Draft laid before Parliament under section 262(6) of the Apprenticeships, Skills, Children and Learning Act 2009, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No. 0000

EDUCATION, ENGLAND

EDUCATION, NORTHERN IRELAND

The Office of Qualifications and Examinations Regulation (Determination of Turnover for Monetary Penalties) Order 2012

Made - - - - 2012

Coming into force in accordance with regulation 1

The Secretary of State for Education makes the following Order in exercise of the powers conferred by section 151B(2) of the Apprenticeships, Skills, Children and Learning Act 2009(**a**);

In accordance with section 262(6)(**b**) of that Act a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the Office of Qualifications and Examinations Regulation (Determination of Turnover for Monetary Penalties) Order 2012 and comes into force on the day after the day on which it is made.

Interpretation

2. In this Order—

"the Act" means the Apprenticeships, Skills, Children and Learning Act 2009;

"business year" means a period of more than six months in respect of which a recognised body publishes accounts or, if no such accounts have been published for the period, prepares accounts;

"date of the notice" means the date on which Ofqual gives notice to a recognised body under section 151A(4) of the Act of its intention to impose a monetary penalty on the recognised body.

(**a**) 2009 c. 22. Section 151B was inserted by section 23 of the Education Act 2011 (c. 21).
(**b**) Section 262(6) was amended by section 23(7) of the Education Act 2011 to include reference to an order under section 151B(2).

Calculation of turnover

3.—(1) For the purposes of these Regulations, the turnover of a recognised body(**a**) is the sum of—

(a) all amounts derived by the body from the provision of goods and services falling within the body's ordinary activities in the United Kingdom; and

(b) all other amounts received by the body in the course of the body's ordinary activities in the United Kingdom by way of gift, grant, subsidy or membership fee,

after deduction of trade discounts, value added tax and other taxes based on the amounts so derived or received.

(2) The amounts are to be calculated in conformity with generally accepted accounting principles in the United Kingdom.

Determination of turnover for the purposes of section 151B(1) of the Act

4.—(1) Subject to the following paragraphs, for the purposes of section 151B(1) of the Act the turnover of a recognised body is the body's turnover for the business year preceding the date of the notice.

(2) Where the business year preceding the date of the notice does not equal twelve months, the turnover is the turnover in that business year divided by the number of months in that business year and multiplied by twelve.

(3) Where there is no preceding business year, the turnover is the turnover for the twelve months ending on the last day of the month preceding the month in which the date of the notice falls.

(4) Where in the application of paragraph (3), the recognised body has turnover for a period of less than twelve months the turnover is the turnover in that period divided by the number of months in that period and multiplied by twelve.

Name
Minister of State
Date Department for Education

(**a**) Section 132(9) of the Apprenticeships, Skills, Children and Learning Act 2009 defines "recognised body".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the determination of the turnover of a recognised body for the purposes of section 151B(1) of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) ("the Act"). A recognised body is defined in section 132(9) of the Act as an awarding body recognised by the Office of Qualifications and Examination Regulation ("Ofqual") under that section.

Section 151A of the Act provides that if it appears to Ofqual that a recognised body has failed to comply with a condition to which its recognition is subject under section 132(3)(d) or 134 of the Act, Ofqual may impose a monetary penalty on the recognised body. The amount of the penalty may be whatever Ofqual decides is appropriate in all the circumstances of the case and must not exceed 10% of the body's turnover, as determined by this Order.

An impact assessment has not been produced for this instrument as making provision to determine turnover has no impact on businesses, the public sector or civil society organisations. An assessment of Ofqual's enforcement powers and the impact of giving Ofqual the power to impose a monetary penalty was prepared for the Education Bill. An updated version of this assessment is annexed to the Explanatory Memorandum which is available alongside this instrument on www.legislation.gov.uk.

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