides that the QCDA is not to be regarded as a servant or agent of the Crown, and that its property is not to be regarded as property of the Crown. There is no change in this regard to the status of the QCA.

(2)

Membership

493. [Paragraph 2](#) sets out the membership of the QCDA. Members are appointed by the Secretary of State, who must appoint one as the chair and may appoint another as the deputy chair. [Paragraph 5](#) makes provision for the tenure of office of the members, and how they may be removed from membership. [Paragraph 6](#) allows the Secretary to require that members be remunerated and that expenses and allowances be paid, with the amounts to be determined by the Secretary of State.

494. [Paragraph 3](#) provides for a chief officer who is appointed by the QCDA subject to the approval of the Secretary of State. The chief officer is an ex-officio member of the QCDA. Under paragraph 4, the Secretary of State may confer functions on the chair, but any such functions must not duplicate functions conferred on the chief officer.

(3)

Staff

495. [Paragraphs 7 and 8](#) provide for the QCDA to have staff, and for their continued membership of the relevant pension scheme.

(4)

Committees and proceedings

496. [Paragraph 9](#) allows the QCDA to establish committees, and for the committees to establish sub-committees. It also allows the Secretary of State to direct the QCDA to set up a committee for a specified purpose. The committee structure must be reviewed by the QCDA at least once every five years. A committee must include at least one member of the QCDA or its staff. Paragraph 10 allows the QCDA to establish joint committees with other bodies.

497. [Paragraphs 11 and 12](#) provide for the QCDA to regulate its own proceedings and for the Secretary of State or his representative, Ofsted and any other body directed by the Secretary of State to attend meetings of the QCDA.

498. Under paragraph 13, the QCDA may delegate any of its functions to a committee or a member of the QCDA or its staff.

499. [Paragraphs 14 and 15](#) provide respectively for a committee to delegate its functions to a sub-committee, and for the Secretary of State to authorise a committee established under a direction to perform functions of the QCDA.

(5)

Reports and accounts

500. [Paragraph 16](#) requires the QCDA to prepare an annual report for each financial year, setting out how it has performed its functions in that year. The QCDA must publish the report and the Secretary of State must lay a copy before Parliament. There is no equivalent requirement currently for the QCA.

501. [Paragraph 17](#) requires the QCDA to keep and prepare accounts in line with any directions of the Secretary of State.

(6)

Documents

502. [Paragraph 18](#) makes provision about the application of the QCDA's seal.

(7)

Funding

503. [Paragraph 20](#) allows the Secretary of State to make grants to the QCDA and to attach conditions to those grants. This will be central to the relationship between the QCDA and the Secretary of State — it is the way in which the Secretary of State will give a remit to the QCDA over particular pieces of work he requires it do.

(8)

Supplementary powers

504. [Paragraph 21](#) of the Schedule confers on the QCDA wide supplementary powers to do anything that it considers necessary or appropriate for the purposes of, or in connection

with, its functions. But the QCDA may not form companies or other bodies or enter into joint ventures without the Secretary of State's consent. The powers are also subject to restrictions provided for elsewhere in the sections (for example, the QCDA may not lend money).

Objective and general duties

Section 176: Objective

505. This section sets out the QCDA's objective: to promote quality and coherence in education and training in England. For the purposes of the QCDA's functions, education includes learning by, and development of, young children pursuant to the Early Years Foundation Stage, which was established under the Childcare Act 2006.
506. The QCA has somewhat broader objectives and has roles in Wales and Northern Ireland. The QCDA will have no responsibilities outside England.

Section 177: General duties

507. This section sets out the matters to which the QCDA must have regard in exercising its functions and pursuing its overall objective. There is some equivalent material in section 26 of the Education Act 1997 setting out requirements to which the QCA must have regard. The duties under section 177 differ in some respects to those under the 1997 Act as described below.
508. The QCDA must have regard to the reasonable requirements of all learners, as defined in *subsection (6)* (this includes young children). The 1997 Act specified a duty to have regard to learners with special learning needs, but there was no equivalent statutory requirement in relation to other learners.
509. The section adopts a new definition of "persons with learning difficulties" (as defined in section 129) to replace the concept of "learners with special learning needs" in the 1997 Act. The only difference of substance is that the new definition provides that a person is not to be taken to have a learning difficulty solely because of a difference in the language in which he or she is to be taught and the language which he or she speaks at home.
510. The QCDA must have regard to the reasonable requirements of all employers (rather than just to those of various sectors thereof, as is the case with the QCA) and of higher education institutions.
511. The QCDA must have regard to the desirability of facilitating innovation.
512. There is an explicit requirement for the QCDA to perform its functions efficiently and effectively.
513. The QCDA must also have regard to such aspects of Government policy as the Secretary of State may direct.
514. As is the case with the QCA at present, the QCDA will also have to have regard to information provided by Ofsted and any other bodies specified by the Secretary of State. The QCDA must also have regard to information provided by Ofqual.
515. The QCDA must also (like the QCA) have regard to the requirements of section 78 of the Education Act 2002. That section provides—
- “The curriculum for a maintained school or maintained nursery school satisfies the requirements of this section if it is a balanced and broadly based curriculum which—
- (a) promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, and

- (b) prepares pupils at the school for the opportunities, responsibilities and experiences of later life.”

