

CONSULTATION

# Reform of the Exam Procedures Review Service

Consultation on changes to the Ofqual Exam  
Procedures Review Service

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**ofqual**

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## 1. Proposals at a glance

- 1.1. The Exam Procedures Review Service (EPRS) considers applications in relation to results, and decisions around reasonable adjustments and special consideration, from centres and private candidates who have completed the relevant awarding organisation's internal appeal procedures. The service covers GCSE, A level, AS, and Project qualifications. At present, the panel which considers EPRS applications comprises one Ofqual member and two external members. Experience has shown that the service can be provided more efficiently using only Ofqual staff.
- 1.2. We propose to retain the EPRS and the practice of allowing applicants to have face to face discussions with Ofqual. We propose to change the process by:
  - removing the routine use of 'formal' hearings in EPRS cases from summer 2019,
  - removing the requirement for the EPRS panel to include external members from summer 2019, and
  - extending the EPRS to cover Technical Qualifications as they become available.

## 2. Audience

- 2.1. Stakeholders with a likely interest in this consultation include awarding organisations, centres (the school or college), teachers and students.

## 3. Consultation arrangements

### **Duration**

- 3.1. The consultation will be open for four weeks, starting on 8 February 2019 and ending at 23:45 on 8 March 2019.

### **Respond**

- 3.2. Please respond to this consultation by using one of the following methods;
  - complete the online response at: <https://www.smartsurvey.co.uk/s/EPRSReform/>
  - email your response to [consultations@ofqual.gov.uk](mailto:consultations@ofqual.gov.uk). Please include the consultation title ('Reform of the Exam Procedures Review Service') in the subject line of the email and make clear who you are and in what capacity you are responding.

## 4. Introduction

### **The review and appeals process**

- 4.1. Our rules for GCSE, A level, AS and Project qualifications<sup>1</sup> require awarding organisations to have in place comprehensive processes to allow for the review and appeal of results.
- 4.2. A learner who is dissatisfied with his or her result – or a centre dissatisfied with a moderation outcome – can apply to the awarding organisation for a review. As part of the review the awarding organisation must consider whether the marking or moderation of the learner's assessment contained any errors, and must correct any error that it finds.
- 4.3. If the learner remains dissatisfied after the review, the awarding organisation must allow the opportunity for an appeal to consider whether there was any failure to follow its internal processes in the marking of assessments or the review process and, since 2016, to reconsider whether any marking or moderation error occurred. The appeal must include at least one decision-maker who is independent of the awarding organisation.
- 4.4. An awarding organisation's appeal process must also allow for the appeal of its decisions in relation to –
  - reasonable adjustments and special consideration, and
  - action taken against a learner or centre following an investigation into malpractice or maladministration.
- 4.5. If the learner remains dissatisfied after the awarding organisation's appeals process (other than in malpractice or maladministration cases<sup>2</sup>), an application can be made to EPRS.
- 4.6. For most learners, these various applications are made through the centre which prepared them for the assessment. However, private candidates can apply directly to the awarding organisation for reviews and appeals, and to Ofqual for the EPRS.

