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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force provisions of the Apprenticeships, Skills, Children and Learning Act 2009 (“the Act”) on 1st April, 1st July and 1st September 2010 to the extent specified in column 2 of the appropriate tables.

### **Provisions coming into force on 1st April 2010**

Section 127 establishes the Office of Qualification and Examinations Regulation as a body corporate and specifies that the body will be referred to as “Ofqual”. The section gives effect to Schedule 9, which makes provision about such matters as the constitution and governance of Ofqual.

Sections 128 to 144 set out the objectives and general duties of Ofqual, and certain functions in relation to qualifications. In particular, provision is made for the recognition of awarding bodies and the accreditation of qualifications and for the Secretary of State to make an order specifying the minimum requirements in respect of knowledge, skills or understanding that someone must be able to demonstrate to gain a particular qualification or a qualification of a particular description.

Section 147 makes provision for a recognised body to surrender recognition by giving notice to Ofqual.

Section 148 sets out Ofqual’s obligation to maintain a register of recognised bodies. The register will include details of the qualifications in respect of which they are recognised and the forms of those qualifications that they offer.

Sections 149 to 153 make provision for monitoring and enforcement of recognised bodies by Ofqual. The provisions include enabling Ofqual to keep under review any “connected” activities of a recognised awarding body, and allowing Ofqual to investigate complaints, to give directions to a recognised body and to withdraw recognition in respect of the qualifications in respect of which a body is recognised, if the body has breached a condition of recognition. Ofqual is also under a duty to prepare and publish a qualifications regulatory framework.

Section 154 allows Ofqual to keep under review all aspects of qualifications to which Part 7 of the Act applies.

Section 156 allows Ofqual to 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 its functions in connection with qualifications.

Section 157 allows Ofqual to provide information to qualifications regulators in the UK to support the qualifications functions of the other regulator.

Section 158(1) and (2) are interpretation provisions. The definitions of “Northern Ireland-only qualification” and “number of hours of guided learning” are not commenced by this Order, as they are used in provisions which are not yet commenced.

Sections 159 and 160 make provision about consultation with Ofqual and others in connection with assessment arrangements.

Section 161 requires Ofqual to keep all aspects of the National Curriculum (“NC”) and Early Years Foundation Stage (“EYFS”) assessment arrangements under review. Section 162 enables Ofqual to require certain persons to provide it with the information it considers it needs to perform this role. Section 163 imposes duties on Ofqual in the event of significant failings in NC or EYFS assessment arrangements.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Sections 164 and 165 require Ofqual to publish regulatory frameworks for the NC and EYFS assessments. Section 166 is an interpretation provision.

Sections 167 to 171 set out further functions of Ofqual, including the power to provide services to other persons in connection with any of its functions, a duty to provide information or advice to the Secretary of State or the Department for Employment and Learning in Northern Ireland (if requested by them) on matters relating to their respective functions, a duty not to impose or maintain unnecessary regulatory burdens and a duty to prepare and publish an annual report.

Section 173 introduces Schedule 10 which enables the Secretary of State to make a scheme to transfer staff and property from the Qualifications and Curriculum Authority (“QCA”) to Ofqual.

Sections 174 and 192 introduce Schedule 12 which contains minor and consequential amendments relating to the establishment of Ofqual and the name change from the QCA to the Qualifications and Curriculum Development Agency (“QCDA”).

Sections 175 to 177 provide for the renaming of the QCA as the QCDA and make provision for its objective and general duties. Section 175 also gives effect to Schedule 11, which makes detailed provisions relating to the QCDA, particularly in relation to its constitution and proceedings.

Section 178 defines the qualifications within the remit of the QCDA. Section 179 makes provision for the QCDA’s duties and powers in relation to qualifications within its remit.

Section 180 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 allows the QCDA to assist Ofqual in connection with its qualification functions. Sections 181 to 191 set out the QCDA’s functions in relation to curriculum, EYFS and assessment and its other functions, including the provision of services, and the provision of advice or information to the Secretary of State.

Section 266 introduces Schedule 16 which repeals certain provisions in other legislation, consequential on the establishment of Ofqual, the name change from the QCA to the QCDA and the minor amendments in Schedule 12.

### **Provision coming into force on 1st July 2010**

Section 155 requires Ofqual to keep under review any system used by the Secretary of State which allocates values to qualifications by reference to the level of attainment indicated by the qualification for the purposes of a qualifications-based performance management system.

### **Provisions coming into force on 1st September 2010**

Sections 206 to 224 make provision for complaints against schools by pupils or parents and for the role of the Local Commissioner. This new scheme is brought into force for complaints against schools maintained by Bristol City Council, Dorset County Council, Hammersmith and Fulham London Borough Council, Hillingdon London Borough Council, Kent County Council, Kensington and Chelsea London Borough Council, Lincolnshire County Council, Portsmouth City Council, Sheffield City Council and Wolverhampton City Council.

### **Transitional provisions**

Articles 5 to 20 make transitional provisions which will enable Ofqual to take over the regulatory functions previously exercised by the QCA.

Article 5 makes provision for the continuity of functions.

Articles 6 to 13 make provision in relation to the recognition of awarding bodies. Articles 6 and 7 make provision for certain persons to be treated as recognised by Ofqual under section 132 of the Act. Articles 8 and 9 make provision for an application for recognition which has been made,

but not determined, before 1st April 2010, to be treated as an application for recognition under section 132 of the Act. Article 10 makes provision so as to treat certain criteria published by the QCA as criteria set and published by Ofqual under section 133 of the Act for the recognition of persons under section 132. Article 12 makes provision for general conditions published by the QCA to be treated as the general conditions of recognition set and published by Ofqual under section 134 of the Act.

Articles 14 to 17 make provision in relation to the accreditation of qualifications. Article 14 sets out the qualifications which are to be subject to the accreditation requirement. Article 15 makes provision for certain qualifications to be treated as accredited by Ofqual under section 139 of the Act. Article 16 makes provision for qualifications submitted for accreditation before 1st April 2010 to be treated as having been submitted to Ofqual for accreditation under section 139 of the Act. Article 17 makes provision so as to treat certain criteria published by the QCA as criteria set and published by Ofqual under section 140 of the Act.

Articles 10(4), 11, 13, 17(3) and 18 enable consultation carried out by the QCA to be treated as if it had been carried out by Ofqual for particular purposes.

Article 19 makes provision for complaints which are being investigated immediately before 1st April 2010 to be treated as made to Ofqual under section 150 of the Act.

Article 20 makes provision for certain documents to be treated as forming part of the NC and EYFS assessments regulatory frameworks and constituting the guidance required by sections 164(1)(b) and 165(1)(b) of the Act.

The transitory provision in article 21 is to enable the amendment made by paragraph 33 of Schedule 12 to the Act (amendment to section 85(6) of the Education Act 2002) to have effect until section 74(1) of the Education and Inspections Act 2006 is in force.

### **Amendments of the Apprenticeships, Skills, Children and Learning Act 2009 (Commencement No. 2 and Transitional and Savings Provisions) Order 2010**

Article 22 amends the No. 2 Commencement Order so that new transitional provisions enable certain provisions of the Learning and Skills Act 2000 to continue so that:

- the Chief Executive of Skills Funding is required to prepare the Annual Report and the final accounts of the Learning and Skills Council, and
- subject to certain modifications, the Chief Executive of Skills Funding may provide proper facilities for education and training in connection with working otherwise than under a contract of employment, until regulations are made under section 1(5)(b) of the Act.