Chapter 2: Functions in relation to qualifications

Section 178: Qualifications within the QCDA’s remit

516. This section defines which qualifications fall within the QCDA’s remit. This remit is broadly similar to that of Ofqual. It covers all qualifications awarded or authenticated in England other than those which are both (a) at foundation degree level or equivalent or first degree level or above, and (b) awarded or authenticated by a higher education institution. As with Ofqual, the QCDA’s remit is no longer restricted to qualifications awarded by an external body (so, for example, a qualification awarded by an employer following completion of its own training would fall within the QCDA’s remit).
517. The Secretary of State is given the power by order to exclude qualifications from the QCDA’s remit. The order-making power is subject to the negative procedure. This provision is designed to allow for any future narrowing of the QCDA’s qualifications role. The intention is that this power could be used in particular to remove the QCDA’s functions in relation to post-19 qualifications, if the Department for Business, Innovation and Skills were (following the review that it currently has under way) to conclude that it did not wish the QCDA to have advice and review functions with respect to these qualifications. Any such decision would not affect Ofqual’s role in regulating these qualifications.

Section 179: Qualifications: general functions

518. This section sets out the QCDA’s duties and powers in relation to qualifications within its remit (see above). These include its duty to keep all aspects of such qualifications under review; its duty to provide advice or carry out research relating to such qualifications at the request of the Secretary of State; and its general power to offer advice to the Secretary of State and to conduct research. It may also publish information relating to qualifications within its remit.

Section 180: Assistance etc. in relation to qualifications functions of Ofqual

519. This section requires the QCDA, where requested by Ofqual, to assist in setting criteria for recognition or accreditation which relate to a qualification or description of qualification where an order specifying minimum requirements under section 141(1) has effect. It also enables the QCDA generally to assist Ofqual in connection with its qualifications functions, including assistance with setting ‘qualifications criteria’ in other cases. ‘Qualifications criteria’ are the criteria for recognition of awarding bodies, for accreditation of individual qualifications and for the assignment of a number of guided learning hours to a qualification.
520. The Government intends that this provision will be used to enable the QCDA to develop draft criteria for qualifications whose high level content is determined as a matter of policy by Ministers, for example, GCSEs, A-levels or Diplomas. The criteria would then be considered for adoption by Ofqual, and provided it was content to adopt them. This process will allow Ofqual to avoid the conflict of interest inherent in the QCA’s functions, whereby it both develops the criteria and is responsible for providing assurance that the qualifications developed against those criteria are of a high standard. This process is supported by section 141, which allows the Secretary of State – where certain pre-conditions are met - to specify by order the minimum requirements for a specified qualification or description of qualification. Where such an order has been made, there would be an expectation that the QCDA would support the development of qualifications criteria, which is why section 180 imposes a duty on the QCDA to assist Ofqual where requested to do so.

Chapter 3: Functions in relation to curriculum, Early Years Foundation Stage and assessment

521. The functions of the QCA in relation to curriculum and assessment were established under section 23 of the Education Act 1997. The functions included: keeping under review all aspects of the curriculum, school examinations and assessment; advising the Secretary of State on these matters, and on research and development connected with them, and helping him to carry out research and development if requested to do so; and publishing and disseminating information about them. The QCA also has a range of functions relating to National Curriculum assessments as a result of orders made under section 87 of the Education Act 2002.
522. Similar functions have been conferred on the QCA in relation to the EYFS learning and development requirements by the [Qualifications and Curriculum Authority \(Additional Functions\) Order 2008 \(S.I. 2008/1744\)](#).
523. Under the provisions of this Chapter, the QCDA will continue much of the QCA's role in relation to these functions, such as advising and supporting Ministers in the monitoring and development of curriculum and assessments.

Section 181: Curriculum

524. This section sets out the QCDA's duties and powers with respect to the curriculum in maintained schools in England for pupils who are of compulsory school age, and pupils in maintained nursery schools. The requirements for the curriculum in such schools are set out in section 78 of the Education Act 2002. It must be a balanced and broadly based curriculum which promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, and which prepares pupils at the school for the opportunities, responsibilities and experiences of later life. The role of the QCDA in relation to the curriculum is similar to its general role in relation to qualifications within its remit and includes a duty to keep all aspects of the curriculum under review, a duty to provide advice or carry out research at the request of the Secretary of State and the power to offer advice to the Secretary of State and to conduct research when it considers it appropriate to do so. The QCDA may also publish information relating to the curriculum.