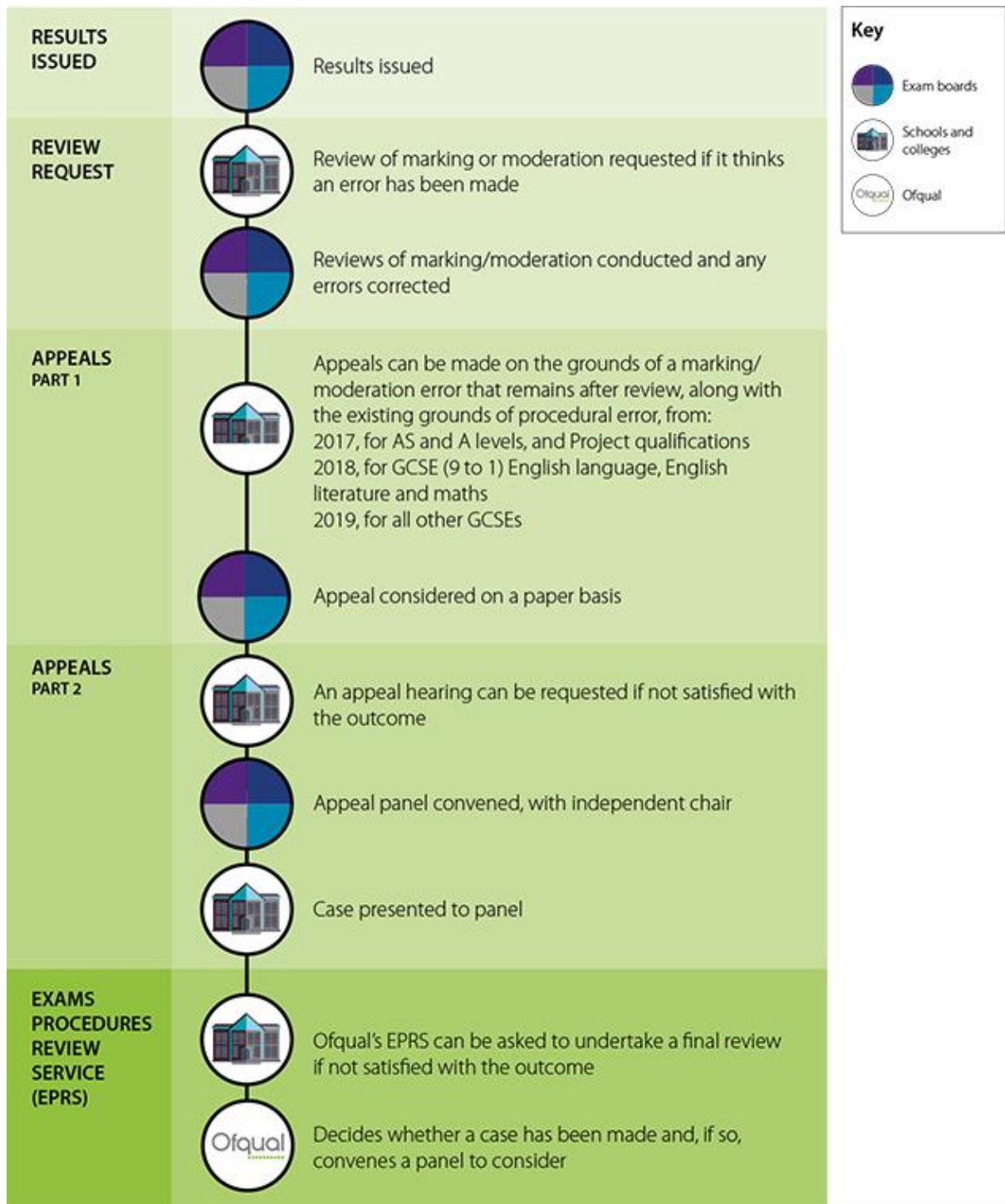
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<sup>1</sup> <https://www.gov.uk/guidance/awarding-organisations-understanding-our-regulatory-requirements>.

<sup>2</sup> Concerns that an awarding organisation has not followed its published process, or secured the outcomes required by Ofqual in respect of malpractice and maladministration are considered by Ofqual's complaints process. We think this exclusion should have been clearer in the terms of reference for EPRS and will make it explicit in any new terms of reference as a result of these proposals.

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The reviews and appeals system for GCSEs, AS and A levels has a number of stages, illustrated in the diagram below.



## **The EPRS**

### *History and remit*

- 4.7. The EPRS replaced the Examinations Appeals Board (the EAB), an independent non-statutory body established by government in 1999. When Ofqual was established in 2010, the EAB continued as an independent body to which Ofqual delegated appeal functions under section 150 of the Apprenticeships, Skills, Children and Learning Act 2009.
- 4.8. The EPRS has operated in its current form since 2013, when Ofqual took over responsibility for deciding applications, with input from external panellists.
- 4.9. The service is currently only available in respect of GCSE, A level, AS and Project qualifications and its purpose is to consider whether an awarding organisation has followed its own processes properly and secured the outcomes required in our rules around reviews and appeals<sup>3</sup>.
- 4.10. The EPRS is a procedural review rather than a further appeal. It is for the awarding organisation to decide whether a marking or moderation error has occurred. EPRS Panel members are not competent to second guess the merits of such decisions, but focus instead on whether those decisions have been made using a robust process and have secured the outcomes required by the relevant rules.
- 4.11. This means that a successful EPRS application may not lead to an increase in a learner's mark as the awarding organisation's procedural failure may not affect the mark awarded. This would be the case where, for example, the awarding organisation had failed to give reasons for a decision at its review or appeal stages. In recent years there has been only one EPRS application which led to an increase in marks. In that case, in 2015, the awarding organisation conceded during the hearing that it should have given credit for a learner's unexpected alternative answer.

