



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

Recognition of awarding bodies

132 Recognition

- (1) Ofqual must recognise an awarding body in respect of the award or authentication of a specified qualification, or description of qualification, to which this Part applies if—
 - (a) the awarding body has applied for recognition in the respect in question, and
 - (b) the body meets the applicable criteria for recognition most recently published under section 133.
- (2) Ofqual may not recognise an awarding body if the requirements set out in paragraphs (a) and (b) of subsection (1) are not met by the body.
- (3) A recognition—
 - (a) has effect from such date as Ofqual may specify,
 - (b) is subject to the general conditions,
 - (c) if in respect of a qualification subject to the accreditation requirement, is subject to an accreditation condition, and
 - (d) is subject to such other conditions that Ofqual may impose at the time of recognition or later.

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- (4) But Ofqual may, at the time of recognition or later, determine that a specified recognition is not to be subject to a specified general condition.
- (5) An accreditation condition in respect of a qualification subject to the accreditation requirement is a condition requiring that the recognised body may award or authenticate a particular form of the qualification only if, at the time of the award or authentication, that form of the qualification is accredited under section 139.
- (6) Ofqual may not charge an awarding body in respect of recognition.
- (7) If Ofqual refuses an application for recognition it must provide the awarding body with a statement setting out the reasons for its decision.
- (8) In this section “the general conditions”, in respect of a recognition of an awarding body, means the general conditions for the time being in force under section 134 which are applicable to the recognition and the body.
- (9) In this Chapter—
 - “awarding body” means a person who awards or authenticates, or who proposes to award or authenticate, a qualification to which this Part applies;
 - “recognised body” means an awarding body recognised under this section;
 - a “recognition” means a recognition under this section.

133 Criteria for recognition

- (1) Ofqual must set and publish the criteria for recognition under section 132.
- (2) Different criteria may be set for—
 - (a) recognition of different descriptions of awarding bodies;
 - (b) recognition in respect of different qualifications or different descriptions of qualifications;
 - (c) recognition in respect of credits in respect of different components of qualifications or different descriptions of components of qualifications.
- (3) Ofqual may revise the criteria.
- (4) If Ofqual revises the criteria it must publish them as revised.
- (5) Before setting or revising the criteria Ofqual must consult such persons as it considers appropriate.

134 General conditions of recognition

- (1) Ofqual must set and publish the general conditions to which a recognition is to be subject.
- (2) Different general conditions may be set for—
 - (a) recognition of different descriptions of awarding bodies;
 - (b) recognition in respect of different qualifications or different descriptions of qualifications;
 - (c) recognition in respect of credits in respect of different components of qualifications or different descriptions of components of qualifications.
- (3) Ofqual may revise the general conditions.

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- (4) If Ofqual revises the general conditions it must publish them as revised.
- (5) Before setting or revising the general conditions Ofqual must consult such persons as it considers appropriate.

135 Other conditions of recognition

- (1) The conditions of recognition that Ofqual may impose under section 132(3)(d) include in particular—
 - (a) fee capping conditions;
 - (b) entry and inspection conditions.
- (2) Fee capping conditions are conditions limiting the amount of a fee chargeable by a recognised body for—
 - (a) the award or authentication of a qualification in respect of which the body is recognised, or
 - (b) the provision of any other service in relation to such a qualification.
- (3) Entry and inspection conditions are conditions requiring permission to enter premises for the purposes of inspecting and copying documents so far as necessary for Ofqual—
 - (a) to satisfy itself that the appropriate standards are being maintained by a recognised body in relation to the award or authentication of any qualification in respect of which the body is recognised, or
 - (b) to determine whether to impose a fee capping condition and, if so, what that condition should be.

136 Fee capping conditions: supplementary

- (1) Ofqual may impose a fee capping condition limiting the amount of a particular fee only if satisfied that the limit is necessary in order to secure value for money.
- (2) Before imposing a fee capping condition in respect of a recognition Ofqual must give notice to the recognised body of its intention to do so.
- (3) The notice must—
 - (a) set out Ofqual’s reasons for proposing to impose the fee capping condition, and
 - (b) specify the period during which, and the way in which, the recognised body may make representations about the proposal.
- (4) Ofqual must have regard to any representations made by the recognised body during the period specified in the notice in deciding whether to impose the fee capping condition.
- (5) Ofqual must establish arrangements (the “review arrangements”) for the review, at the request of a recognised body, of a decision to impose a fee capping condition.
- (6) The review arrangements must require the decision on review to be made by a person within subsection (7).
- (7) A person within this subsection is one who—
 - (a) appears to Ofqual to have skills likely to be relevant to decisions to impose fee capping conditions, and

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- (b) is independent of Ofqual.
- (8) A person is independent of Ofqual for the purposes of subsection (7) 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.
- (9) A decision to impose a fee capping condition must not take effect before the later of—
 - (a) the expiry of the period during which a review can be requested under the review arrangements, and
 - (b) the completion of any review requested under those arrangements.
- (10) Ofqual must, in performing its functions in relation to fee capping conditions, have regard to any guidance given by the Secretary of State.
- (11) The Secretary of State must publish any guidance given under subsection (10).