Section 182: Early learning goals and educational programmes

525. This section sets out the QCDA's duties and powers with respect to early learning goals and educational programmes, which mirror those in section 181 relating to the curriculum. These functions include its duty to keep all aspects of these matters under review, its duty to provide advice or carry out research at the request of the Secretary of State and the power to offer advice to the Secretary of State and to conduct research when it considers it appropriate to do so. The QCDA may also publish information relating to the early learning goals and educational programmes.
526. The early learning goals establish learning and development expectations for most children to reach by the end of the Early Years Foundation Stage. They are established by order made under section 39(1)(a) of the Childcare Act 2006 and are defined in section 41(2) of that Act as "the knowledge, skills and understanding which young children of different abilities and maturities are expected to have before the 1st September next following the day on which they attain the age of five". Educational programmes are also established by such an order and are defined in section 41(2) of the 2006 Act as "the matters, skills and processes which are required to be taught to young children of different abilities and maturities".

Section 183: Assessment arrangements

527. This section sets out the QCDA's duties and powers with respect to assessment arrangements within its remit. These arrangements include National Curriculum

assessment arrangements for each key stage and assessment arrangements under the EYFS learning and development requirements (together referred to as “the regulated assessment arrangements”). The arrangements within the QCDA’s remit also include any other testing and assessment arrangements for pupils of compulsory school age at maintained schools and for pupils at maintained nursery schools. The QCDA’s remit is therefore broader than Ofqual’s, which is restricted to regulated assessment arrangements. The QCDA’s duties and powers broadly mirror those relating to curriculum. They include a duty to keep all aspects of assessment arrangements under review, a duty to provide advice and to carry out research at the request of the Secretary of State, and a discretion to offer advice to the Secretary of State and to conduct research when the QCDA considers it appropriate to do so. The QCDA may also publish information relating to assessment. The QCDA’s duty to keep under review assessment arrangements is a distinct role from the regulatory one for which Ofqual will be conducting reviews of regulated assessments under section 161. The expectation is that the QCDA will use information obtained through reviewing assessment arrangements to assist it in providing the Secretary of State with advice on assessment arrangements.

528. The amendments made to the Education Act 2002 and the Childcare Act 2006 by paragraphs 35(3) and 40(2) of Schedule 12 allow the QCDA (and any other body designated by the Secretary of State) to be given specific functions in relation to National Curriculum and EYFS assessment arrangements respectively.

Chapter 4: Other functions and supplementary provision

Other functions

Section 184: Provision of services or other assistance

529. This section enables the QCDA to provide services or other assistance in relation to the matters listed in *subsection (1)*. The consent of the Secretary of State is not required for the provision of services or other assistance, unless it is outside the scope of the list in subsection (1), or involves providing financial assistance or charging for services. The section prohibits the QCDA from lending money. The QCDA may use the powers under this section to provide services such as support and advice to schools on implementing the curriculum, or to awarding bodies in relation to the development of qualifications. In particular, this section will enable the QCDA to operate systems and support services such as the Diploma Aggregation Service (a web-based IT system that supports the administration and award of Diplomas). The QCDA’s powers to assist Ofqual in relation to its qualifications functions derive from section 180 – under this section it cannot assist Ofqual in relation to such matters.

Section 185: Provision of information or advice

530. This section provides a duty for the QCDA to advise the Secretary of State on any matters relating to education or training in England which the Secretary of State refers to it. This duty supplements the specific duties to give advice on certain matters set out in Chapters 2 and 3 of this Part. Section 185 also imposes a duty on the QCDA to give information to the Secretary of State on such matters relating to its functions as the Secretary of State may request.

Section 186: Ancillary activities

531. This replicates the existing duty for the QCA to comply with a direction of the Secretary of State to carry out ancillary activities relating to its functions (under section 25(2) and (3) of the Education Act 1997).

Section 187: Co-operation and joint working

532. This section allows the QCDA to co-operate or work jointly with other public bodies, where it is appropriate for the efficient and effective performance of any of the QCDA's functions. This would enable it, for example, to seek the advice of the Welsh qualifications regulator on qualifications that are regulated in Wales but offered in England, or to work with a Sector Skills Council to advise on the qualifications needed in a particular employment sector.

Section 188: Power to confer supplementary functions on the QCDA

533. This section provides a power for the Secretary of State to confer supplementary functions on the QCDA by order, where such new functions are exercisable in connection with the matters listed in *subsection (2)*. This measure is designed to enable the functions of the QCDA to develop over time to meet changing needs and circumstances. An order under this section is subject to the negative procedure.

Supplementary provision

Section 189: Directions etc. by the Secretary of State

534. The Secretary of State may issue directions to the QCDA as to the performance of any of its functions. This power sits alongside those of the Secretary of State to direct the QCDA in relation to "ancillary activities" – see section 186, and to set up a committee for a specified purpose – see paragraph 9(2) of Schedule 11. The QCDA must also, in performing its functions, act in accordance with any plans approved by the Secretary of State.
535. The provisions in this section reflect the QCDA's role as an NDPB, accountable to Ministers

Section 190: Guidance by the Secretary of State

536. The QCDA must, in performing its functions, have regard to any guidance given by the Secretary of State.

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

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

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 19s¹. The amendments to section 96 in paragraph 27 bring the qualifications to which this approval regime applies into line with the

¹ *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>

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.
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.
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.