### *Process*

- 4.12. Each application to the EPRS is subject to a three stage process<sup>4</sup>:
  - A triage stage to identify and redirect those applicants who have not yet exhausted the awarding organisation's internal review and appeal process;
  - A review stage to identify whether the application raises a real possibility that the applicant was, or might have been, disadvantaged as a result of a failure by the awarding organisation to:
    - follow its published procedures<sup>5</sup>; or secure the requirements set out in its Conditions of Recognition; and
  - A hearing before an EPRS Panel to decide whether the awarding organisation has followed its processes properly and secured the outcomes required by our rules.
- 4.13. Where an application is rejected at review stage, the applicant receives a reasoned decision explaining why from a senior member of Ofqual staff.
- 4.14. An applicant can ask for an internal review of any decision to reject the application at the triage or review stages.

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- 4.15. In some cases, where an application passes the triage and review stages, a decision to grant the application can be made on the papers, without a hearing. This can happen where there has been an obvious failure on the part of the awarding organisation and the parties consent to a decision on the papers.
- 4.16. Where a hearing does take place it is conducted along adversarial lines with the applicant and the awarding organisation each presenting their case to the EPRS Panel.
- 4.17. Where an application is successful and the EPRS Panel identifies a failure on the part of the awarding organisation, the awarding organisation must have regard to that outcome under General Condition I2.2.
- 4.18. Applications to the EPRS have increased significantly over the years, from 13 in the first year, following the 2012 summer series, to 105 in 2017. However, 94 of the 2017 applications were redirected to the appropriate awarding organisation at the triage stage.
- 4.19. With the increased use of the review stage to filter out unarguable cases, the number of cases proceeding to a hearing has generally decreased: from seven in 2013 to single hearings following the 2014 and 2015 series, and none following the 2016 series. Only three cases proceeded to the hearing stage following the summer 2017 series.
- 4.20. The majority of cases which now proceed to an EPRS Panel hearing do so because the application identifies an argument that was raised by the school during the review and appeal process and it is not clear how that argument has been considered by the awarding organisation during that process.

### *EPRS Panels*

- 4.21. Each EPRS Panel currently consists of one Ofqual staff member and two external panellists.
- 4.22. We retain a pool of three external panellists whose current terms with the EPRS will end during 2019. Panellists are paid for preparation for, and attendance at, hearings and for attending an annual training event, in addition to expenses and subsistence.
- 4.23. If the EPRS is to continue with the current panel model, we will need to recruit and train additional panellists to augment and then replace the current cohort.
- 4.24. We have taken this opportunity, before incurring expenditure on recruitment and training, to consider whether the EPRS process might be delivered more efficiently without external panellists.

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<sup>3</sup> The terms of reference for the EPRS can be found at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/679321/Terms\\_of\\_Reference\\_-\\_Exam\\_Procedures\\_Review\\_Service.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679321/Terms_of_Reference_-_Exam_Procedures_Review_Service.pdf)

<sup>4</sup> The EPRS casework process can be found at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/678073/Casework\\_Process\\_-\\_Exam\\_Procedures\\_Review\\_Service.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/678073/Casework_Process_-_Exam_Procedures_Review_Service.pdf)

<sup>5</sup> This will be a breach of the awarding organisation's Conditions of Recognition which require it to comply with the arrangements that it puts in place with respect to reviews and appeals. See for example, Conditions GCSE14.1, GCSE16.1, GCSE17.1 and GCSE18.2.

