

*These notes refer to the Education Act 2011 (c.21)
which received Royal Assent on 15 November 2011*

EDUCATION ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Qualifications and the Curriculum

International comparison surveys

Section 20: Requirement for schools to participate in international surveys

126. *Section 20* inserts new section 538A into Chapter 4 of Part 9 of EA 1996. It enables the Secretary of State to secure the participation of community, voluntary and foundation schools, in England, in international education surveys.
127. England takes part in a number of international comparison surveys which generate comparative data on pupil performance, attitudes to learning and the education environment, such as the Programme for International Student Assessment (PISA). This section is intended to ensure that sampled schools participate in specified surveys.

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.

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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.

Qualifications: Wales

Section 24: Enforcement powers of Welsh Ministers

146. **Section 24** amends Chapter 2 of Part 5 of EA 1997 which is concerned with functions of the Welsh Ministers in relation to qualifications. The amendments to sections in that Chapter, and the new sections inserted there, would make the same alteration of and addition to the powers of the Welsh Ministers (as the regulator of qualifications in Wales) as are made to the powers of Ofqual by section 23 of this Act.

Abolition of the Qualifications and Curriculum Development Agency

Section 25: Abolition of the Qualifications and Curriculum Development Agency

147. **Section 25** repeals sections 175 to 191 of, and Schedule 11 to, ASCLA 2009. This will abolish the body established as the Qualifications and Curriculum Authority (“QCA”), and continued in existence as the Qualifications and Curriculum Development Agency (“QCDA”) under that Act.

Section 26: Abolition of the QCDA: consequential amendments

148. **Section 26** gives effect to Schedule 8, which removes references to the QCDA from other legislation, and enables the Secretary of State to make changes to subordinate legislation by order in consequence of section 24.

Schedule 8

149. **Paragraphs 1, 2, 3, 4, 9 and 10** all remove references to the QCDA from other legislation.
150. **Paragraph 6** amends EA 1996 to remove the requirement for Standing Advisory Councils on Religious Education (“SACREs”) for an area in England to send the QCDA a copy of their annual report.
151. The amendment to EA 1996 made by **paragraph 7** removes the power of the Secretary of State to make regulations requiring a local authority or head teacher to provide information relevant for the purposes of provisions in ASCLA 2009 relating to the QCDA.
152. **Paragraphs 12 and 20(a)** amend section 85 of EA 2002, in its current form and as substituted by section 74 of EIA 2006, which is not yet in force. Section 85 makes provision about curriculum requirements for the fourth key stage (in other words, for pupils aged 14 to 16) and subsection (9) imposes a duty on local authorities, governing bodies and head teachers to have regard to guidance issued by the QCDA. The amendments make provision for such guidance to be issued by the Secretary of State rather than the QCDA. **Paragraph 20(b)** amends section 85A of EA 2002, as it is inserted by section 74 of EIA 2006, which makes provision about entitlement areas for the fourth key stage and imposes a duty on local authorities, governing bodies and head teachers to have regard to guidance issued by the QCDA or the Secretary of State. The reference to the QCDA is omitted.

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153. *Paragraphs 13 and 17* respectively amend provisions in EA 2002 relating to National Curriculum assessment arrangements and CA 2006 relating to Early Years Foundation Stage assessment arrangements. In each case, the amendment removes the QCDA from the bodies subject to the powers of the Secretary of State to confer or impose functions in an order specifying assessment arrangements.
154. *Paragraph 14* amends section 90 of EA 2002, which gives the Secretary of State the power to direct in respect of a particular maintained school that, for a specified period, the National Curriculum does not apply or applies with modifications. The amendments have the effect that the QCDA is no longer able to make, or agree to make, an application for a direction from the Secretary of State, and is no longer able to act as a reviewing body where such a direction has been given.
155. *Paragraph 15* replaces section 96 of EA 2002 so as to change the way in which persons must be consulted before the Secretary of State makes certain orders or regulations relating to the National Curriculum. Under section 96 as substituted, the Secretary of State must give notice of the proposal to specified persons and other persons whom the Secretary of State thinks it is desirable to consult. The Secretary of State must give the bodies and persons consulted an opportunity to submit evidence and representations which the Secretary of State must consider before publishing a summary of the views expressed in the consultation and a draft of the proposed order or regulations. The Secretary of State must allow at least one month for further evidence and representations and may then make the order or regulations with or without modifications.
156. Section 46 of CA 2006 provides for regulations to be made allowing the Secretary of State to direct in respect of one or more early years providers that, for a specified period, the Early Years Foundation Stage does not apply or applies with modifications. The amendments in *paragraph 18* will mean that the QCDA is no longer a reviewing body where such a direction has been given.
157. *Paragraph 21* amends the Safeguarding Vulnerable Groups Act 2006 so that work carried out for or on behalf of the QCDA will no longer be a controlled activity relating to children for the purposes of that Act.
158. *Paragraph 23* amends ASCLA 2009 to remove reference to the QCDA as a person who may provide information to which Ofqual is required to have regard.
159. *Paragraph 25* amends Schedule 5 to ASCLA 2009 (learning aims for persons aged 19 or over) to remove the reference to the QCDA providing advice or information relating to qualifications to which the Secretary of State may have regard in forming an opinion for the purposes of that Schedule.

Section 27: Abolition of the QCDA: transfer schemes

160. *Section 27* gives effect to Schedule 9, giving power to the Secretary of State to make a scheme to enable the transfer of staff, property, rights and liabilities from the QCDA to Ofqual and the Secretary of State (to provide, for example, for any transfers to the Department for Education).