137 Entry and inspection conditions: supplementary

- (1) An entry and inspection condition requires permission to enter premises to be given only if—
 - (a) the premises in question are not used as a private dwelling,
 - (b) the entry is to be by an authorised person,
 - (c) reasonable notice has been given to the recognised body in question, and
 - (d) the entry is to be at a reasonable time.
- (2) “Authorised person” means a member of Ofqual’s staff who is authorised (generally or specifically) for the purpose.
- (3) An entry and inspection condition may require an authorised person to be given permission to do anything that a person authorised by a provision of Part 1 of the [Education Act 2005 \(c. 18\)](#) to inspect documents could do by virtue of section 58 of that Act (computer records).

Accreditation of certain qualifications

138 Qualifications subject to the accreditation requirement

- (1) Ofqual may determine that a specified qualification, or description of qualification, to which this Part applies is subject to the accreditation requirement.
- (2) A determination under subsection (1) may provide that a qualification or description of qualification is subject to the accreditation requirement—
 - (a) for all purposes, or
 - (b) for the purposes of award or authentication by a specified awarding body.
- (3) Ofqual must publish a determination falling within subsection (2)(a).
- (4) Ofqual may revise a determination made under subsection (1).
- (5) If Ofqual revises a determination falling within subsection (2)(a) it must publish the determination as revised.
- (6) Before making or revising a determination under subsection (1) Ofqual must—

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- (a) if the determination falls within subsection (2)(a), consult such persons as it considers appropriate, and
- (b) if the determination falls within subsection (2)(b), consult the awarding body in question.

139 Accreditation

- (1) Where a qualification is subject to the accreditation requirement Ofqual must accredit a particular form of the qualification if—
 - (a) that form of the qualification has been submitted for accreditation by a recognised body which is recognised in respect of the qualification, and
 - (b) that form of the qualification meets the applicable criteria for accreditation most recently published under section 140.
- (2) Ofqual may not accredit a form of a qualification if the requirements set out in paragraphs (a) and (b) of subsection (1) are not met in respect of that form of the qualification.
- (3) An accreditation under this section has effect from such date as Ofqual may specify.
- (4) Ofqual may not charge a recognised body in respect of accreditation under this section.
- (5) If Ofqual refuses an application for accreditation it must provide the recognised body with a statement setting out the reasons for its decision.

140 Criteria for accreditation

- (1) Ofqual must set and publish the criteria for accreditation under section 139.
- (2) Different criteria may be set for the accreditation of different qualifications or different descriptions of qualifications.
- (3) Ofqual may revise the criteria.
- (4) If Ofqual revises the criteria it must publish them as revised.
- (5) Before setting or revising the criteria Ofqual must consult such persons as it considers appropriate.
- (6) If Ofqual revises the criteria under this section which are applicable to a form of a qualification which is accredited under section 139, the accreditation ceases to have effect on the date specified by Ofqual.
- (7) Ofqual may vary the date specified under subsection (6) at any time before the date.
- (8) Ofqual may determine that subsection (6) does not apply in relation to a specified revision.
- (9) Ofqual must publish a determination made under subsection (8).
- (10) Ofqual may make saving or transitional provision in connection with the accreditation of a form of a qualification ceasing to have effect under subsection (6).

Minimum requirements

141 Power to specify minimum requirements

- (1) The Secretary of State may by order specify minimum requirements in respect of a specified qualification, or description of qualification, to which this section applies.
- (2) But the Secretary of State may make an order under subsection (1) only if satisfied that it is necessary to do so for the purpose of ensuring that the curriculum studied by persons taking a course leading to the qualification, or a qualification of the description, is appropriate, having regard to the likely ages of those persons.
- (3) This section applies to a qualification, or description of qualification, if—
 - (a) the qualification, or each qualification of the description, is one to which this Part applies, and
 - (b) the condition in subsection (4) is met in relation to the qualification or each qualification of the description.
- (4) The condition is that—
 - (a) one or more forms of the qualification is (or are) approved under section 98 of the [Learning and Skills Act 2000 \(c. 21\)](#), or
 - (b) the Secretary of State reasonably expects approval under that section to be sought for one or more forms of the qualification.
- (5) A minimum requirement in respect of a qualification or description of qualification is a requirement which relates to the knowledge, skills or understanding which a person must demonstrate in order to obtain the qualification or a qualification of the description.