## 5. Proposed changes to the EPRS

### **Routine use of panel hearings**

- 5.1. Under the present process, where an application passes the triage and review stages, and there is not a sufficiently clear failure on the part of the awarding organisation for a decision to be made on the papers, a hearing will take place before an EPRS Panel.
- 5.2. Preparing cases for an EPRS Panel hearing can take significant time; for Ofqual, for the awarding organisation and for the centre or private candidate. This can cause significant delay which is compounded by the need to convene the EPRS hearing on a date which is convenient for the panellists, the supporting staff from Ofqual, the applicant and the awarding organisation.
- 5.3. The issue of delay can be further compounded where either the applicant or the awarding organisation wishes to have legal representation at the hearing. For example, in a summer 2017 case a delay of five months was caused where a school instructed solicitors and counsel to present its case at the hearing and a date had to be found which accommodated those representatives as well as the other attendees.
- 5.4. Both the applicant and the awarding organisation will already have submitted their cases in writing as part of the ERPS process. The hearing often simply takes the form of each side repeating the points that it has already submitted in writing.
- 5.5. Despite this, holding hearings can also be costly for all parties concerned. For example, the school and awarding organisation will need to prepare their submissions (or instruct representatives to do so). The process is also resource intensive for Ofqual with Ofqual staff compiling hearing bundles and advising the panel. External panellists must also be paid, and their expenses met, and in many cases a venue must be secured to hold the hearing.
- 5.6. We understand that there are advantages to holding a panel hearing. In particular, centres have told us that even where applications are eventually unsuccessful, they value having had the opportunity to make their case before the EPRS Panel. Being able to see the awarding organisation explain its decisions, to ask questions and to see the EPRS Panel test the explanations given by the awarding organisation allows the centre to have more confidence in the outcome than a paper-based process, particularly where the application is determined in favour of the awarding organisation.
- 5.7. However, deciding cases without panel hearings has the potential to allow applications to be resolved faster, at less cost to all those involved, without diminishing the quality of decision making or independence. We therefore propose to discontinue the use of such hearings as part of the EPRS.
- 5.8. We do understand, however, that applicants value the opportunity to present their case in person as well as on paper. As such, we propose that in cases for which a panel hearing would currently be held, Ofqual would chair a meeting with the applicant and the awarding organisation to discuss the case, clear up any misunderstandings as to the process thus far and identify whether any issues remain for Ofqual to determine. The meeting could take place either remotely or in person.

**Question 1: To what extent do you agree with our proposal to hold meetings instead of formal hearings in all cases that are not filtered out at the triage and review stages and which cannot be decided on the papers?**



**Continued use of external panellists**

- 5.9. The majority of applications are decided at the triage and review stages. Decisions at these stages are currently made by Ofqual without any external input.
- 5.10. An EPRS Panel is convened for the small number of cases which progress to the hearing stage. Although each panel is made up of one Ofqual member and two external members drawn from the external pool, the final decision in each case – whether or not to uphold the application - is made by the Ofqual member as defined in the Terms of Reference
- 5.11. Decisions are not made by consensus (although in practice there often is consensus between panel members) – they are Ofqual decisions alone. The role of the external panellists is advisory.
- 5.12. This is unsurprising because in many cases the EPRS Panel must address questions of regulatory compliance; whether the awarding organisation secured the outcomes required by our regulations in the particular case. As the regulator, questions of compliance are for Ofqual to decide. The external panellists are not experts in that regard.
- 5.13. Therefore, although the presence of external panellists provides an additional independent element in Ofqual decision-making as part of the EPRS service, their input on the central question is limited and the compliance issues which need to be considered are often outside their expertise.
- 5.14. The use of panel members also comes at a cost, with such members being paid £350 per day, plus expenses.
- 5.15. As discussed above, we propose holding meetings with the parties in certain cases. The presence of panellists at such meetings may make them seem more formal or adversarial than we intend them to be.
- 5.16. It is our view that the EPRS could operate without input from external panellists. This would save on costs and, for the reasons given above, the quality of decision-making would not be diminished.
- 5.17. Our proposal is that a single Ofqual decision maker, of appropriate seniority, should make each EPRS decision, supported by Ofqual staff, but without any input from external panellists.
- 5.18. Although there would no longer be any input to the decision from persons external to Ofqual, Ofqual itself is independent of the awarding organisations and applicants that would be parties to EPRS cases.
- 5.19. In combination with the removal of panel hearings, we anticipate that a wholly internal process would be capable of generating a provisional decision on whether to allow or reject an eligible application within four weeks of the application being made.

**Question 2: To what extent do you agree or disagree with our proposal to remove external panellists from the EPRS and to make the EPRS an internal Ofqual process?**

### **Timing of reforms to the EPRS**

- 5.20. We propose that, if adopted, our reforms to the EPRS should come into effect for the summer 2019 assessment series.
- 5.21. If we were to delay the removal of external panel members beyond this date the contracts of the current pool of external members will have expired and we would need to replace them. That would force Ofqual to incur costs in relation to recruitment and training of persons who may be panellists for a relatively short period of time.
- 5.22. We do not consider that a longer lead time is required as neither awarding organisations nor potential applicants will be required to undertake any preparation for the proposed changes.
- 5.23. Any applications made to the EPRS in respect of previous assessment series – the winter resits for GCSE English Language and GCSE Mathematics, for example – will be considered using the current EPRS process.

