

APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: Office of Qualifications and Examinations Regulation

Chapter 3: Functions in relation to assessment arrangements

468. The Secretary of State is responsible for specifying the arrangements for pupil assessments in relation to each of the key stages of the NC (see section 87 of the Education Act 2002). The Secretary of State is also responsible for specifying the arrangements which are required for assessing the achievements of children in relation to the learning and development requirements of the EYFS (see sections 39 to 42 of the Childcare Act 2006). In this context, the Secretary of State may impose functions on other bodies in relation to developing, implementing or monitoring assessment arrangements. Ofqual's role, under the new arrangements delivered through this Act, is to keep these assessment arrangements under review and to report to Parliament on the assessment arrangements and how well they are achieving their purposes. The arrangements are intended to strengthen the assessment system, and to help improve public confidence following the problems with delivery of NC tests in 2008. The Government asked Lord Sutherland to investigate what went wrong with NC test delivery in 2008, the reasons for the problems experienced and what should be done to avoid a recurrence in future years. The Government accepted all the recommendations in his report¹, and the provisions in this Act reflect those recommendations.

Development etc. of regulated assessment arrangements

Section 159: NC assessment arrangements: duty to consult Ofqual etc., Section 160: EYFS assessment arrangements: duty to consult Ofqual etc.

469. These sections require the Secretary of State to consult Ofqual before making an order specifying assessment arrangements. They also require any person acting on the Secretary of State's behalf under such an order in connection with the making of assessment arrangements to consult Ofqual before doing so. The relevant order making powers are in section 87(3)(c) of the Education Act 2002 (in relation to the NC) and section 39(1)(a) of the Childcare Act 2006 (in relation to the learning and development requirements of the EYFS). The new obligations reflect Ofqual's status as independent regulator and particularly its interest in ensuring that the proposed assessment approaches are appropriate given the specified purposes, and can be effectively monitored.

¹ Lord Sutherland (2008), *The Sutherland Inquiry: An independent report into the delivery of National Curriculum tests in 2008*, London: The Stationery Office

Review etc. of regulated assessment arrangements

Section 161: Review of regulated assessment arrangements

470. This section requires Ofqual to keep all aspects of these NC and EYFS assessments arrangements under review. This constitutes the principal regulatory role of Ofqual in relation to the regulated assessment arrangements (as defined in section 131).
471. Ofqual's powers of review will enable it to consider all aspects of the implementation of the regulated assessment arrangements, such as looking at the way in which specified bodies exercise monitoring and review functions, including functions concerned with investigating complaints about the way in which tests and other assessments have been conducted.

Section 162: Powers to require information

472. To enable Ofqual to carry out its review role effectively, this section grants it powers to require certain persons to provide it with the information it considers it needs to perform this role. Those persons are the Secretary of State, NC responsible bodies and EYFS responsible bodies (as defined in the section) and Ofsted. *Subsection (2) (d)* includes a power for the Secretary of State to specify in regulations (subject to the negative procedure) other persons who are to be subject to this requirement. This power is required to allow for flexibility for further organisations to be added in case, for example, assessment arrangements change in the future and different bodies become involved in the process.

Section 163: Duty to notify significant failings

473. One of the recommendations in Lord Sutherland's inquiry report was that Ofqual should have a duty to inform the Secretary of State and the QCA if it had concerns about the delivery and quality of NC tests. Reflecting this recommendation, these provisions impose a duty on Ofqual covering both NC and EYFS assessment arrangements. Ofqual must notify the Secretary of State and any responsible body whose act or omission appears to Ofqual to have contributed to a significant failing if it considers that there is or is likely to be a significant failing in the assessment arrangements. Such a failure is defined as a failure in a significant way to achieve one or more of the specified purposes of the assessment arrangements.
474. Examples of circumstances in which Ofqual should notify the Secretary of State might include the following:
- if it became evident to Ofqual that there was a significant risk that significant numbers of test results would be delayed, and that the results would not therefore provide pupils, schools or the Government with timely information about the attainment and progress of pupils, assuming that the provision of this information was one of the specified purposes of the assessment; or
 - if a new type of NC test was being developed which Ofqual judged would not provide a reliable assessment of a pupil's level of attainment.

Regulatory frameworks

Section 164: NC assessments regulatory framework, Section 165: EYFS assessments regulatory framework

475. These sections require Ofqual to publish and keep under regular review two documents: the "NC assessments regulatory framework" and the "EYFS assessments regulatory framework" in relation to NC and EYFS assessment arrangements respectively.
476. The regulatory frameworks will give guidance to bodies with responsibilities for the development, implementation and monitoring of NC and EYFS assessment

arrangements on how to perform their functions. This may include the measures of success which Ofqual considers will demonstrate evidence of effective development and delivery of assessments. The regulatory frameworks will also set out how Ofqual will carry out its review function at all stages of the assessment process.

477. Those bodies with responsibility for developing, implementing and monitoring NC and EYFS assessment arrangements (the NC and EYFS responsible bodies) must have regard to the relevant regulatory framework document in doing so. Ofqual must consult on a regulatory framework document before publishing it or revising it. The persons Ofqual must consult are the Secretary of State, such of the NC responsible bodies or, as the case may be, EYFS responsible bodies and any other persons as Ofqual considers appropriate. Ofqual may revise a regulatory framework document at any time.