

CONSULTATION

Extraordinary regulatory framework, General Qualifications COVID-19: Guidance

Consultation on statutory guidance in relation to
appeals under the GQCovid regulatory framework

ofqual

Contents

Proposals at a glance	3
Audience	3
Duration	3
Respond.....	3
Introduction	4
Ofqual’s statutory guidance.....	4
Background to this consultation	4
Consultation details	5
Proposals	5
GQCov4 – Information to be provided to Centres	5
GQCov5 - Appeals.....	5
Proposed Guidance	6
Guidance on compliance with Condition GQCov4	6
Information to be provided to Centres.....	6
Guidance on compliance with Condition GQCov5	7
The wrong data.....	7
Incorrect Centre Information	7
Incorrect data sets	8
Errors in data sets.....	9
Other examples of the wrong data – exceptional cases	10
Equality Analysis	12
Regulatory Impact Assessment	13
Introduction of proposed guidance	14
Annexes	14
Annex A	14
Your data	14
Annex B	16
Ofqual’s role, objectives and duties	16
The Apprenticeship, Skills, Children and Learning Act 2009	16
The Equality Act 2010.....	17

Proposals at a glance

We are seeking views on draft guidance as part of the extraordinary regulatory framework for general qualifications. The proposed guidance relates to arrangements for appeals and covers:

- the information awarding organisations must provide to Centres which are considering an appeal
- further explanation of the circumstances in which an appeal might be allowed because the wrong data has been used in the standardisation process

Audience

This consultation is open to anyone who may wish to make representation but is likely to be of most interest to awarding organisations who must comply with the GQCovid framework, to Centres which might consider appealing against calculated results this summer, and to Learners who might ask Centres to make such appeals.

Duration

This consultation will be open for 14 days starting on 30 June 2020 and ending on 14 July 2020 at 23:45.

This is a shorter period than we would normally allow for a consultation on statutory guidance but we consider this is necessary and reasonable in the current exceptional circumstances. It is important that we are able to make final decisions on any statutory guidance in good time to allow awarding organisations to make any necessary changes to their systems and processes for appeals before results are issued and to allow schools, colleges, students and their parents and carers to be able to access information on how appeals will operate this year.

Respond

Please respond to this consultation by completing the online response at www.gov.uk/government/consultations/consultation-on-statutory-guidance-in-relation-to-the-gqcovid-regulatory-framework

For information on how we will use and manage your data, please see annex A.

Introduction

Ofqual's statutory guidance

We publish guidance to help awarding organisations understand how to comply with their Conditions of Recognition. Awarding organisations that develop, deliver and award regulated qualifications must have regard to the guidance that we publish. This means that they must review the guidance and take seriously what it says. Guidance is not a further set of rules, and the approaches set out within it are not the only way to comply. However, if an awarding organisation chooses to take a different approach, it needs to be able to explain why it has done so.

Background to this consultation

We consulted on exceptional arrangements for awarding GCSE, GCE, Extended Project and Advanced Extension Award qualifications this summer between 15 April 2020 and 29 April 2020. We announced our decisions following that consultation on 22 May 2020.

On 11 June 2020 we set and published the [GQCOVID-19 Conditions and Requirements](#)¹ which implement those policy decisions².

We are now consulting on draft statutory guidance to help awarding organisations to comply with two of these new conditions.

The draft statutory guidance also reflects our [decision](#) that it is not necessary to develop an additional ground of appeal for use where a centre has experienced a demographic change. As reflected in analysis we have published, this is because the magnitude of change which is necessary to affect the calculation of results in a measurable way is so great that it is likely to occur only exceptionally, if at all. If such an exceptional case did occur, then this would amount to using the wrong data for the purposes of standardisation. This is already grounds for an appeal.

In addition to guidance for awarding organisations, we will separately produce a guide for students that sets out how their grades were calculated this year and the options available if they believe their result was not properly produced. This will include our expectations about who can support students in understanding both the options available to them if they wish to query their result and how to access those routes. We will publish this guide by the end of July.

