



# Education Act 2011

## 2011 CHAPTER 21

### PART 4

#### QUALIFICATIONS AND THE CURRICULUM

##### *Ofqual*

### 23 Enforcement powers

- (1) Part 7 of ASCLA 2009 (the Office of Qualifications and Examinations Regulation) is amended as set out in subsections (2) to (6).
- (2) In section 151 (power to give directions), for subsection (1) substitute—
  - “(1) Subsection (2) applies if it appears to Ofqual that a recognised body has failed or is likely to fail to comply with a condition to which the recognition is subject.”
- (3) After section 151 insert—

#### **“151A Power to impose monetary penalties**

- (1) Subsection (2) applies if it appears to Ofqual that a recognised body has failed to comply with a condition to which the recognition is subject.
- (2) Ofqual may impose a monetary penalty on the recognised body.
- (3) A “monetary penalty” is a requirement to pay to Ofqual a penalty of an amount determined by Ofqual in accordance with section 151B.
- (4) Before imposing a monetary penalty on a recognised body, Ofqual must give notice to the body of its intention to do so.
- (5) The notice must—
  - (a) set out Ofqual's reasons for proposing to impose the penalty, and

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- (b) specify the period during which, and the way in which, the recognised body may make representations about the proposal.
- (6) The period specified under subsection (5)(b) must not be less than 28 days beginning with the date on which the notice is received.
- (7) Ofqual must have regard to any representations made by the recognised body during the period specified in the notice in deciding whether to impose a monetary penalty on the body.
- (8) If Ofqual decides to impose a monetary penalty on the body, it must give the body a notice containing information as to—
  - (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) the period within which payment is required to be made (which must not be less than 28 days),
  - (d) rights of appeal,
  - (e) the period within which an appeal may be made, and
  - (f) the consequences of non-payment.

#### **151B Monetary penalties: amount**

- (1) The amount of a monetary penalty imposed on a recognised body under section 151A must not exceed 10% of the body's turnover.
- (2) The turnover of a body for the purposes of subsection (1) is to be determined in accordance with an order made by the Secretary of State.
- (3) Subject to subsection (1), the amount may be whatever Ofqual decides is appropriate in all the circumstances of the case.

#### **151C Monetary penalties: appeals**

- (1) A recognised body may appeal to the First-tier Tribunal against—
  - (a) a decision to impose a monetary penalty on the body under section 151A;
  - (b) a decision as to the amount of the penalty.
- (2) An appeal under this section may be made on the grounds—
  - (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable.
- (3) The requirement to pay the penalty is suspended pending the determination of an appeal under this section.
- (4) On an appeal under this section the Tribunal may—
  - (a) withdraw the requirement to pay the penalty;
  - (b) confirm that requirement;
  - (c) vary that requirement;
  - (d) take such steps as Ofqual could take in relation to the failure to comply giving rise to the decision to impose the requirement;

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- (e) remit the decision whether to confirm the requirement to pay the penalty, or any matter relating to that decision, to Ofqual.

#### **151D Monetary penalties: interest and recovery**

- (1) This section applies if all or part of a monetary penalty imposed on a recognised body is unpaid at the end of the period ending on the applicable date.
  - (2) The applicable date is—
    - (a) the last date on which the recognised body may make an appeal under section 151C in respect of the penalty, if no such appeal is made;
    - (b) if an appeal under section 151C in respect of the penalty is made—
      - (i) the date on which the appeal is determined, or
      - (ii) if the appeal is withdrawn before being determined, the date on which the appeal is withdrawn.
  - (3) The unpaid amount of the penalty for the time being carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (and does not also carry interest as a judgment debt under that section).
  - (4) The total amount of interest imposed under subsection (3) must not exceed the amount of the penalty.
  - (5) Ofqual may recover from the body, as a civil debt due to it, the unpaid amount of the penalty and any unpaid interest.”
- (4) In section 152 (power to withdraw recognition), for subsection (2) substitute—
- “(2) Ofqual may withdraw recognition from the recognised body in respect of the award or authentication of—
    - (a) a specified qualification or description of qualification in respect of which the body is recognised, or
    - (b) every qualification or description of qualification in respect of which the body is recognised.”
- (5) After section 152 insert—

#### **“152A Costs recovery**

- (1) Ofqual may, by notice, require a recognised body on which a sanction has been imposed to pay the costs incurred by Ofqual in relation to imposing the sanction, up to the time it is imposed.
- (2) The references in subsection (1) to imposing a sanction are to—
  - (a) giving a direction under section 151;
  - (b) imposing a monetary penalty under section 151A;
  - (c) withdrawing recognition under section 152.
- (3) “Costs” includes in particular—
  - (a) investigation costs;
  - (b) administration costs;
  - (c) costs of obtaining expert advice (including legal advice).

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- (4) A notice given to a recognised body under subsection (1) must contain information as to—
- (a) the amount required to be paid,
  - (b) how payment may be made,
  - (c) the period within which payment is required to be made (which must not be less than 28 days),
  - (d) rights of appeal,
  - (e) the period within which an appeal may be made, and
  - (f) the consequences of non-payment.
- (5) The body may require Ofqual to provide a detailed breakdown of the amount specified in the notice.

### **152B Costs recovery: appeals**

- (1) A recognised body may appeal to the First-tier Tribunal against—
- (a) a decision under section 152A(1) to require the body to pay costs;
  - (b) a decision as to the amount of those costs.
- (2) An appeal under this section may be made on the grounds—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable.
- (3) The requirement to pay the costs is suspended pending the determination of an appeal under this section.
- (4) On an appeal under this section the Tribunal may—
- (a) withdraw the requirement to pay the costs;
  - (b) confirm that requirement;
  - (c) vary that requirement;
  - (d) take such steps as Ofqual could take in relation to the failure to comply giving rise to the decision to impose the requirement;
  - (e) remit the decision whether to confirm the requirement to pay the costs, or any matter relating to that decision, to Ofqual.

### **152C Costs: interest and recovery**

- (1) This section applies if all or part of an amount of costs that a recognised body is required to pay under section 152A(1) is unpaid at the end of the period ending on the applicable date.
- (2) The applicable date is—
- (a) the last date on which the recognised body may make an appeal under section 152B in respect of the costs, if no such appeal is made;
  - (b) if an appeal under section 152B in respect of the costs is made—
    - (i) the date on which the appeal is determined, or
    - (ii) if the appeal is withdrawn before being determined, the date on which the appeal is withdrawn.

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- (3) The unpaid amount of the costs for the time being carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (and does not also carry interest as a judgment debt under that section).
- (4) The total amount of interest imposed under subsection (3) must not exceed the amount of the costs.
- (5) Ofqual may recover from the body, as a civil debt due to it, the unpaid amount of the costs and any unpaid interest.”
- (6) In section 153 (qualifications regulatory framework), in subsection (8)(e), for “152” substitute “ 152C ”.
- (7) In section 262(6) of ASCLA 2009 (orders and regulations subject to affirmative resolution procedure), after paragraph (e) insert—  
“(ea) an order under section 151B(2);”.

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**Commencement Information**

**II** S. 23 in force at 1.5.2012 by S.I. 2012/924, art. 3

**Changes to legislation:**

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