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Department for  
**Employment  
and Learning**  
[www.delni.gov.uk](http://www.delni.gov.uk)

# Consultation Document

## New Regulatory Arrangements for Vocational Qualifications in Northern Ireland

11 August 2008

## **EXECUTIVE SUMMARY**

Qualifications are the means by which successful formal learning is recognised. This consultation paper proposes some changes to the ways in which vocational qualifications, those associated with a particular field of employment, are regulated.

Qualifications are currently regulated across England, Northern Ireland and Wales by three regulatory bodies, who act jointly to maintain a three-country qualifications framework: the Qualifications and Curriculum Authority (QCA, the English regulator), the Northern Ireland Council for the Curriculum, Examinations and Assessment (CCEA) and the Department for Children, Education, Lifelong Learning and Skills (DCELLS, the Welsh regulator).

Awarding bodies develop qualifications, which are then accredited by the regulators if they meet a set of criteria and placed on the National Qualifications Framework, which accords the qualification a seal of quality and usually attracts public funding for the delivery of that qualification in Northern Ireland. Education and training providers choose qualifications to deliver based upon the demand in their area, and the awarding bodies oversee the assessment process. The regulators ensure that each recognised awarding body continues to meet the established requirements to fulfil these activities.

A new regulatory body known as the Office of the Qualifications and Examinations Regulator (Ofqual) is being established in England, subject to the necessary legislation being passed, following restructuring to the existing regulatory and advisory body, the Qualifications and Curriculum Authority (QCA). QCA (and one of its predecessors, the National Council for Vocational Qualifications) has been regulating National Vocational Qualifications (NVQs) in Northern Ireland since they were introduced and legislation is currently progressing to extend this remit in Northern Ireland to all vocational

qualifications. These moves are being taken because the proposed establishment of the new Education and Skills Authority (ESA), which is expected to subsume the functions of CCEA, gave rise to the need to reconsider the regulatory arrangements in Northern Ireland. While the Department of Education's intention is to bring the regulation of general and academic qualifications in-house, DEL prefers to build on the well-established track record of the QCA NI office in regulating NVQs to include all vocational qualifications.

This consultation sets out proposed arrangements for a new system for the regulation of vocational qualifications in Northern Ireland in the light of these changes. The nature of the new regulator, Ofqual, has a direct impact upon this regulation because of the wider remit of the QCA to include the regulation of all vocational qualifications in Northern Ireland (dependent upon the passage of the Education and Skills Bill through the Westminster Parliament) and the proposed transfer of regulatory functions from QCA to Ofqual. A decision must now therefore be taken about whether QCA's current and anticipated functions in Northern Ireland should be transferred to Ofqual.

The intention for the new regulator, Ofqual, is that it will regulate at a more strategic level than its predecessor, focussing its attention on where risk is greatest. It is envisaged that it will have an expanded range of powers of sanction to be used where appropriate and, crucially, it will have greater independence and will report directly to the Westminster Parliament.

The Department for Employment and Learning is recommending in this consultation that Ofqual's remit should also extend to Northern Ireland, *i.e.* that it should continue the proposed functions of QCA: to regulate all vocational qualifications in Northern Ireland. We envisage that similar reporting arrangements would operate here as those which are planned to operate in England – Ofqual would report to the NI Assembly in relation to its activities in Northern Ireland. In addition, Ofqual would maintain an office in Northern Ireland

to enable it to fulfil its role as an independent guarantor of standards in vocational qualifications, which will maintain the confidence of employers, students and the general public that these qualifications are of the highest quality.

The consultation paper poses a number of key questions regarding the operation of Ofqual in Northern Ireland and your views are sought on the full range of activities in which it is proposed Ofqual will be engaged.

Replies may be sent by e-mail to: [lifelong.learning@delni.gov.uk](mailto:lifelong.learning@delni.gov.uk)

Or by post to:            Learning and Curriculum Policy Branch  
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Responses should be returned by 31 October 2008. We may not be able to consider responses received after that date.

If you have any queries relating to this consultation, please contact:

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## 1. INTRODUCTION

1.1. Qualifications are the means by which successful formal learning is recognised. They range from vocational qualifications, including National Vocational Qualifications (NVQs), to general academic qualifications, such as GCSEs and A levels; from qualifications in the essential skills of literacy, numeracy and IT to university degrees and higher. They are a determining factor in the operation of a successful labour market: qualifications that are recognised and respected by employers create opportunities for the holders of those qualifications and growth in employment creates overall economic growth, in turn creating more employment opportunities.

1.2. Northern Ireland's economic performance has improved in recent years, but there still exist pockets of deprivation characterised by high levels of economic inactivity and low qualification levels (see, for example, DEL's Labour Market Bulletin 21<sup>1</sup> for a broad discussion of these issues). There is therefore a social, as well as an economic imperative to ensure that the qualifications available in Northern Ireland are accessible and attractive to learners and employers alike, and are sufficiently rigorous to command respect amongst potential employers and the general public.

