

EXPLANATORY MEMORANDUM TO
THE APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009,
PARTS 7 AND 8 (CONSEQUENTIAL AMENDMENTS) ORDER 2010

2010 No. 677

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 This Order makes amendments to secondary legislation which are consequential on provisions in the Apprenticeships, Skills, Children and Learning Act 2009 (“the 2009 Act”) that:

- provide for the Qualifications and Curriculum Authority (QCA) to continue in existence but to be renamed as the Qualifications and Curriculum Development Agency (QCDA), with revisions to its statutory functions;
- establish the Office of Qualifications and Examinations Regulation (Ofqual); and
- amend provisions in the Learning and Skills Act 2000 governing the eligibility of qualifications used in maintained schools etc. in England for public funding, to align this approval regime with the new regulatory regime.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative Context**

4.1 The Apprenticeships, Skills, Children and Learning Act 2009 received Royal Assent in November 2009. Section 127 of that Act establishes a new body known as the Office of Qualifications and Examinations Regulation (Ofqual) whose functions (set out in Part 7 of the 2009 Act) are broadly to regulate qualifications and assessments. Similar regulatory functions were previously carried out by the Qualifications and Curriculum Authority (QCA). By section 175 of the 2009 Act the QCA is to continue in existence but is renamed the Qualifications and Curriculum Development Agency (QCDA). The QCDA’s amended functions are set out in Part 8 of the 2009 Act. Schedule 12 to the 2009 Act also makes changes to section 96 of the Learning and Skills Act 2000, a provision that governs which qualifications used in maintained schools etc. in England need to be approved by the Secretary of State in order for them to be eligible for public funding. The amendments bring the qualifications to which this approval regime applies into line with the qualifications in respect of which an awarding body may apply to be recognised by Ofqual.

4.2 This Order makes changes to references in secondary legislation to the QCA or to matters relating to qualifications, consequential on changes made by the 2009 Act.

5. Territorial Extent and Application

This Order extends to the United Kingdom.

6. European Convention on Human Rights

As the Order is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Part 7 of the 2009 Act establishes Ofqual as a Non-Ministerial Department, reporting directly to Parliament and the Northern Ireland Assembly. In relation to England, Ofqual will regulate academic and vocational qualifications (excluding foundation, first or higher degrees) and National Curriculum and Early Years Foundation Stage assessment arrangements. Ofqual will also regulate vocational qualifications (other than degrees) in Northern Ireland. Ofqual's functions include the safeguarding of qualification and assessment standards, promoting public confidence in qualifications and assessments, and economic regulation of the qualifications market.

7.2 Ofqual's status as a Non-Ministerial Department is intended to ensure that there is no conflict of interest with Ministers over standards issues, nor with the QCDA, which will develop the specifications of qualifications such as GCSEs and design and deliver National Curriculum assessments. Setting up a fully independent regulator and equipping it with appropriate powers is intended to give grounds for greater confidence that the standards of qualifications and assessments are being maintained.

7.3 Part 8 of the 2009 Act provides for the regulatory role of the QCA to be removed, and for various other changes to the QCA's functions. The QCA continues in existence, but with a new name – the Qualifications and Curriculum Development Agency.

8. Consultation outcome

Given the technical and consequential nature of this Order, no public consultation has taken place on the detail of the amendments.

9. Guidance

The amendments contained in this Order are consequential, so no guidance is needed.

10. Impact

This Order will have no impact on business, charities or voluntary bodies; nor on the public sector. An Impact Assessment has therefore not been prepared.

11. Regulating small business

This Order will have no impact on small business.

12. Monitoring & review

12.1 The technical nature of this Order is such that no specific monitoring and review arrangements are appropriate.

12.2 More broadly, arrangements are in place for the provisions in the primary legislation to be kept under review. Ofqual has a statutory duty to keep its regulatory functions under review and not to impose or maintain unnecessary regulatory burdens. We will also ask Ofqual to commission an independent review of the arrangements after three years. The QCDA is accountable to Ministers, with an annual remit. Its work will – as is the case at the moment with the QCA - be kept under regular review.

13. Contact

Chris Eridani Ball at the Department for Children, Schools and Families (tel: 020 7340 07780 or email: christopher.eridani-ball@dcsf.gsi.gov.uk) can answer any queries regarding the Order.