

Status: Point in time view as at 01/08/2012.

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SCHEDULES

SCHEDULE 9

Section 127

THE OFFICE OF QUALIFICATIONS AND EXAMINATIONS REGULATION

Status

- 1 Ofqual is to perform its functions on behalf of the Crown.

Commencement Information

- II** Sch. 9 para. 1 in force at 1.4.2010 by [S.I. 2010/1151](#), art. 2, [Sch. 1](#)

Membership

- 2 (1) Ofqual is to consist of—
- [^{F1}(za) a member appointed by Her Majesty by Order in Council as the chief executive of Ofqual,]
 - (a) a member appointed by [^{F2}the Secretary of State to chair Ofqual (“the chair”), and]
 - (b) between 7 and 12 members appointed by the Secretary of State (the “ordinary members”), ^{F3}...
 - ^{F3}(c)
- (2) The person appointed by Her Majesty [^{F4}as the chief executive of] Ofqual is to be known as the Chief Regulator of Qualifications and Examinations (“the Chief Regulator”).
- (3) Ofqual may appoint one of the ordinary members as deputy to the [^{F5}chair] (“the deputy”).
- (4) Before appointing a person as an ordinary member, the Secretary of State must consult the [^{F5}chair] or the deputy (subject to sub-paragraph (6)).
- (5) The Secretary of State may consult the deputy instead of the [^{F5}chair] only if satisfied that—
- (a) it is not practicable to consult the [^{F5}chair] , and
 - (b) it is necessary to make the appointment before it would be practicable to do so.
- (6) The Secretary of State may appoint a person as an ordinary member without consulting either the [^{F5}chair] or the deputy if satisfied that—
- (a) it is not practicable to consult either of those persons, and
 - (b) it is necessary to make the appointment before it would be practicable to do so.

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- (7) One of the ordinary members (“the Northern Ireland member”) must be a person appointed following consultation with the Department for Employment and Learning in Northern Ireland.

Textual Amendments

- F1** Sch. 9 para. 2(1)(za) inserted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 7 para. 2\(2\)\(a\)](#); [S.I. 2012/924](#), art. 2
- F2** Words in Sch. 9 para. 2(1)(a) substituted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 7 para. 2\(2\)\(b\)](#); [S.I. 2012/924](#), art. 2
- F3** Sch. 9 para. 2(1)(c) and word omitted (1.4.2012) by virtue of [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 7 para. 2\(2\)\(c\)](#); [S.I. 2012/924](#), art. 2
- F4** Words in Sch. 9 para. 2(2) substituted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 7 para. 2\(3\)](#); [S.I. 2012/924](#), art. 2
- F5** Word in Sch. 9 para. 2(3)-(6) substituted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 7 para. 2\(4\)](#); [S.I. 2012/924](#), art. 2

Commencement Information

- I2** Sch. 9 para. 2 in force at 1.4.2010 by [S.I. 2010/1151](#), art. 2, [Sch. 1](#)

The Chief Regulator

- 3 (1) The Chief Regulator holds and vacates office in accordance with the terms of the appointment.
- (2) Those terms are to be determined by the Secretary of State, subject to the following provisions of this Schedule.
- (3) The Chief Regulator must not be appointed for a term of more than 5 years.
- (4) The Chief Regulator may resign from office at any time by giving written notice to the Secretary of State.
- (5) Her Majesty may remove the Chief Regulator from office on either of the following grounds—
- (a) inability or unfitness to carry out the duties of office;
 - (b) absence from Ofqual's meetings for a continuous period of more than 6 months without Ofqual's permission.
- (6) The previous appointment of a person as [^{F6}the chief executive of Ofqual (whether before or after the relevant commencement date)] does not affect the person's eligibility for re-appointment.

[^{F7}(7) “The relevant commencement date” means the date on which Schedule 7 to the Education Act 2011 comes fully into force.]