¹ The GQCovid framework refers to two sets of requirements; we have so far set and published only one set of such requirements. Further requirements will be published on or before 3 July. In addition, our consultation on arrangements for an examination series in autumn 2020 closed on 8 June 2020. It will be necessary to add to the GQCovid framework if we decide to go ahead with the proposals on which we consulted.

² We consulted with affected awarding organisations on the form of those conditions and requirements between 22 May 2020 and 1 June 2020.

Consultation details

Proposals

We propose to issue guidance on:

- Condition GQCov4 - Information to be provided to Centres, and
- Condition GQCov5 - Appeals

The proposed guidance is set out Part 4 of this consultation, our proposals are explained in this section.

GQCov4 – Information to be provided to Centres

Condition GQCov4 requires awarding organisations to have arrangements in place to provide sufficient information to assist Centres to decide whether to appeal on behalf of a student, or students.

The proposed guidance sets out the minimum information which we consider an awarding organisation must provide in order to comply with the requirement to provide 'sufficient information' to a Centre (Condition GQCov4.2(a)).

We also explain that it is for each Centre to decide whether or not to share any of the information provided by the awarding organisation with students, including whether or not sharing any of the information is compatible with data protection law. Awarding organisations will not be required to provide advice to Centres in this regard.

GQCov5 - Appeals

Condition GQCov5 requires awarding organisations to have in place arrangements to allow a Centre to appeal results on behalf of a student or students and explains the grounds of appeal which are available for calculated results in summer 2020.

The proposed guidance sets out further explanation and exemplification in relation to appeals on the basis that the 'wrong data' was used for the purposes of standardisation. In the proposed guidance we explain:

- that an appeal on the basis that a Centre made a mistake in the submission of centre assessment grades or rank order information may succeed only where the Centre demonstrates, with evidence, that it made such a mistake
- the circumstances in which an appeal on the basis of an error in a dataset may be successful and those in which such an appeal cannot be successful
- some examples of the exceptional circumstances in which using the dataset which will be specified in our requirements might nonetheless amount to using the wrong data
- that awarding organisations will be able to take advice in relation to appeals from a technical panel including representatives of all relevant awarding organisations and Ofqual

Proposed Guidance

The guidance we propose to set is reproduced in this section. We have numbered the paragraphs to allow respondents to refer to specific sections in their responses.

Guidance on compliance with Condition GQCov4

Information to be provided to Centres

1. Awarding organisations must have arrangements in place to provide information concerning the calculation of results to Centres which are considering whether or not an appeal should be made.
2. This guidance explains what information will be considered sufficient for these purposes (Condition GQCov4.2(a)).
3. The purpose of providing information to a Centre is to allow the Centre to evaluate whether any of the grounds of appeal set out in Condition GQCov5.1 might be relevant. This should allow awarding organisations to focus resources on promptly resolving those cases where an error might have occurred as well as reducing the number of unnecessary appeals. .
4. Where a request for information is made, an awarding organisation must provide sufficient information to allow a Centre to review the data used for the purposes of calculating results and to compare that data with information held by the Centre.
5. Sufficient information will include:
 - a. The centre assessment grades and rank order information as recorded and used by the awarding organisation for the purposes of standardisation,
 - b. The historical results information for the Centre used by the awarding organisation for the purposes of standardisation, and
 - c. The relevant prior attainment data for the Centre, including the 2020 cohort, used by the awarding organisation for the purposes of standardisation
6. In appropriate cases, an awarding organisation may decide that further information should be disclosed to the Centre to assist it in deciding whether to submit an appeal. If a Centre explains in its request for information why or where it considers an error might have been made, the awarding organisation will be better able promptly to identify any further information which might assist the Centre.

7. Once information has been provided by the awarding organisation, it will be for the Centre to decide whether or not to disclose some or all of that information to any Learners on whose behalf it is considering the possibility of an appeal, where such disclosure is compatible with the Centre's obligations under data protection and other legal requirements. Disclosure at this stage will not represent a breach of confidentiality for the purposes of Condition GQCov3.6, because it will take place after results have been issued. Nor would we expect an awarding organisation to provide legal advice to a Centre regarding disclosure to a Learner.