142 Consultation before making order specifying minimum requirements

- (1) Before making an order under section 141(1) the Secretary of State must consult Ofqual and such other persons as the Secretary of State considers appropriate.
- (2) For the purposes of consulting under subsection (1) the Secretary of State must publish a document setting out—
 - (a) the grounds on which the Secretary of State is satisfied of the matter specified in section 141(2),
 - (b) the proposed minimum requirements, and
 - (c) the Secretary of State's reasons for proposing those minimum requirements.
- (3) The Secretary of State must provide a copy of the document to Ofqual and any other persons the Secretary of State proposes to consult under subsection (1).

143 Effect of order specifying minimum requirements

- (1) This section applies in relation to a qualification or description of qualification in respect of which minimum requirements specified in an order under section 141(1) have effect.
- (2) Ofqual must perform its functions under sections 133, 134 and 140 in relation to the qualification or description of qualification in a way which secures that the minimum requirements in respect of the qualification or description of qualification are met.

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- (3) But Ofqual is not required to comply with the duty imposed by subsection (2) if it appears to Ofqual that complying with that duty would result in the level of attainment (in terms of depth of knowledge, skills or understanding) indicated by the qualification or description of qualification not being consistent with that indicated by comparable regulated qualifications.

144 Revocation and amendment of orders specifying minimum requirements

- (1) Subsection (2) applies if—
- (a) the Secretary of State has made an order under section 141(1) in respect of a qualification or description of qualification, and
 - (b) the qualification or description of qualification ceases to be one to which section 141 applies.
- (2) The Secretary of State may by order—
- (a) revoke the order, or
 - (b) amend it for the purpose of removing the qualification or description of qualification from the application of the order.
- (3) Subsections (1) and (2) do not affect the power of the Secretary of State to revoke or amend an order under section 141(1) in other circumstances.
- (4) Sections 141(2) and 142 do not apply to an order—
- (a) revoking an order under section 141(1), or
 - (b) amending an order under section 141(1) for the purpose only of removing a qualification or description of qualification from the application of the order.

Guided learning

145 Assignment of number of hours of guided learning

- (1) A recognised body may only award or authenticate a particular form of a qualification in respect of which it is recognised if Condition 1 or 2 is met.
- (2) Condition 1 is met if the recognised body determines that the qualification is not relevant for 2008 Act purposes.
- (3) Condition 2 is met if—
- (a) the recognised body determines that the qualification is relevant for 2008 Act purposes, and
 - (b) the body assigns to the particular form of the qualification a number of hours of guided learning.
- (4) Subsection (1) does not apply in relation to a qualification which is a Northern Ireland-only qualification.
- (5) A recognised body must apply the applicable criteria then in force under section 146 when determining—
- (a) whether or not a qualification is relevant for 2008 Act purposes, and
 - (b) in respect of a qualification which the body has determined is relevant for those purposes, a number of hours of guided learning to assign to a form of the qualification.

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- (6) If revised criteria come into force under section 146, a recognised body must review any determination it has made under this section.
- (7) Ofqual may—
 - (a) review any determination made by a recognised body under this section, and
 - (b) require the recognised body to revise any such determination in such respects as Ofqual may specify.
- (8) If under subsection (7)(b) Ofqual requires a recognised body to revise a determination that a qualification is not relevant for 2008 Act purposes by specifying that the determination should provide that the qualification is so relevant—
 - (a) Ofqual may assign to a form of the qualification awarded or authenticated by the recognised body a number of hours of guided learning, and
 - (b) if it does so, the recognised body is to be treated as having determined to assign that number of hours of guided learning to that form of the qualification.
- (9) For the purposes of this Chapter a qualification is relevant for 2008 Act purposes if there are, or may reasonably be expected to be, persons seeking to obtain the qualification for the purposes of discharging the duty under section 2(1)(c) of the [Education and Skills Act 2008 \(c. 25\)](#) (duty to participate in education or training).
- (10) In this Chapter a “number of hours of guided learning”, in relation to a form of a qualification, means a number of notional hours representing an estimate of the amount of actual guided learning which could reasonably be expected to be required in order for persons to achieve the standard required to obtain that form of the qualification.
- (11) In subsection (10) “actual guided learning” means time a person spends—
 - (a) being taught or given instruction by a lecturer, tutor, supervisor or other appropriate provider of education or training, or
 - (b) otherwise participating in education or training under the immediate guidance or supervision of such a person,but does not include time spent on unsupervised preparation or study, whether at home or otherwise.
- (12) Section 172(2)(a) does not apply for the purposes of this section.