### **Question 3: To what extent do you agree that if we implement the above reforms these should come into effect for the summer 2019 assessment series?**

### **Extending the EPRS to Technical Qualifications**

- 5.24. The EPRS is currently available for A level, AS, GCSE and Project qualifications. For each of these types of qualifications we have specified detailed requirements in respect of reviews and appeals.
- 5.25. We have recently decided to apply the same requirements to Technical Qualifications as they become available.
- 5.26. The use of these detailed requirements for reviews and appeals currently distinguishes A level, AS, GCSE and Project qualifications from other qualifications. Those requirements, together with the policies published under them, provide awarding organisations with clarity as to what is expected of them and applicants with a good sense of the service that they should expect to receive. The EPRS can then hold awarding organisations to account when those services are not provided as they should be.
- 5.27. For the purpose of consistency, it makes sense that the EPRS should be extended to Technical Qualifications where these are subject to the same requirements around reviews and appeals.
- 5.28. It is the Government's policy that Technical Qualifications should be seen as gold standard qualifications which provide a vocational alternative to A levels. The extension of the EPRS to Technical Qualifications would help to ensure that standard and bolster public confidence in Technical Qualifications.
- 5.29. We therefore propose that the EPRS should be extended to cover Technical Qualifications from the time that these are first offered by awarding organisations.
- 5.30. We recognise that the extension of the EPRS is likely to result in a greater volume of applications and hence an increased demand on Ofqual resources. However, at present, we consider that any increase will be manageable.

**Question 4: To what extent do you agree that we should extend the EPRS to include Technical Qualifications where these are subject to the same requirements around reviews and appeals as A level, AS, GCSE and Project qualifications?**

### **Annual reports on EPRS activity**

5.31. In order to ensure transparency, we intend to publish annual reports on the work that the EPRS undertakes each year. These reports will include the number of cases considered in respect of each type of qualification within the scope of EPRS together with a summary of the outcomes. Where cases raise important issues which might affect learners, centres or awarding organisations, we will publish detailed case summaries.

## **6. Regulatory Impact & Growth and Equality**

### **Regulatory impact**

- 6.1. In summary, we think our proposal to hold more informal meetings in cases which are currently considered by an EPRS Panel is more likely to reduce than increase the regulatory burden on awarding organisations and the administrative burden on schools. This is because preparing for such a meeting is likely to be less burdensome than preparing to attend a panel hearing and the meeting itself is likely to be shorter than such a hearing.
- 6.2. We have proposed extending EPRS to Technical Qualifications. We recognise that the EPRS process is more burdensome for awarding organisations and for centres (albeit to a lesser extent) than engaging with Ofqual's complaints process, which will consider complaints about the awarding organisation's appeal processes for those qualifications for which EPRS is not available. In particular, the complaints process does not contemplate (other than perhaps exceptionally) an informal meeting of the parties chaired by Ofqual. However, we consider the additional burden is proportionate in view of the Government's policy that Technical Qualifications should be seen as gold standard qualifications which provide a vocational alternative to A levels.

**Question 5: We have set out our view of the regulatory impact of our proposals on reform of the EPRS. Do you have any comments on this assessment?**

**Question 6: Are there any additional steps we could take to reduce the regulatory impact of our proposals?**

**Question 7: Are there any costs or benefits associated with our proposals which we have not identified?**

## **Growth**

- 6.3. We have a duty under the Apprenticeships, Skills, Children and Learning Act<sup>6</sup> to have regard to the desirability of facilitating innovation in connection with the provision of regulated qualifications. We have committed in our Corporate Plan<sup>7</sup> to survey awarding organisations' views of the impact of our regulatory requirements on innovation and consider any revisions required in response. We do not believe that there is anything in our proposals that would prevent innovation by awarding organisations, but would welcome your views on this.

**Question 8: We have not identified any ways in which our proposals will prevent innovation by awarding organisations. Do you have any comments on this assessment? Please provide specific examples.**

## **Equality analysis**

- 6.4. Ofqual is a public body, so the public sector equality duty in the Equality Act 2010 applies to us.
- 6.5. We have considered how our proposals might affect people who share particular protected characteristics. We have not identified any impacts of our proposals (positive or negative) on persons who share the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation.
- 6.6. The EPRS covers decisions with respect to reasonable adjustments and therefore may consider applications from persons with protected characteristics who feel that appropriate reasonable adjustments have not been made. However, the absence of a hearing or external panellists would not prevent any applicant with a protected characteristic from making their case to Ofqual or impact on the quality of Ofqual's decision making in that regard.