1.3. This consultation document proposes reforms to the system for regulating vocational qualifications in Northern Ireland to ensure that these imperatives can be met more effectively. Readers should note that no changes are proposed in this consultation to the regulation of academic qualifications, the responsibility for which lies with the Department of Education, or to university degrees.

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<sup>1</sup> A copy can be downloaded from: [www.delni.gov.uk/lmb\\_21\\_complete.pdf](http://www.delni.gov.uk/lmb_21_complete.pdf).

## The Strategic Context

1.4. The primary focus of the Northern Ireland Executive's Programme for Government, 2008-2011<sup>2</sup> is on the development of economic growth. A successful economy is built upon the twin foundations of a highly productive, highly skilled and flexible workforce, and growth in the availability of employment. The Executive's commitment to the development of skills needed by employers is demonstrated by its commitment to Public Service Agreement targets, such as:

- to increase the proportion of the working age population who are qualified at skill level 2 and above to 80% by 2015<sup>3</sup>;
- to increase the proportion of the working age population who are qualified at skill level 3 and above to 60% by 2015<sup>4</sup>; and
- to have 42,000 adult learners achieving a recognised qualification in essential skills by March 2011.

1.5. The Department for Employment and Learning's (DEL) skills strategy, *Success Through Skills* (2006<sup>5</sup>), sets out a vision for the future that can be achieved through improving the skills of all people in Northern Ireland:

"by 2015, the Northern Ireland economy is highly competitive in global terms; it is based on high value added jobs, with progressive leadership from a strong cadre of skilled local managers; it has increased export levels and it attracts substantial amounts of inward investment. Its people are entrepreneurial and innovative; small businesses are encouraged to grow and strong, coherent services and support for businesses of all sizes are provided. Employment has increased, leading to an expansion of the workforce and migrant workers are playing a valuable role in the economy. The workforce, increasingly, is literate and numerate and has good ICT skills. Individuals can solve problems, work in teams, are innovative and enterprising and expect to learn new skills throughout their working lives. A broader adoption of technology and e-learning will have reduced transport and location barriers." (*Success Through Skills*, 2006, p.6).

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<sup>2</sup> A copy can be found at [www.pfgbudgetni.gov.uk/index/programme-for-government-document](http://www.pfgbudgetni.gov.uk/index/programme-for-government-document).

<sup>3</sup> Qualifications at level 2 include GCSEs and level 2 NVQs.

<sup>4</sup> Qualifications at level 3 include A-levels and level 3 NVQs.

<sup>5</sup> See [www.delni.gov.uk/index/publications/pubs-sectoral/skills-strategy-ni](http://www.delni.gov.uk/index/publications/pubs-sectoral/skills-strategy-ni).

1.6. Four broad themes underpin this vision:

- *understanding the demand for skills* through the use of appropriate labour market information, involving employers and developing the role of the Sector Skills Councils (employer-led coordinating bodies representing a particular employment sector);
- *improving the skills levels of the workforce*, with a focus on the essential skills of literacy, numeracy and IT, the provision of appropriate careers and education guidance and information and the further development of such schemes as Investors in People (this is a framework and mark of quality to help organisations to improve their performance by examining all aspects of their people management systems);
- *improving the quality and relevance of education and training*. DEL's strategy document, "Further Education Means Business", develops this theme, stressing the importance of the reform of vocational qualifications and of joint activity with the Department of Education to improve educational provision for all 14- to 19-year-olds, wherever they may study; and
- *tackling the skills barriers to employment and employability*. This theme is addressed to a large extent through the Government's Welfare to Work strategy.

1.7. The need to increase the skills and qualifications levels of everybody in the NI workforce is therefore a theme that runs through strategic planning at all levels and an effective qualifications framework is an integral part of a functional labour market. If learners and potential learners, employers and other stakeholders are to have full confidence in this system, it must be regulated effectively and with transparency.

## 2. THE CURRENT REGULATORY SYSTEM

2.1. There are a number of stages in the development and regulation of qualifications. Qualifications are developed and awarded by awarding bodies, which also oversee the administration of qualifications. Centres such as schools, colleges and other training providers, including employers, use those awarding bodies offering the qualifications that are in demand with their learners and potential learners and, particularly in the case of vocational qualifications, those that are in demand with employers. For this reason, awarding bodies work increasingly closely with Sector Skills Councils (SSCs), who represent employers, to develop qualifications that meet the needs of the sector as articulated in each SSC's sector qualifications strategy.

2.2. At present all qualifications provided by awarding bodies are external qualifications; **that is, qualifications are developed by awarding bodies, and not by centres that use them.** It is worth noting that changes to this aspect of qualification development are proposed later in this consultation document – see paragraphs 3.38 and 3.39, below.