Textual Amendments

- F6** Words in Sch. 9 para. 3(6) substituted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 7 para. 3\(2\)](#); [S.I. 2012/924](#), art. 2
- F7** Sch. 9 para. 3(7) inserted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 7 para. 3\(3\)](#); [S.I. 2012/924](#), art. 2

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Commencement Information

I3 Sch. 9 para. 3 in force at 1.4.2010 by [S.I. 2010/1151](#), [art. 2](#), [Sch. 1](#)

[^{F8}The chair

Textual Amendments

F8 Sch. 9 para. 3A and heading inserted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), [s. 82\(3\)](#), [Sch. 7 para. 4](#); [S.I. 2012/924](#), [art. 2](#)

- 3A**
- (1) The chair holds and vacates office in accordance with the terms of the appointment.
 - (2) Those terms are to be determined by the Secretary of State, subject to the following provisions of this Schedule.
 - (3) The chair must not be appointed for a term of more than 5 years.
 - (4) The chair may resign from office at any time by giving written notice to the Secretary of State.
 - (5) The Secretary of State may remove the chair from office on either of the following grounds—
 - (a) inability or unfitness to carry out the duties of the office;
 - (b) absence from Ofqual's meetings for a continuous period of more than 6 months without Ofqual's permission.
 - (6) The previous appointment of a person to chair Ofqual (whether before or after the relevant commencement date) does not affect the person's eligibility for re-appointment.
 - (7) “The relevant commencement date” means the date on which Schedule 7 to the Education Act 2011 comes fully into force.]

The deputy and other ordinary members: tenure

- 4**
- (1) The deputy and other ordinary members hold and vacate office in accordance with the terms of their appointments, subject to the following provisions of this Schedule.
 - (2) An ordinary member must not be appointed for a term of more than 5 years.
 - (3) The deputy may resign from office at any time by giving written notice to Ofqual.
 - (4) The ordinary members may resign from office at any time by giving written notice to the Secretary of State
 - (5) Ofqual may remove the deputy from office if Ofqual thinks it appropriate to do so.
 - (6) The Secretary of State may remove an ordinary member from office on either of the following grounds—
 - (a) inability or unfitness to carry out the duties of office;
 - (b) absence from Ofqual's meetings for a continuous period of more than 6 months without Ofqual's permission.

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- (7) Before removing an ordinary member from office, the Secretary of State must consult the [F9 chair] or the deputy (subject to sub-paragraph (9)).
- (8) The Secretary of State may consult the deputy instead of the [F9 chair] only if—
- (a) the ordinary member to be removed from office is not the deputy, and
 - (b) the Secretary of State is satisfied that—
 - (i) it is not practicable to consult the [F9 chair] , and
 - (ii) it is necessary to remove the ordinary member from office before it would be practicable to do so.
- (9) The Secretary of State may remove an ordinary member from office without consulting either the [F9 chair] or the deputy if satisfied that—
- (a) if the ordinary member to be removed from office is the deputy, sub-paragraph (10) applies;
 - (b) in any other case, sub-paragraph (11) applies.
- (10) This sub-paragraph applies if—
- (a) it is not practicable to consult the [F9 chair] , and
 - (b) it is necessary to remove the ordinary member from office before it would be practicable to do so.
- (11) This sub-paragraph applies if—
- (a) it is not practicable to consult either the [F9 chair] or the deputy, and
 - (b) it is necessary to remove the ordinary member from office before it would be practicable to do so.
- (12) The Secretary of State must consult the Department for Employment and Learning in Northern Ireland before removing the Northern Ireland member from office.
- (13) The previous appointment of a person as the deputy or another ordinary member does not affect the person's eligibility for re-appointment.
- (14) If the deputy ceases to be an ordinary member, the person also ceases to be the deputy.

Textual Amendments

F9 Word in Sch. 9 para. 4(7)-(11) substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\), Sch. 7 para. 5](#); [S.I. 2012/924, art. 2](#)

Commencement Information

I4 Sch. 9 para. 4 in force at 1.4.2010 by [S.I. 2010/1151, art. 2, Sch. 1](#)

Remuneration etc. of [F10 members]

Textual Amendments

F10 Word in Sch. 9 para. 5 heading substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\), Sch. 7 para. 6](#); [S.I. 2012/924, art. 2](#)