**Question 9: We have set out our view that our proposals would not impact (positively or negatively) on students who share a particular protected characteristic. Are there any potential impacts that we have not identified?**

**Question 10: Are there any additional steps we could take to mitigate any negative impact you have identified would result from our proposals, on students who share a protected characteristic?**

**Question 11: Do you have any other comments on the impacts of our proposals on students who share a protected characteristic?**

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<sup>6</sup> <http://www.legislation.gov.uk/ukpga/2009/22/contents> (section 129 (2) (g))

<sup>7</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/696861/Ofqual\\_corporate\\_plan\\_2018\\_to\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/696861/Ofqual_corporate_plan_2018_to_2021.pdf)

## Annex A: Your Data

### **The identity of the data controller and contact details of our Data Protection Officer**

This Privacy Notice is provided by The Office of Qualifications and Examinations Regulation (Ofqual). We are a 'controller' for the purposes of the General Data Protection Regulation (EU) 2016/679 and Data Protection Act 2018 ('Data Protection Laws'). We ask that you read this Privacy Notice carefully as it contains important information about our processing of consultation responses and your rights.

### **How to contact us**

If you have any questions about this Privacy Notice, how we handle your personal data, or want to exercise any of your rights, please contact:

Data Protection Officer at [dprequests@ofqual.gov.uk](mailto:dprequests@ofqual.gov.uk) or write to us at: Data Protection Officer, Ofqual, Earlsdon Park, 53-55 Butts Road, Coventry, CV1 3BH.

As part of this consultation process you are not required to provide your name or any personal information that will identify you however we are aware that some respondents may be happy to be contacted by Ofqual in relation to their response. If you or your organisation are happy to be contacted with regard to this consultation, please give your consent by providing your name and contact details in your response.

### **Our legal basis for processing your personal data**

For this consultation, we are relying upon your consent for processing personal data. You may withdraw your consent at any time by contacting us using the details above.

### **How we will use your response**

We will use your response to help us shape our policies and regulatory activity. If you provide your personal details, we may contact you in relation to your response.

### **Sharing your response**

We may share your response, in full, with The Department for Education (DfE) and The Institute for Apprenticeships (IFA) where the consultation is part of work involving those organisations. We may need to share responses with them to ensure that our approach aligns with the wider process. If we share a response, we will not include any personal data (if you have provided any). Where we have received a response to the consultation from an organisation, we will provide the DfE and IFA with the name of the organisation that has provided the response, although we will consider requests for confidentiality.

Following the end of the consultation, we will publish a summary of responses and may publish copies of responses on our website, [www.gov.uk/ofqual](http://www.gov.uk/ofqual). We will not include personal details.

We will also publish an annex to the consultation summary listing all organisations that responded. We will not include personal names or other contact details.

Please note that information in response to this consultation may be subject to release to the public or other parties in accordance with access to information law, primarily the Freedom of Information Act 2000 (FOIA). We have obligations to disclose information to particular recipients or including member of the public in certain circumstances. Your explanation of your reasons for requesting confidentiality for all or part of your response would help us balance requests for disclosure against any obligation of confidentiality. If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances.

## *Consultation on changes to the Ofqual Exam Procedures Review service*

Members of the public are entitled to ask for information we hold under the Freedom of Information Act 2000. On such occasions, we will usually anonymise responses, or ask for consent from those who have responded, but please be aware that we cannot guarantee confidentiality.

If you choose 'No' in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we won't make your personal name and private contact details publicly available.

### **How long will we keep your personal data**

For this consultation, Ofqual will keep your personal data (if provided) for a period of 2 years after the close of the consultation.

### **Your data**

Your personal data:

- will not be sent outside of the European Economic Area
- will not be used for any automated decision making
- will be kept secure

We implement appropriate technical and organisational measures in order to protect your personal data against accidental or unlawful destruction, accidental loss or alteration, unauthorised disclosure or access and any other unlawful forms of processing.

### **Your rights, e.g. access, rectification, erasure**

As a data subject, you have the legal right to:

- access personal data relating to you
- have all or some of your data deleted or corrected
- prevent your personal data being processed in some circumstances
- ask us to stop using your data, but keep it on record

If you would like to exercise your rights, please contact us using the details set out above.

We will respond to any rights that you exercise within a month of receiving your request, unless the request is particularly complex, in which case we will respond within 3 months.

Please note that exceptions apply to some of these rights which we will apply in accordance with the law.

You also have the right to lodge a complaint with the Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at [ico.org.uk](http://ico.org.uk), or telephone 0303 123 1113. ICO, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

If there is any part of your response that you wish to remain confidential, please indicate so in your response



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