2.3. Awarding bodies are, in turn, regulated by regulatory bodies. Under current arrangements, regulatory bodies maintain the standards of qualifications and assessment, 'recognise' awarding bodies as having the capacity to meet those standards, set criteria for the accreditation of qualifications and accredit qualifications that meet those criteria. The regulators in England, Northern Ireland and Wales also work jointly to maintain the National Qualifications Framework (NQF). This framework sets out a series of levels against which all qualifications are recognised and where qualifications at the same level are broadly similar in terms of the demands they place upon the learner. This helps learners to make informed decisions about the qualifications they want to pursue. When a qualification has been accredited and added to the NQF it is listed on the



National Database of Accredited Qualifications. This system ensures that there are consistent standards across the diverse and complex range of qualifications available.

2.4. Once a qualification has been accredited, the regulators monitor the delivery of the qualification to ensure that standards are maintained. The regulators and other stakeholders have recently completed the testing and trialling of the new Qualifications and Credit Framework (QCF) for vocational qualifications, which will provide a new way of recognising achievement through the awarding of credit for units and qualifications. It will provide flexible routes to gaining qualifications, and enable qualifications to be achieved in small steps. The QCF is expected to be phased in between September 2008 and 2010 and consideration is currently being given as to how the NQF and the QCF will be integrated in the future.

2.5. At present, there are around 6,000 qualifications in this system, offered by around 125 recognised awarding bodies which are regulated in England, Northern Ireland and Wales by three regulatory bodies: the Qualifications and Curriculum Authority (QCA), the Northern Ireland Council for the Curriculum, Examinations and Assessment (CCEA) and the Department for Children, Education, Lifelong Learning and Skills (DCELLS). These bodies act jointly across the three countries to ensure that qualifications are comparable and that there is public confidence in the qualifications system. These arrangements help to ensure that qualifications are understood and recognised across the three countries, benefiting learners, employers and further and higher education institutions. The regulators also work closely with similar authorities in Scotland, particularly in relation to vocational qualifications.

## **Regulation of Vocational Qualifications in Northern Ireland**

2.6. Two of these regulatory bodies currently regulate the qualifications system in Northern Ireland, except those awarded or authenticated by higher education institutions: CCEA regulates all general and academic qualifications and a number of vocational qualifications, including what are known as vocationally-related qualifications, which provide education in the knowledge which underpins areas of employment, while QCA, through its Northern Ireland office, regulates NVQs, which are much more heavily competence-based. CCEA is accountable to the Department of Education and the Department for Employment and Learning for its regulatory activities, while the QCA is directly accountable to the Secretary of State for Children, Schools and Families in England, although it operates an office in Belfast, with which DEL has a memorandum of understanding.

2.7. CCEA is a statutory body set up under the Education (Northern Ireland) Order 1998, governed by a board appointed by the Department of Education; it is both an awarding body — it develops and oversees the administration of some qualifications, including GCSEs — and a regulatory body which accredits and regulates external qualifications, with the exception of NVQs. With the proposed establishment of the Education and Skills Authority, responsibility for the regulation of general and academic qualifications in Northern Ireland will transfer from CCEA to the Department of Education.

2.8. QCA is a statutory authority that was established by the (Westminster) Education Act 1997. It is a non-departmental public body and is governed by a board whose members are appointed by the Secretary of State for Children, Schools and Families. QCA performs a wide range of functions relating to curriculum, qualifications and assessment. It receives an annual remit and funding settlement from the Westminster government, including remits from both the Department for Children, Schools and Families (DCSF) and the Department

for Innovation, Universities and Skills (DIUS). QCA is accountable to ministers for the delivery of those remits, although its regulatory functions in particular are undertaken at arm's length from ministers. It has a Northern Ireland office, which is wholly funded by DEL, and its main responsibility specifically in relation to Northern Ireland is the accreditation and regulation of NVQs.

2.9. The different areas of responsibility for QCA and CCEA stem from the fact that the legislation empowering QCA to regulate NVQs in Northern Ireland only referred to NVQs. When newer qualifications which were not NVQs began to be introduced, only CCEA had the power to regulate them, and DEL has funded CCEA to undertake this activity since then.

2.10. The current responsibilities of QCA (for NVQs) and CCEA (for all other qualifications) in Northern Ireland, some of which are carried out in conjunction with the English and Welsh regulators, include:

- keeping under review and providing advice to DEL and the Department of Education on all aspects of external qualifications;
- regulating awarding bodies;
- developing and publishing criteria for the accreditation of qualifications;
- accrediting qualifications into the National Qualifications Framework;
- establishing and maintaining high standards in the qualifications system; and
- keeping under review whether there are appropriate qualifications available to meet national and local need.