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- 5 (1) Ofqual must, if the Secretary of State requires it to do so, pay remuneration, allowances and expenses to the ^{F11}members of Ofqual] .
- (2) Ofqual must, if the Secretary of State requires it to do so, pay, or make provision for the payment of, a pension, allowances or gratuities to or in respect of a ^{F12}person who is or has been the chair or an] ordinary member.
- (3) If a person ceases to be ^{F13}a member of Ofqual] and the Secretary of State decides that the person should be compensated because of special circumstances, Ofqual must pay compensation to the person.
- (4) The amount of a payment under ^{F14}sub-paragraph (1), (2) or (3)] is to be determined by the Secretary of State.
- ^{F15}(5) Service as the Chief Regulator is one of the kinds of service to which a scheme under section 1 of the Superannuation Act 1972 (superannuation schemes as respects civil servants etc) can apply.
- (6) Ofqual must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of any increase attributable to sub-paragraph (5) in the sums payable out of money provided by Parliament under the Superannuation Act 1972.]

Textual Amendments

- F11** Words in Sch. 9 para. 5(1) substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\), Sch. 7 para. 7\(2\); S.I. 2012/924, art. 2](#)
- F12** Words in Sch. 9 para. 5(2) substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\), Sch. 7 para. 7\(3\); S.I. 2012/924, art. 2](#)
- F13** Words in Sch. 9 para. 5(3) substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\), Sch. 7 para. 7\(4\); S.I. 2012/924, art. 2](#)
- F14** Words in Sch. 9 para. 5(4) substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\), Sch. 7 para. 7\(5\); S.I. 2012/924, art. 2](#)
- F15** Sch. 9 para. 5(5)(6) inserted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\), Sch. 7 para. 7\(6\); S.I. 2012/924, art. 2](#)

Commencement Information

- I5** Sch. 9 para. 5 in force at 1.4.2010 by [S.I. 2010/1151, art. 2, Sch. 1](#)

^{F16}Staff]

Textual Amendments

- F16** Sch. 9 para. 6 heading substituted (1.4.2012) by [Education Act 2011 \(c. 21\), s. 82\(3\), Sch. 7 para. 8; S.I. 2012/924, art. 2](#)

- 6 ^{F17}(1)
- ^{F17}(2)
- ^{F17}(3)

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- (4) Ofqual may appoint ^{F18}... members of staff.
- (5) The following are to be determined by Ofqual with the approval of the Secretary of State—
- (a) the number of ^{F19}... members of staff of Ofqual;
 - (b) their conditions of service.

Textual Amendments

- F17** Sch. 9 para. 6(1)-(3) omitted (1.4.2012) by virtue of [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 7 para. 9(2)**; [S.I. 2012/924](#), art. 2
- F18** Word in Sch. 9 para. 6(4) omitted (1.4.2012) by virtue of [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 7 para. 9(3)**; [S.I. 2012/924](#), art. 2
- F19** Word in Sch. 9 para. 6(5)(a) omitted (1.4.2012) by virtue of [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 7 para. 9(3)**; [S.I. 2012/924](#), art. 2

Commencement Information

- I6** Sch. 9 para. 6 in force at 1.4.2010 by [S.I. 2010/1151](#), art. 2, **Sch. 1**

Committees

- 7 (1) Ofqual may establish committees, and any committee established by Ofqual may establish sub-committees.
- (2) Ofqual may—
- (a) dissolve a sub-committee established under sub-paragraph (1), or
 - (b) alter the purposes for which such a sub-committee is established.
- (3) In this Schedule a committee or sub-committee established under sub-paragraph (1) is referred to as an “Ofqual committee”.
- (4) An Ofqual committee must include at least one member of Ofqual or Ofqual's staff.
- (5) Ofqual may arrange for the payment of remuneration, allowances and expenses to any person who—
- (a) is a member of an Ofqual committee, but
 - (b) is not a member of Ofqual or Ofqual's staff.
- (6) Ofqual must at least once in any 5 year period review—
- (a) the structure of Ofqual committees, and
 - (b) the scope of each Ofqual committee's activities.
- (7) The first review under sub-paragraph (6) must be completed not later than the day which is the end of the period of 5 years beginning with the day on which section 127 comes into force.

Commencement Information

- I7** Sch. 9 para. 7 in force at 1.4.2010 by [S.I. 2010/1151](#), art. 2, **Sch. 1**

- 8 (1) Ofqual and any other person may establish a committee jointly.