Guidance on compliance with Condition GQCov5

8. Awarding organisations which issue results for GQ Qualifications in summer 2020 are required to have in place arrangements for Centres to appeal those results on behalf of one or more Learners. A Centre may appeal on procedural grounds, on the basis that the wrong data was used to calculate results for Learners, or where there was an administrative error in the issuing of results by an awarding organisation.
9. This guidance covers appeals on the basis that the wrong data was used.

The wrong data

10. The GQ Covid framework includes three specific examples of data which will be considered to be the wrong data in any appeal:
 - a. Where a Centre has provided incorrect centre assessment grades and rank order information to the awarding organisation (GQCov5.2(a)(i)),
 - b. Where the awarding organisation has used an incorrect data set for the purposes of statistical standardisation (GQCov5.2(a)(ii)),
 - c. Where the awarding organisation has introduced an error into the data set it used for the purposes of statistical standardisation (GQCov5.2(a)(iii)).
11. In any appeal where one of these three errors is shown to have occurred, the awarding organisation must take appropriate action to remedy the error; correcting the data and issuing results which reflect the corrected data³.

Incorrect Centre Information

12. A Centre which appeals on the basis that it made an error in the information it submitted to the awarding organisation for the purposes of calculating results will need to be able to show, using evidence, that it made such a mistake. This is consistent with an appeal in any other circumstances, where the

³ Provided always that results for Learners who did not request an appeal must not be lowered.

appellant has the burden of proof and must show its grounds of appeal are made out.

13. It is particularly important this summer that awarding organisations are able promptly to distinguish between genuine errors, which might characteristically be administrative mistakes such as transposing digits or confusing Learners with similar names, and attempts to amend centre assessment grades or rank order information by revisiting or revising the professional judgments which underpin them, which is not permitted.
14. Awarding organisations should make sure their appeals processes require Centres to submit their supporting evidence at the earliest stage where a mistake by the Centre is said to have occurred and that Centres must explain why data which the Head of Centre declared to be accurate is now considered incorrect. Where the awarding organisation is satisfied a mistake has been made, we anticipate appeals will be resolved promptly using the shortened process specified at Condition GQCov5.7, where appropriate.
15. In line with the direction given to Ofqual by the Secretary of State,⁴ an appeal on the basis that a Centre has provided incorrect data should not be used as a means for a Learner to disagree with the professional judgments underpinning a centre assessment grade or their position in the rank order. If there is evidence that the information provided by the Centre was affected by bias or discrimination, or the Centre wrongly failed to take into account reasonable adjustments which would have been provided had exams taken place, the Learner can make a complaint to the Centre and / or an allegation of malpractice or maladministration to the awarding organisation. Separate processes allow results to be corrected, where appropriate, where malpractice or maladministration is found to have taken place.⁵

Incorrect data sets

16. Centres will be able to determine from the information disclosed to them under Condition GQCov4 whether an incorrect data set has been used for the purposes of statistical standardisation. This is likely to happen only in a limited range of circumstances, for example where the data sets for two Centres with similar names, or a similar National Centre Number, have been confused during the standardisation process.
17. We anticipate that it should be straightforward both for the Centre to show the wrong data set is likely to have been used and for the awarding organisation to verify which data set it used and whether or not that data set was correct.

4

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877611/Letter from Secretary of State for Education to Sally Collier.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877611/Letter_from_Secretary_of_State_for_Education_to_Sally_Collier.pdf)

⁵ Where a result is shown to be incorrect, including as a result of malpractice or maladministration, an awarding organisation must correct that result if it considers it appropriate to do so, without the need for a specific appeal (General Condition H6.3(b)).

18. Where the awarding organisation recognises that the wrong data set has been used, the shortened process specified at Condition GQCov5.7 means the appeal can be resolved promptly. Using the wrong data set will affect results for all of the General Qualifications taken at the affected Centre; we do not anticipate a Centre will be required to submit an appeal for every General Qualification where an incorrect data set has been used.