Careers education and guidance

Section 28: Education and training support services in England

161. *Subsection (2)* removes the Secretary of State's power under section 69 of ESA 2008 to give local authorities directions relating to the exercise of their functions under section 68 of that Act.
162. The duty in section 68 (which remains in force) requires local authorities in England to make available to young people and relevant young adults for whom they are responsible such services as they consider appropriate to encourage, enable or assist them to engage and remain in education or training. A "young person" means a person

who has attained the age of 13 but not the age of 20. A “relevant young adult” is a person aged 20 to 24 years who has a learning difficulty within the meaning of subsections (6) and (7) of section 15ZA of EA 1996.

163. *Subsection (3)*, as a consequence of omitting section 69, removes all references to section 69 and the Secretary of State’s direction making powers in sections 68, 70(2) and 71(8) of ESA 2008. This section retains the provision for local authorities to have regard to any guidance issued by the Secretary of State (section 68(4)(b) of ESA 2008).
164. *Subsection (4)* repeals the duty in section 73 of ESA 2008 which requires schools and other educational institutions to allow persons involved in providing education and training support services (for example, Connexions personal advisers) access to pupils or students, and facilities on their premises.
165. *Subsection (5)* repeals section 76A(5) of ESA 2008. Section 76A(1) of ESA 2008 enables the Secretary of State to make arrangements with another person for the holding and supply of certain information in connection with education and training support services provided in pursuance of section 68 or 70(1)(b) of ESA 2008. This power has been used to make arrangements with a contractor to hold information on the participation of young people in education and training in a database known as the National Client Caseload Information System (NCCIS). Subsection (3) of section 76A allows anyone holding “relevant information” as referred to in 76A(2) to supply it to either the Secretary of State or the NCCIS contractor. Section 76A(5) prevents information obtained by either the Secretary of State or the NCCIS contractor under 76A(3) from then being disclosed to each other in a way that reveals, or could reveal, the identity of an individual. The repeal of this subsection removes this prohibition.
166. The Government intends to use this power to generate data about the kinds of activities that pupils from a school or college go on to do after they leave. This will be done by “matching” information from the NCCIS (which contains information about where individuals go on to work or study) with information the Secretary of State holds on individuals’ education outcomes in the National Pupil Database. Published information will not identify individuals. Both the NCCIS contractor and the Secretary of State will continue to be required to comply with the Data Protection Act 1998 which protects the use of individuals’ personal data.

Section 29: Careers guidance in schools in England

167. *Subsection (2)* inserts a new section 42A into EA 1997 to require maintained schools and pupil referral units in England to secure independent careers guidance for pupils in the school year in which they reach the age of 14 until they have ceased to be of compulsory school age.
168. New section 42A(4) provides that the guidance must be impartial, and as is currently set out in section 43(2ZB) (which has not been brought into force), it must also include information on all 16 to 18 education or training options, including apprenticeships.
169. New section 42A(5) sets out what constitutes independent guidance: a school cannot fulfil the duty by asking a teacher or another person employed by the school to provide guidance to all pupils. However, this would not prohibit a teacher from offering some careers advice.
170. *Subsections (3) to (9)* make consequential amendments to sections 43 to 46 of EA 1997, principally to confine their application to schools in Wales. However, the duty in section 45 to provide careers information continues to apply to further education institutions in England.

Repeal of the diploma entitlement

Section 30: repeal of diploma entitlement for 16 to 18 year olds

171. **Section 30** amends sections 45, 48 and 86 of ASCLA 2009 by removing references to the “additional entitlement”.
172. Section 45 of ASCLA 2009, which has not yet been brought into force, provides for EA 1996 to be amended by inserting into it new sections 17A to 17D. These currently place a duty on local authorities in England to secure for 16 to 18 year olds the “core” and “additional” entitlements. The additional entitlement is defined by section 17D(1) of EA 1996 as an entitlement to follow a course of study in an area specified by order by the Secretary of State and no order has been made. *Subsections (2) to (6)* amend new sections 17A to 17D by removing from them all references to “additional entitlements” so that when section 45 is commenced the duties under sections 17A to 17D of EA 1996 will only relate to the “core” entitlement.
173. Reference to the “additional entitlements” are also removed from section 48 (which requires the local authority to have regard to the desirability of the additional element in considering whether education for persons subject to youth detention is suitable) and 86 of ASCLA 2009 (which requires the Chief Executive of Skills Funding to have regard to the desirability of the additional entitlement in exercising certain functions relating to education for over 19s and people subject to adult detention).

Section 31: repeal of diploma entitlement for fourth key stage

174. **Section 31** amends section 74 of EIA 2006, which replaces section 85 of EA 2002 with new sections 85 and 85A. Under section 85A(1)(b), all Key Stage 4 pupils (that is, those aged from 14 to 16) are entitled to follow a course of study in an entitlement area specified by the Secretary of State by order. No order has been made, and the legislation is not yet in force. It was the public intention of the previous Government that the additional entitlement was to be to the new 14 to 19 diplomas. This would have placed duties on local education authorities, governing bodies and head teachers of maintained secondary schools to secure this entitlement. The section will remove this duty so that section 85A will simply entitle key stage 4 pupils to study the subjects listed at subsection (2). *Subsection (3)* of the section makes amendments which are consequential on the amendments to section 85A of EA 2002.