2.11. The functions of CCEA will be absorbed by the new Education and Skills Authority on its establishment and, subject to the necessary legislation being passed, the regulatory function in relation to general and academic qualifications will at that point transfer to the Department of Education. In advance of this change, DEL has included clauses in the Education and Skills Bill — currently being considered by the UK Parliament — which will

transfer responsibility for the regulation of all vocational qualifications in Northern Ireland to the QCA (in addition to NVQs which QCA already regulate in Northern Ireland).

### **Proposed Changes in the Regulatory Arrangements for England**

2.12. The Department for Children, Schools and Families and the Department for Innovation, Universities and Skills published new proposals last December for the regulatory framework in England (*Confidence in Standards*<sup>6</sup>). It was proposed that the existing Qualifications and Curriculum Authority should be replaced by two bodies. The first body, the Office of the Qualifications and Examinations Regulator (Ofqual), would regulate the qualifications and assessments which measure and demonstrate the outputs of public education provision. Ofqual would be responsible for giving recognition to organisations wishing to award accredited qualifications and making objective judgements about the extent to which qualifications standards remain consistent from one year to the next. Subject to the necessary legislation being passed, Ofqual would be created as an independent body answerable to the Westminster parliament, rather than reporting to ministers in England, as the QCA currently does. Ofqual has already been set up in interim form as a committee of the QCA acting with as much independence as possible within the parameters of the current legislation.

2.13. The second body, which would be known as the Qualifications and Curriculum Development Agency (QCDA) would continue the non-regulatory functions of the QCA: developing and delivering qualifications and assessment and advising on the curriculum. It would have the objectives of being a key source of expertise in monitoring and developing

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<sup>6</sup> Further information about this consultation can be found at [www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1519](http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1519).

curriculum and qualifications to meet the Government's objectives for education and skills; and developing and delivering National Curriculum and other assessments decided by ministers, and ensuring delivery of public qualifications.

2.14. These proposals address barriers to securing confidence that standards in qualifications and assessment are being maintained in two ways. Firstly, Ofqual would be required to report to the Westminster Parliament rather than ministers, as QCA does currently, enhancing its reputation as an independent guarantor of qualifications standards. Secondly, a perceived conflict of interest is addressed: QCA is responsible both for developing the content of public qualifications and tests (and for the delivery of National Curriculum tests) and for regulating those same qualifications and tests. Separate organisations — QCDA and Ofqual respectively — would, under the proposals, be responsible for these functions.

2.15. Given the proposed transfer of regulatory responsibility for all vocational qualifications in Northern Ireland to QCA, it is now necessary to revisit the regulatory arrangements for vocational qualifications in Northern Ireland because the new Ofqual will have different functions and powers than the existing QCA (Ofqual will assume responsibility for QCA's regulatory functions), subject to the passage of legislation. Chapter 3 of this consultation document therefore sets out a series of proposals which the Department feels will maintain confidence in the regulation of qualifications in Northern Ireland, will reaffirm the Department's commitment to the existing three-country framework, and will confer sufficient flexibility to deal with the challenges arising in the future.

2.16. The non-regulatory aspects of the new arrangements which are to become the responsibility of QCDA in England do not form part of this

consultation. Further proposals will be submitted for consultation on these functions later in the year.

### **3. A NEW REGULATORY SYSTEM IN NORTHERN IRELAND**

3.1. This chapter sets out the proposed arrangements for a new system for the regulation of vocational qualifications in Northern Ireland. In light of the wider remit of the Qualifications and Curriculum Authority (QCA) to include the regulation of all vocational qualifications in Northern Ireland (dependent upon the passage of the Education and Skills Bill through the Westminster Parliament), it is also necessary to set out the proposals in England for the establishment of the new regulatory body (Ofqual) which will assume the regulatory role of the existing QCA, subject to the passage of legislation. The nature of this body has a direct impact upon the regulation of vocational qualifications in Northern Ireland, and a decision must also be taken about whether QCA's current and anticipated functions in Northern Ireland should be transferred to Ofqual.

3.2. The Department feels that, at this stage, the best solution to NI regulation is to ask Ofqual to continue QCA's expanded regulatory role in the sphere of vocational qualifications, once it has been created on a statutory footing. The rest of this consultation document sets out the reasons behind this recommendation. Readers should note that references in the rest of this paper to Ofqual should be read with the caveat that its establishment and its proposed powers and functions are dependent upon the necessary legislation being passed by the Westminster Parliament.

3.3. The use of Ofqual as the regulator for vocational qualifications in Northern Ireland would require the legislation which establishes the new framework in England to also include arrangements for how it will operate here. English ministers have confirmed that they are content for the new Ofqual to continue the regulatory activities of QCA in Northern Ireland.

