Regulatory Burden Statement

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Our role

We are the independent qualifications[1] regulator for England and (for vocational qualifications only) Northern Ireland. We regulate so that qualifications are sufficiently valid and trusted. We make clear and considered judgements for the benefit of those who study, and rely on, regulated qualifications.

The government decides the National Curriculum for primary and secondary schools, the qualifications that can be offered, and the accountability framework by which schools and colleges are evaluated. Government departments in England and Northern Ireland also determine funding for certain vocational qualifications and apprenticeships delivered in colleges and by employers and training providers. Many qualification we regulate are bought and used privately, with no government involvement or funding.

Our objectives and duties

We have five statutory objectives, which are set out in the Apprenticeships, Skills, Children and Learning Act 2009. In brief, they are:

1.   To secure qualifications standards

2.   To promote National Assessment[2] standards

3.   To promote public confidence in regulated qualifications and National Assessment arrangements

4.   To promote awareness of the range and benefits of regulated qualifications.

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[1] A qualification is regulated by us: (a) if it is awarded by an awarding organisation that we have recognised to provide the qualification; and (b) if at least some students are being assessed for the qualification in England or (if they are taking vocational qualifications) Northern Ireland.

[2] This refers collectively to our role in relation to Early Years Foundation Stage and National Curriculum assessments.

5.   To secure that regulated qualifications are provided efficiently.

Education and skills policy is devolved and as we regulate we are mindful of the qualification policy in each administration.

The way that we regulate is influenced by a range of duties that we take into account when reaching the decisions about the sufficient validity of qualifications.

This statement explains how we approach our duties to keep our regulatory functions under review and to not impose or maintain any unnecessary regulatory burden.

Regulatory context

We follow good regulatory practice, in particular the Better Regulation Executive's five principles of good regulation[3] and the six Penalties Principles and seven characteristics set out in the Macrory report *Regulatory Justice: Making Sanctions Effective.*[4]

We are required[5] to publish an annual statement on our plans to keep our regulatory functions under review and to not impose or maintain any unnecessary burden. We must take this into account in how we regulate over the next 12-month period. For completeness, this statement also sets out our earlier activity in these areas.

This statement also sets out the reasons why, in some cases, we have decided not to remove potentially burdensome requirements immediately. We need to allow time for awarding organisations to understand and prepare for such changes, and to make sure that any replacement requirements that we put in place are proportionate and effective.

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[3] To ensure that regulations are necessary, fair, effective, affordable and enjoy a broad degree of public confidence, in 1997 the Better Regulation Task Force set out five principles that any policy intervention and its enforcement should meet: proportionality, accountability, consistency, transparency and targeting.

[4] *Regulatory Justice: Making Sanctions Effective* (November 2006): http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file44593.pdf

[5] Apprenticeships, Skills, Children and Learning Act 2009, Section 170.

A regulatory function[6] is anything that requires an awarding organisation to do something or to not do something. For example, we set criteria[7] that awarding organisations must meet to enter the regulated qualifications market, and we set out the ongoing requirements that all awarding organisations must meet in the General Conditions of Recognition.[8] A regulatory function also includes anything that guides an awarding organisation in a particular direction, including statutory guidance and enforcement action.

Burden[9] means any of the following:

■ a financial cost;

■ an administrative inconvenience;

■ an obstacle to efficiency, productivity or profitability; or

■ a sanction, criminal or otherwise, that affects the carrying on of any lawful activity.

A burden can be a burden placed directly on an awarding organisation, or a burden imposed by an awarding organisation – for example, on a school or a college – as a result of our regulatory requirements.

Some burden is a necessary and proper part of regulation – for example, awarding organisations must invest in the appropriate systems, processes and controls needed to develop and award sufficiently valid qualifications. Similarly, awarding organisations must set some requirements of schools and colleges offering their qualifications, necessary to secure the validity of the qualification.

We want to allow awarding organisations to innovate, invest and respond to the legitimate needs of employers and others and to provide sufficiently valid qualifications. We must make sure that any burden that we impose is proportionate and necessary to secure valid qualifications.

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[6] Legislative and Regulatory Reform Act 2006 Part 1, paragraph 32 (2).

[7] www.gov.uk/government/publications/accreditation-criterion

[8] www.gov.uk/government/publications/general-conditions-of-recognition

[9] Legislative and Regulatory Reform Act 2006 Part 1, paragraph 1 (3).

Review of regulatory functions 2014–15

All recognised awarding organisations must comply with our General Conditions of Recognition. These were first introduced in 2011 when we reviewed our other regulatory requirements, and withdrew some regulations where we could. Many of our regulatory requirements now focus on outcomes, enabling awarding organisations to innovate and respond flexibly to them.

In 2014, we undertook a more fundamental review of our regulatory approach and began to implement changes designed to increase our effectiveness.

Rather than rely on more limited checks, we now increasingly expect awarding organisations to demonstrate to us that their qualifications are sufficiently valid from end to end – as they are designed, developed, delivered and evaluated. We have developed our risk framework so that we can better target our audit and other compliance activity to provide assurance about the validity of regulated qualifications.

Regulatory impact assessments

We are in a major period of qualification reform. Our report to Parliament[10] explains how we are dealing with the reform of GCSE, AS and A levels alongside changes we have made to how we regulate vocational qualifications. Inevitably, the requirements that must be met by awarding organisations offering qualifications that are intended to be directly comparable with each other – for example, different versions of GCSE mathematics – are more detailed than the more general requirements of qualifications where there is no such expectation.