146 Criteria for assignment of number of hours of guided learning

- (1) Ofqual must set and publish criteria for determining—
 - (a) whether a qualification is relevant for 2008 Act purposes, and
 - (b) in respect of a qualification which a recognised body has determined is relevant for those purposes, the number of hours of guided learning that should be assigned to a form of the qualification.
- (2) Different criteria may be set for determinations in relation to different qualifications or different descriptions of qualifications.
- (3) Ofqual may revise the criteria.
- (4) If Ofqual revises the criteria it must publish them as revised.
- (5) Before setting or revising the criteria Ofqual must consult such persons as it considers appropriate.

Surrender

147 Surrender of recognition

- (1) A recognised body may give notice to Ofqual that it wishes to cease to be recognised in respect of the award or authentication of a specified qualification or description of qualification.
- (2) As soon as reasonably practicable after receipt of a notice under subsection (1) Ofqual must give notice to the recognised body of the date on which the body is to cease to be recognised in the respect in question (“the surrender date”).
- (3) At any time before the surrender date Ofqual may vary that date by giving further notice to the recognised body.
- (4) In deciding or varying the surrender date Ofqual must have regard to the need to avoid prejudicing persons who are seeking, or might reasonably be expected to seek, to obtain the qualification, or a qualification of the description, specified in the notice under subsection (1).
- (5) Ofqual may make saving or transitional provision in connection with a recognised body ceasing to be recognised in any respect by virtue of this section.

Register

148 Register

- (1) Ofqual must maintain and publish a register containing the following information in relation to each recognised body—
 - (a) the qualifications in respect of which it is recognised,
 - (b) the forms of those qualifications which are awarded or authenticated by it, and
 - (c) if the recognised body has determined under section 145 that any of those qualifications is relevant for 2008 Act purposes, the number of hours of guided learning it has assigned to each form of the qualification awarded or authenticated by it.
- (2) The register may include such other information as Ofqual considers appropriate.

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—
 - (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

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- 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.
- (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—

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- (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.
- (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.

Other

154 Review of qualifications to which Part applies

Ofqual may keep under review all aspects of qualifications to which this Part applies.

155 Review of system for allocating values to qualifications

- (1) Ofqual must keep under review any system used by the Secretary of State for allocating values to qualifications to which this Part applies by reference to the level of attainment indicated by the qualifications.
- (2) The duty in subsection (1) applies only if the values are to be allocated for the purpose of a qualifications-based performance management system.
- (3) A qualifications-based performance management system is a system for measuring the relative performance of schools by reference to the performance of pupils at the schools in qualifications to which this Part applies.
- (4) Ofqual may at any time require the Secretary of State to provide it with any information which Ofqual considers it necessary or expedient to have for the purposes of, or in connection with, the performance by Ofqual of its duty under subsection (1).

156 Co-operation and joint working

- (1) Ofqual may co-operate or work jointly with another public authority where it is appropriate to do so for the efficient and effective performance of any of Ofqual's qualifications functions.
- (2) "Public authority" includes any person who performs functions (whether or not in the United Kingdom) which are of a public nature.
- (3) In this Chapter "qualifications functions" means functions in connection with qualifications to which this Part applies.

157 Power to provide information to qualifications regulators

- (1) Ofqual may provide information to a qualifications regulator for the purpose of enabling or facilitating the performance of a relevant function of the regulator.
- (2) For the purposes of this section—
 - (a) a qualifications regulator is a person who has functions in any part of the United Kingdom which are similar to Ofqual's qualifications functions, and
 - (b) a function of a qualifications regulator is a relevant function if it is similar to any of the qualifications functions of Ofqual.
- (3) Nothing in this section—
 - (a) affects any power to disclose information that exists apart from this section, or
 - (b) authorises the disclosure of information in contravention of any provision made by or under any Act which prevents disclosure of the information.

General

158 Interpretation of Chapter

- (1) In this Chapter—
 - "awarding body" has the meaning given by section 132;
 - "entry and inspection condition" has the meaning given by section 135;
 - "fee capping condition" has the meaning given by section 135;
 - "Northern Ireland-only qualification" means a qualification in respect of which the persons who are, or who may reasonably be expected to be, seeking to obtain the qualification are, will be or may reasonably be expected to be assessed for those purposes wholly in Northern Ireland;
 - "number of hours of guided learning", in relation to a form of a qualification, has the meaning given by section 145;
 - "qualifications functions" has the meaning given by section 156;
 - "recognised body" has the meaning given by section 132;
 - a "recognition" has the meaning given by section 132.
- (2) For the purposes of this Chapter a qualification is subject to the accreditation requirement if a determination by Ofqual that the qualification, or a description of qualification which applies to the qualification, is to be subject to that requirement has effect under section 138.

Status: *This is the original version (as it was originally enacted).*

- (3) For the purposes of this Chapter a qualification is relevant for 2008 Act purposes if it falls within section 145(9).