3.4. This chapter of the consultation paper therefore sets out details of the regulatory framework proposed for England and seeks your views on whether

these arrangements are also appropriate for Northern Ireland. It should be noted that, while it is intended that Ofqual in England will regulate both academic and vocational qualifications, in Northern Ireland its remit is only proposed to extend to vocational qualifications. Respondents are therefore being asked whether it is appropriate, given the nature of the framework set out in this consultation document, for the responsibility for the regulation of vocational qualifications in Northern Ireland to be conducted by Ofqual. Your views are also sought on whether some specific aspects of the proposed regulatory system should also be applied in Northern Ireland.

3.5. A preliminary equality impact assessment (EQIA) has been carried out on the proposals contained in this consultation. A copy is enclosed or attached. The assessment concluded that there was no need to conduct a full EQIA on the proposals, as no groups are likely to be differentially affected.

### **The New Office of the Qualifications and Examinations Regulator: Scope and Functions**

3.6. In England, Ofqual, like QCA currently, will regulate qualifications at all levels, with the exception of qualifications awarded or authenticated by higher education institutions. Regulated qualifications will include general qualifications (e.g. GCSEs and A levels), vocational qualifications and a wide range of other qualifications (e.g. literacy and numeracy, and employability skills).

3.7. It will remain the decision of an awarding body whether to seek accreditation of its qualifications in the National Qualifications Framework and/or the Qualifications and Credit Framework. Accreditation is a guarantee of quality for learners and guarantees public funding in Northern Ireland for colleges delivering vocational qualifications, but there are currently many awarding bodies and qualifications outside the national framework. Ofqual will want to promote



the benefits of entry into the qualifications framework as a badge of quality and to promote public understanding of the qualifications.

3.8. Ofqual will have the power to regulate at three different levels:

- system level;
- organisation level (regulating individual awarding bodies); and
- qualification level (regulating the detail of some qualifications and their components or units).

#### *System Level Regulation*

3.9. At the system level, it is intended that the functions of Ofqual should include:

- keeping under review all aspects of accredited qualifications; and
- conducting studies of the qualifications and assessment systems, including:
  - studies of the efficiency and value for money of the qualifications system and surveys of market activity;
  - strategic reviews of different parts of the qualifications system;
  - studies of public confidence in the qualifications and assessment systems; and
  - producing information about the systems of qualifications and assessment.

3.10. In looking at the qualifications system, Ofqual will be expected to work with the UK Commission for Employment and Skills<sup>7</sup> and other bodies with relevant responsibilities in the system. It will also maintain the existing three-country framework and continue to work with the regulator in Scotland to ensure

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<sup>7</sup> The Commission's role is to provide advice to Government on strategy and policies relating to employment and skills, to assess progress towards achieving national employment and skills targets, and to have responsibility for the performance of Sector Skills Councils.

that all UK qualifications are comparable and retain the confidence of the public and employers.

#### *Organisation Level Regulation*

3.11. At the organisation level, it is intended that Ofqual should be responsible in law for recognising organisations that award qualifications (awarding bodies) or parts of qualifications as part of the Qualifications and Credit Framework. Ofqual will be expected to maintain and publish a list of all recognised awarding bodies and will develop a series of requirements that all organisations seeking to become recognised awarding bodies will need to satisfy before being recognised. Ofqual will consult on the detail of these requirements, but they are likely to include assurances of organisational stability and capability to carry out assessments securely and competently, requirements to have thorough quality assurance processes in place and agreement to regular inspection and monitoring by the regulator. The terms of an awarding body's recognition will set out the types of qualifications it has been recognised to award.

3.12. Awarding bodies will also need to show that they will adhere to the rules of the national framework for qualifications such as, where appropriate, allowing units awarded by other recognised organisations to count towards their qualifications and obtaining approval from a Sector Skills Council for a vocational qualification in the relevant sector. The continued recognition of an organisation will be dependent on it not being involved in activities which, in the view of the regulator, are liable to conflict with their awarding functions unless systems are in place to ensure the integrity of the awarding body's qualifications.

#### *Qualification Level Regulation*

3.13. In the current system there are three levels of requirement for qualifications:

- general requirements – these are high level requirements that apply to all regulated qualifications. They include requirements that each new qualification has the support of interested parties, (for example, that the relevant Sector Skills Council supports a sector-specific vocational qualification) and that exam centres can confirm that candidates' work is authentic;
- qualification requirements – these are requirements specific to a particular category of qualification. The requirements determine, for example, that qualifications must always be graded in a particular way; and
- sector or subject requirements – these requirements currently exist only for A levels and GCSEs including, for example, a requirement that GCSE music must include a performance element.

3.14. It is proposed that Ofqual should have the power to set requirements at each of these levels, but to simplify the system it is also proposed that the general requirements become part of the awarding body recognition process. This would mean that part of the recognition process would be to check that an awarding body could meet general requirements. The terms of recognition would specify which types of qualification an organisation might offer. Qualification and subject requirements would apply only to the bodies recognised to award relevant types of qualification.