In developing our new requirements, we undertake regulatory impact assessments alongside our consultations. These consider the impact on awarding organisations as well as on schools, colleges and other stakeholders of the requirements that we propose, and they inform our final decisions. We publish the regulatory impact assessments on our website.

Our approach to enforcement

We take enforcement action where it is proportionate to do so.

We set out our requirements clearly and supplement them with guidance so that awarding organisations can understand what they need to do to deliver sufficiently

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[10] www.gov.uk/government/publications/ofqual-report-for-the-period-1-april-2011-to-31-december-2014

valid qualifications. Where we have evidence that they are not sufficiently valid we use of a range of enforcement tools to bring awarding organisations into compliance.

Our approach to enforcement is set out in *Taking Regulatory Action*.[11] This was updated in May 2012 to include our power to fine an awarding organisation, which came into effect on 4th May 2012.

Removing and avoiding unnecessary burden

Following our review of our regulatory approach, we are making significant progress in removing regulatory requirements that we have decided are no longer necessary. For example, we have removed our accreditation requirement for all types of qualifications other than GCSEs, AS and A levels. We are also in the process of removing the detailed design requirements set out in the Qualifications and Credit Framework, and replacing them with more proportionate requirements to secure sufficiently valid qualifications.

When developing new requirements or regulatory processes, we seek to avoid imposing unnecessary burden.

Accreditation

For some qualifications, we set an accreditation requirement. This enables us to gain additional assurance that a qualification is likely to be sufficiently valid before it is first awarded.

In autumn 2014, as part of the changes that we have made to how we regulate, we decided after consultation to retain the accreditation requirement in a targeted and specific way. We will only retain the accreditation requirement where the burden that it imposes can be justified as the best way to secure validity.

Whether we now set an accreditation requirement depends on several factors. For example, for GCSEs, AS and A levels, a number of exam boards compete to offer the same high-stakes qualifications. Before they are taught, these qualifications must be checked to make sure that they meet the curriculum requirements and design rules.

We may sometimes require some or all qualifications from any particular awarding organisation to be submitted for accreditation – for example, when an organisation has been only recently recognised, or if we have other specific concerns about an organisation or a particular qualification.

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[11] www.gov.uk/government/publications/taking-regulatory-action

The Qualifications and Credit Framework (QCF)

The evidence from our review in 2014 and from our consultation led us to conclude that the QCF rules should be removed, and we announced that decision in December 2014. These rules impose a one-size-fits-all approach to the design of qualifications, which is not always consistent with the development of sufficiently valid vocational qualifications that meet employers' needs. Therefore, the requirement for qualifications to be developed within these design constraints represents an unnecessary burden that will be removed when we lift these QCF rules.

Recognition

We have made changes to minimise the burden of the process by which an awarding organisation can apply to extend the range of regulated qualifications that it provides. We have put in place a proportionate, risk-based approach to ensure that we only request evidence of how an awarding organisation meets our *Criteria for Recognition*[12] where we do not already hold that evidence. We recently applied this approach to the recognition process for reformed GCSEs. For awarding organisations that already offered existing GCSEs, we ensured that the evidence requirements were rigorous, while being targeted and proportionate to the risks and challenges of offering the new qualifications.

Review of regulatory functions – outlook for 2015–16

Our Corporate Plan sets out our strategic goal and priorities for 2015–18. There are several specific priorities that relate directly to our duty to keep our regulatory functions under review. We summarise them here and more detail can be found in our Corporate Plan.[13] We plan to do the following:

- Withdraw the QCF rules in 2015 and introduce a new simpler, descriptive framework for all the qualifications we regulate that will provide information about a qualification's level and size. We are currently consulting[14] on how this can be implemented to ensure that awarding organisations understand and can manage any changes they need to make as a result.

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[12] www.gov.uk/government/publications/criteria-for-recognition

[13] www.gov.uk/government/publications/ofquals-corporate-plan-for-2015-to-2018

[14] www.gov.uk/government/consultations/after-the-qcf-a-new-qualifications-framework

- Develop further guidance to help awarding organisations understand and comply with our requirements, prioritising guidance that will support the provision of sufficiently valid and trusted qualifications.

- Continue to improve our approach to identifying and assessing risk so that we can target our compliance and audit activity effectively and take appropriate enforcement action.

Removing and avoiding unnecessary burden – outlook for 2015–16

Again, our Corporate Plan sets out a number of specific priorities that relate to our duty to not impose or maintain unnecessary burden. We plan to do the following:

- Consult on the removal of the Code of Practice for GCSE, GCE, Principal Learning and Project qualifications, in part to reduce the regulatory burden on awarding organisations offering those qualifications.

- Work with awarding organisations and other stakeholders to identify ways in which our externally facing IT systems can be improved to make them easier to use. This will enhance the data available to users of qualifications and minimise the need for other agencies to collect duplicate data.

- Work with school and colleges and other stakeholders to make sure that they are ready to teach the first tranche of reformed GCSEs, AS and A levels from September 2015. This will help make this transition as smooth as possible.

- Introduce systematic arrangements to get feedback from awarding organisations and others on the effectiveness of our regulatory arrangements. We will consider and decide on whether we should make changes as a result. For example, in 2015–16 we will be considering our conditions and statutory guidance governing the provision of training events by awarding organisations to support the teaching of their qualifications. We put these requirements in place as a result of concerns raised in 2012 about the risk of inappropriate information being disclosed at these events by individuals with access to confidential assessment material. We are reviewing how the provisions we put in place are working in practice and whether the burden that they place on awarding organisations is proportionate to the risk.

We keep the weight and effect of our regulation under review. This includes making sure that we are not imposing or maintaining any unnecessary burden. We will update this burden statement annually.