Errors in data sets

19. Awarding organisations will use historical results and prior attainment data for the purposes of statistical standardisation, along with the centre assessment grades and rank order information provided by Centres. Although we will expect awarding organisations to have taken steps to guard against error and have quality assurance processes in place, the current exceptional circumstances mean it is possible that an awarding organisation may introduce errors into these data sets when transposing the information into its systems.
20. A Centre will be able to identify from the information disclosed under Condition GQCov4 whether there are differences between the information held by the Centre and the information in the systems used by the awarding organisations for statistical standardisation. The Centre will be able to support its appeal with evidence showing that such a difference exists.
21. When an appeal is brought on these grounds, the awarding organisation will need to review the primary sources of the information used for standardisation:
 - a. The centre assessment grades and rank order information originally provided by the Centre, where the awarding organisation is said to have introduced an error into that information,
 - b. The source of the historical results or prior attainment data where the awarding organisation is said to have introduced an error into that information.
22. If the awarding organisation has introduced an error into any of the relevant data, then the appeal should be allowed using the shortened process specified at Condition GQCov5.7, where appropriate, the data corrected, and any revised results issued⁶.
23. If, where a centre has submitted an appeal on the basis that the awarding organisation has introduced an error into the data set it submitted to them, the awarding organisation identifies that the alleged error in fact existed when that information was submitted to the awarding organisation, the Centre may be given an opportunity to amend its appeal and produce evidence that its initial submission included an error (GQCov5.2(a)(i)).

⁶ Provided always that results for Learners who did not request an appeal must not be lowered.

24. Condition GQCov5.2(b) precludes an appeal on the basis either:
- a. of a pre-existing error in the original historical results or prior attainment data, or
 - b. that particular Learners registered with the Centre were not matched with their prior attainment data for the purposes of standardisation.

Other examples of the wrong data – exceptional cases

25. The specific examples in the GQCovid framework are not the only circumstances in which an awarding organisation might conclude that the wrong data was used, although we anticipate other examples will be rare.
26. There are some exceptional circumstances in which using a default data set for statistical standardisation might be shown through an appeal to amount to using the wrong data because of some exceptional factor which undermines the assumption that the default data set is the most likely to lead to consistent results.
27. In rare cases there may be clear and objective evidence of a substantive difference between the 2020 cohort and a Centre's previous cohorts which undermines the assumption that those previous cohorts are sufficiently representative of the 2020 cohort reliably to inform the statistical model. In such a case the default data set could be held to be the wrong data for the purposes of standardisation.
28. A substantive difference will not be established through subjective evidence or evidence which is relevant only to the potential performance of the 2020 cohort had exams taken place. We do not expect appeals to be brought on the basis of inspection reports, curriculum choices or changes to teaching staff, the outcome of standardised tests, mock exams or other evidence the centre has about the potential performance of this year's Learners relative to previous cohorts at the Centre.
29. Instead, the necessary difference will be established through evidence that something happened to the 2020 cohort, or happened to an earlier cohort (and not the 2020 cohort), which indicates that the 2020 cohort may not be comparable with previous years, in a way which would not otherwise be identified and resolved through the standardisation process⁷.
30. Although not necessarily exhaustive, it is likely that it will be possible to identify the necessary difference in two scenarios:
- a. Where there has been a major structural change in the arrangements at a Centre which first affects the 2020 cohort, such as:

⁷ For example, because the standardisation process will include information about prior attainment, a substantial difference in prior attainment between cohorts will not give rise to grounds of appeal.