3.15. It should also be noted that Ofqual's proposed role in setting qualification requirements would only apply in Northern Ireland to vocational qualifications; requirements placed upon awarding bodies for general qualifications, such as GCSEs or A levels, would be the responsibility of the Department of Education.

### *Entering Qualifications into the National System*

3.16. For the accreditation system to function effectively and retain the trust of employers and the general public, qualifications must be subjected to an appropriate level of scrutiny before being made available to the public. This must also be balanced with the desire to ensure that there is a functional market in qualifications, where competition keeps prices down and standards high. Ofqual will intervene only where necessary and allow awarding bodies the freedom to innovate.

3.17. Qualifications within the national system are used for different purposes. Some, such as GCSEs, are taken by most 16-year olds and used to record young people's achievements in their formal years of education. Other qualifications — vocational qualifications in particular — are focussed on the needs of particular employment sectors. It is essential that employers in these sectors are confident that the skills the qualifications are testing are relevant to them and are up-to-date. It is appropriate, therefore, that the regulatory framework should allow for different approaches to different qualifications. It is therefore proposed that the regulator should take a view, based on an assessment of the likelihood and impact of things going wrong ('risk'), about which qualifications need closer scrutiny at the point of entry to the system and subsequently.

3.18. In addition to their role in the development stages of new qualifications, where they will work closely with the awarding body developing the qualification, it is also being proposed that Sector Skills Councils (SSCs) are involved in the approval of vocational qualifications that are submitted for accreditation, overseen by the regulator. Different SSCs will have different levels of familiarity with, and capacity to use, the accreditation system, and the regulators will perform this oversight role according to the readiness of each SSC to take part in the process. The Department intends to involve the SSCs in this way under the

existing legislation governing the operation of QCA in Northern Ireland and will work closely with them in advance of the proposed regulation of vocational qualifications in Northern Ireland by Ofqual, depending upon the outcome of this consultation process.

3.19. Ofqual will also monitor recognised awarding organisations and hold them to account for their performance. This is likely to take the form of periodic monitoring checks and regular inspections, the findings of which will be made public. The regulator may also request formal reports from organisations recognised in this way. As well as monitoring awarding organisations, the regulator will monitor qualifications in the national system. The focus of this monitoring activity and the degree of detail in which it is undertaken will again be determined by risk. The regulator will need to develop and consult on a clear framework for its monitoring activity.

#### *Ensuring value for money*

3.20. Ofqual should have a role to oversee the qualifications market and ensure value for money for the substantial amounts of public money that are spent on qualifications, though without duplicating the functions of existing bodies such as the Competition Commission. QCA has developed its market role in recent years, learning from experience in other regulated industries, and developed work to assess the efficiency of the system.

### **The operation of the regulator**

#### *Visibly Independent and Accountable*

3.21. Ofqual will be an independent regulator, required to submit a report each year to the Westminster Parliament on its work. In addition, the regulator may report to Parliament, from time to time, on specific issues. It is proposed that

Ofqual will similarly report on its activities in Northern Ireland to the Northern Ireland Assembly.

3.22. To regulate fairly and effectively, Ofqual will have to build a relationship of trust with those it regulates, but this must be balanced against the need to be seen to be fair and unbiased in its judgements to maintain the trust of the public. The new regulator will therefore be expected to engage with learners, employers, further education colleges, other vocational training providers and the public. It would be for Ofqual to decide how best to do that; it might, for example, use panels, research and conferences.

#### *Governance of the Regulator*

3.23. Ofqual will be a non-ministerial government department. The chair of the organisation, who will be its public face, will be known as the Chief Regulator of Qualifications and Examinations and will be a Crown appointment. The regulator will have a non-executive board appointed by the Secretary of State for Children, Schools and Families.

3.24. With regard to its proposed functions in Northern Ireland, we would envisage a separate committee of Ofqual being created, which would report to Ofqual's board. Additionally, should the current arrangements continue where Ofqual would have an office in Belfast, the Department for Employment and Learning would support its work through the operation of a memorandum of understanding.

#### *The Role of Ministers*

3.25. The regulator will be regulating the delivery of government policy. It is therefore proposed that English ministers should have the opportunity to give guidance to the regulator on the policy aims and objectives of qualifications,

including which qualifications they regard as 'higher risk' and so requiring regulation at qualification level. Any guidance of this type will be published. This will not prevent the regulator from investigating areas of its own choice, including issues where there may be a risk of controversy. For its activities in Northern Ireland, it is proposed that similar arrangements will apply: the Minister for Employment and Learning will also be able to issue similar guidance to the regulator as far as its remit extends to Northern Ireland.