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- (2) In this Schedule a committee established under sub-paragraph (1) is referred to as a “joint committee”.
- (3) A joint committee may establish sub-committees.
- (4) In this Schedule a sub-committee established under sub-paragraph (3) is referred to as a “joint sub-committee”.
- (5) A joint committee and a joint sub-committee must include at least one member of Ofqual or Ofqual's staff.
- (6) Ofqual may arrange for the payment of remuneration, allowances and expenses to any person who—
 - (a) is a member of a joint committee or a joint sub-committee, but
 - (b) is not a member of Ofqual or Ofqual's staff.

Commencement Information

I8 Sch. 9 para. 8 in force at 1.4.2010 by [S.I. 2010/1151](#), art. 2, [Sch. 1](#)

Procedure etc.

- 9
- (1) Ofqual may regulate—
 - (a) its own proceedings (including quorum), and
 - (b) the procedure (including quorum) of Ofqual committees.
 - (2) A joint committee may regulate—
 - (a) its own procedure (including quorum), and
 - (b) the procedure (including quorum) of any sub-committee established by it.
 - (3) The validity of proceedings of Ofqual, or of an Ofqual committee, a joint committee or joint sub-committee is not affected by—
 - (a) a vacancy;
 - (b) a defective appointment.

Commencement Information

I9 Sch. 9 para. 9 in force at 1.4.2010 by [S.I. 2010/1151](#), art. 2, [Sch. 1](#)

Delegation

- 10
- (1) Ofqual may delegate any of its functions to—
 - (a) a member of Ofqual or Ofqual's staff;
 - (b) a committee established by Ofqual;
 - (c) a joint committee.
 - (2) A function is delegated under this paragraph to the extent and on the terms that Ofqual determines.

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Commencement Information

I10 Sch. 9 para. 10 in force at 1.4.2010 by [S.I. 2010/1151](#), [art. 2](#), [Sch. 1](#)

- 11 (1) A committee established by Ofqual or a joint committee may delegate any of its functions to a sub-committee established by it.
- (2) A function is delegated under this paragraph to the extent and on the terms that the committee determines.
- (3) The power of a committee established by Ofqual to delegate a function under this paragraph, and to determine the extent and terms of the delegation, are subject to Ofqual's powers to direct what a committee established by it may and may not do.
- (4) The power of a joint committee to delegate a function under this paragraph, and to determine the extent and terms of the delegation, are subject to the power of Ofqual and any other person with whom Ofqual established the joint committee to direct (acting jointly) what the committee may and may not do.

Commencement Information

I11 Sch. 9 para. 11 in force at 1.4.2010 by [S.I. 2010/1151](#), [art. 2](#), [Sch. 1](#)

Documents

- 12 The application of Ofqual's seal is authenticated by the signatures of—
- (a) two members of Ofqual, or
 - (b) one member of Ofqual and another person who has been authorised (generally or specifically) for that purpose by Ofqual.

Commencement Information

I12 Sch. 9 para. 12 in force at 1.4.2010 by [S.I. 2010/1151](#), [art. 2](#), [Sch. 1](#)

- 13 The Documentary Evidence Act 1868 (c. 37) has effect in relation to Ofqual as if—
- (a) Ofqual were included in the first column of the Schedule to that Act,
 - (b) any member or other person authorised to act on Ofqual's behalf were mentioned in the second column of that Schedule, and
 - (c) the regulations referred to in that Act included any document issued by Ofqual or under its authority.

Commencement Information

I13 Sch. 9 para. 13 in force at 1.4.2010 by [S.I. 2010/1151](#), [art. 2](#), [Sch. 1](#)

Supplementary powers

- 14 (1) Ofqual may do anything that it considers necessary or appropriate for the purposes of, or in connection with, its functions.

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- (2) The power in sub-paragraph (1) is subject to any restrictions imposed by or under any provision of any Act.
- (3) Ofqual may not lend money.

Commencement Information

I14 Sch. 9 para. 14 in force at 1.4.2010 by [S.I. 2010/1151](#), art. 2, [Sch. 1](#)

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