### *Equal Opportunities*

3.26. As a public body, Ofqual would have certain duties relating to the promotion of equality in England. It will be required to produce equality schedule(s) setting out how it will meet its duties under equality legislation in respect of the three equality strands: race, disability and gender. It will also be required to carry out equality impact assessments on policies, functions and services to ensure they are compliant with equalities legislation. For its activities in Northern Ireland, Ofqual would be required to promote equality of opportunity in line with section 75 of the Northern Ireland Act 1998 and observe all other legal requirements.

3.27. We would expect the Ofqual to pay particular attention to the need to ensure that disabled students and learners with special needs can access accredited qualifications. Ofqual will also need to work with awarding organisations, the Commission for Equality and Human Rights in England and the Equality Commission for Northern Ireland to meet its goals.

## **Wider engagement of the regulator**

### *The UK Dimension*

3.28. Given the free and frequent movement of learners and workers across England, Northern Ireland and Wales, there is a clear need to maintain a common qualifications system as far as possible. The regulatory system for qualifications will continue to operate as a joint activity across the three countries, with the regulatory authorities working closely together. The regulators will also continue to work in close cooperation with the regulator for Scotland.

### *The International Dimension*

3.29. The qualifications industry increasingly operates internationally. Qualifications such as A levels are an important UK export; some awarding bodies trade on their UK accreditation to sell overseas and some conduct a significant proportion of their business overseas. Revenue from qualifications sold overseas is a significant proportion of turnover for many awarding bodies active in international markets.

3.30. Increasingly, the reality is that qualifications and the organisations offering them are not limited by national boundaries. Ofqual will have to operate effectively internationally and to establish relationships with counterparts overseas, in order to maintain confidence in qualifications with an international dimension.

3.31. In particular, the regulators in the three-country system enjoy a good relationship with similar bodies in the Republic of Ireland. Work is being carried out at the moment to ensure that there are clear comparisons available between qualifications obtained in the UK and in ROI, given the large number of workers and learners moving between these countries.



### **Proposed Operation of Ofqual in Northern Ireland**

3.32. The broad functions and role of Ofqual in England have been set out in the preceding paragraphs. The function of the English regulator has a direct bearing upon the regulation of vocational qualifications in Northern Ireland because, at present, QCA NI (Ofqual NI in interim form) regulates all NVQs here and, depending upon the successful passage of the Education and Skills Bill through the Westminster Parliament, this remit will be widened to cover all vocational qualifications.

3.33. DEL is strongly supportive of these proposed reforms to the regulatory system. Statutory formalisation of organisation-level regulation is to be welcomed, as it makes absolutely clear how the system operates and ensures that awarding bodies are recognised and regulated within a transparent framework. The overall strategic approach to regulation, which is focussed on the capability of the awarding bodies to deliver appropriate qualifications and conducted on the basis of risk is also a strong feature of the new approach, while the new system also accommodates the involvement of Sector Skills Councils in the development of, and accreditation process for, vocational qualifications. This aligns with the Department's aims for the vocational qualifications available to providers and learners to be attuned to the needs of employers.

3.34. It is also the Department's view that, with the proposed independent nature of Ofqual, which will focus on its regulatory role and with an accountability to the legislature rather than being under the control of ministers, should go a long way towards maintaining and raising confidence that the standards of qualifications are being maintained.

3.35. For these reasons, we are recommending that Ofqual should continue the proposed role of QCA in Northern Ireland for regulating vocational qualifications: Ofqual's remit should extend to the regulation of all vocational qualifications in NI.

This continues the arrangements whereby QCA would be carrying out this role in the absence of any changes to the regulatory framework in England. As was the case with QCA, we envisage that Ofqual would maintain an office in Northern Ireland which would be funded by the Department through a memorandum of understanding.

3.36. It should be restated again that this proposal only concerns vocational qualifications; all other qualifications in Northern Ireland, which are the responsibility of the Department of Education, will be regulated by that department once the Education and Skills Authority has, subject to the passage of legislation, been established. In the longer term, the possibility of a single regulator for Northern Ireland is something that the Department for Employment and Learning would be keen to look at, and we will engage with the Department of Education in the future to investigate this possibility. In the shorter term, it is essential that arrangements are made for the regulation of vocational qualifications in Northern Ireland in the light of changes to structures in England, and the engagement of Ofqual as the NI regulator for these qualifications is, in our opinion, the best solution available.

**Question 1: Do you agree that the new regulator, Ofqual, should regulate vocational qualifications in Northern Ireland?**

## **Other Aspects of the Proposed Regulatory Framework**

3.37. The remainder of the consultation presents other recommendations about how Ofqual would operate in Northern Ireland, should it become the regulator for vocational qualifications here.

### *Removal of the 'Externality Rule'*

3.38. Under the current legislation, there is a requirement (the 'externality rule') that restricts regulatory activities to externally awarded qualifications (or those which are authenticated by a third party). It is proposed that this requirement should be removed and that Ofqual should instead be allowed to determine the terms of the recognition for organisations which deliver their own qualifications. This restriction is widely seen as being unnecessarily bureaucratic and restrictive and its removal will allow organisations, such as large employers and training providers (including further education colleges), which have the capability to do so, to award their own qualifications, *i.e.* to become awarding bodies in their own right.

3.39. The removal of the 'externality rule' will enable employers to have their training recognised and compared to all other qualifications on an even footing. This will enhance the flexibility of the labour market by properly recognising the achievements of people undergoing relevant training within their organisation.

**Question 2: Do you agree with the proposal to remove the restriction to externally awarded qualifications?**

### *Charging for Recognition of Awarding Bodies*

3.40. As the new system would allow more organisations to become awarding bodies, Ofqual would need to have the capacity to manage this potential increase

in the number of applications for recognition. Views are therefore also invited on the possibility of giving the regulator a power to charge potential awarding bodies for the recognition process, in addition to retention of the QCA's current power to charge for accreditation. Were this to go ahead, the regulator would be required to consult on and publish a schedule of charges, and to apply it consistently.

**Question 3: Do you believe that Ofqual should have the power to charge for recognition of awarding organisations?**

*Appeals and complaints*

3.41. Ofqual will focus its activity at a strategic level. However, when things go wrong — as they will on occasion — there needs to be a clear process for investigating what has happened. This is vital in order to correct any impact on the learners affected, to learn any wider lessons, and to prevent a wider loss of confidence in the system.

3.42. It is therefore proposed that the regulator should have the power to investigate complaints and appeals about recognised organisations, about individual exam results from other providers of education and training or from the public. As with similar complaints processes, the complaint would go to the relevant organisation first, with the regulator acting as the back-stop, should the complaint be unresolved.

3.43. In cases where an enquiry or appeal has gone through the awarding organisation's system but remains unresolved, it is proposed that the regulators across England, Northern Ireland and Wales should establish arrangements to hear appeals.

3.44. Currently, the Examinations Appeals Board considers appeals about GCSEs, A-levels and Entry Level qualifications across the three countries. The

Board is independent of awarding bodies and of the regulators, and the availability of an independent body of this kind is highly valued. It is proposed that the new arrangements for appeals should retain the strengths of the current system, but that the system should encompass all qualifications in the regulated system, including vocational qualifications. The body or bodies to hear appeals should be empowered to review the processes followed by the awarding organisation and, if appropriate, invite it to reconsider its decision.

3.45. Appeals arrangements should be seen to be fully independent and it is therefore proposed to remove ministers from the appeals board appointments process. The regulators across England, Northern Ireland and Wales will be required to establish an independent panel.

**Question 4: Do you agree with the proposed arrangements for dealing with appeals?**

*Powers of the regulator*

3.46. The regulators for England, Northern Ireland and Wales currently have a published sanctions policy. The sanctions which the regulators can impose at present are limited to:

- setting new conditions for accreditation of qualifications (such conditions are determined by the relevant regulator and may include placing a limit on the amount of fee that can be demanded in respect of the award or authentication of a qualification as well as various rights to enter premises, inspect and copy documents);
- suspending or removing accreditation of a qualification; and
- using statutory powers to direct awarding bodies to take or refrain from taking steps in particular circumstances.

3.47. In conjunction with these current regulatory powers (modified as necessary), it was also proposed in *Confidence in Standards* that the new regulator should have a number of further powers which reflect the range of its functions. Such new powers would be required to allow Ofqual to function effectively in its new, independent role, while these powers would also need to be balanced by considerations of good regulation, to keep any bureaucratic outcomes to a minimum.

3.48. More detailed proposals on the sanctions open to the new regulator are currently being formulated on the basis of responses to relevant questions in *Confidence in Standards* and there will be a further consultation process with the awarding bodies and any others affected prior to legislation. This is expected to take place later this summer.

#### *Advisory Role for Ofqual*

3.49. In addition to the proposed powers set out thus far, the Department is also investigating the possibility of Ofqual NI ensuring that high standards are obtained in the content and delivery of qualifications by advising vocational qualification developers, subject to the prior agreement of QCA/Ofqual to undertaking this role. The Department does not feel that this would conflict with Ofqual's role as a regulator in Northern Ireland, as this is a quality assurance role, which is similar to the regulatory function, and it is one which the existing QCA NI has conducted to a high standard until now in conjunction with its regulatory role. Your views are sought on this proposed additional function for Ofqual in Northern Ireland.

**Question 5: Do you feel that it is appropriate for Ofqual to provide advice to vocational qualification developers in Northern Ireland, in addition to the regulatory functions set out in this consultation?**

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