- i. A school which, having historically had a mixed intake, became a single-sex school in 2020 (and which retained its previous National Centre Number⁸), or
 - ii. A school which has in place an accelerated learning programme for very able Learners in years other than Y11 and Y13 and which for the first time enters a number of those Learners for GQ Qualifications in 2020,
 - b. A school at which teaching and learning for the 2018 and / or 2019 cohort was significantly disrupted for a prolonged part of the academic year by one or more extraordinary or momentous incidents or events, and which did not so disrupt teaching and learning for the 2020 cohort.
31. Once a substantive difference has been established it will be necessary for the awarding organisation to consider whether the substantive difference was sufficient to displace the assumption that the performance of the previous cohort is representative of the likely performance of the 2020 cohort had exams taken place. Only where that assumption is displaced will taking the performance of the earlier cohort into account amount to using the wrong data.
32. In practice, the assumption will be displaced where technical evidence indicates that the differentiating factor would be likely to have actually affected the calculated results for the 2020 cohort to a sufficiently measurable degree. It will be possible to establish this only in circumstances where a set of results can be calculated which take account of the influence of the differentiating factor.
33. In cases of a major structural change, it may be possible to adjust the statistical model to reflect the composition of the 2020 cohort, based on national modelling for cohorts with that composition.
34. Where the teaching and learning for an earlier cohort was significantly disrupted for a prolonged period by extraordinary or momentous incidents it may be possible to use a different year's data or to disregard the previous attainment for that centre and standardise results based on a national average.
35. Only where the awarding organisation can identify a method to standardise results which allows for the substantive difference and which it considers is more likely to produce accurate results than the initial calculated results should the appeal succeed. If replacement results are no more likely to be accurate than the initial results, there will be no adequate basis to conclude that the initial results were affected by the wrong data.
36. In practice, considering the impact of an exceptional factor on results for a particular cohort and evaluating whether the approach to standardisation can

⁸ Where such a change led to a change in National Centre Number, the awarding organisations will have taken the changed arrangements into account as part of the statistical standardisation process.

be adjusted to produce more accurate results will be a complex technical task. Awarding organisations will have the opportunity to take advice in this connection from a technical panel, convened and administered by Ofqual, at which each awarding organisation will be represented, as well as Ofqual⁹.

Question 1: Do you have any comments on the draft guidance on Condition GQCov4 – Information to be provided to Centres?

For specific comments, please refer to the relevant paragraph number in your response.

Question 2: Do you have any comments on the draft guidance on Condition GQCov5 – Appeals?

For specific comments, please refer to the relevant paragraph number in your response.

Equality Analysis

We are subject to the public sector equality duty. Annex B sets out how this duty interacts with our statutory objectives and other duties.

We fully considered the potential impact of our proposed exceptional arrangements for the awarding of qualifications in summer 2020 on persons with protected characteristics in our policy consultation, and again when we explained our [decisions following that consultation](#).

We have considered the potential impact on persons with protected characteristics of our proposed guidance in this consultation, which is intended to help awarding organisations to comply with the GQCovid Conditions. We have not identified any positive or negative impacts of this guidance which were not already considered and taken into account when we made our policy decisions.

To further help students, including those who share protected characteristics, we will produce a guide which sets out how grades were calculated this year and the options available to students who believe their results were not properly produced. This will explain the appeals process as well as setting out what actions they might take if they consider their results might have been affected by bias or discrimination. We will publish this guide by the end of July.

We will also have a helpline available to students and their parents or carers to talk about the arrangements for appeals or malpractice or maladministration concerns, as well as any other questions they may have about their results this summer. We will also work with the National Careers Service who run the government's national helpline for students on and around results days so that they can also support students when they receive their results and can provide information about the appeals process. As this national service is put in place by the government to

⁹ Representatives of the other UK qualifications regulators will also be invited to attend.

support students each year, its staff are well placed to advise on a wide range of issues, including on appeals, and they can pass any complex enquiries to us if needed. Students and their parents and carers will also be able to contact Ofqual directly if they prefer. We will publicise both our public enquiries helpline and the National Careers Service helpline to students and their parents and carers.

Awarding organisations which award GCSE, GCE, Extended Project and Advanced Extension Award qualifications must have regard to our guidance, but need not follow it in all cases.

Question 3: We have not identified any ways in which the proposed guidance would impact (positively or negatively) on persons who share a protected characteristic. Are there any potential impacts we have not identified?

Question 4: Are there any additional steps we could take to mitigate any negative impact resulting from these proposals on persons who share a protected characteristic?

Question 5: Do you have any other comments on the impact of our proposals on persons who share a protected characteristic?

For specific comments, please refer to the relevant paragraph number in your response.

Regulatory Impact Assessment

We have considered the regulatory impact of introducing this guidance. The Apprenticeships, Skills, Children and Learning Act 2009 requires that recognised awarding organisations have regard to the guidance we publish. This means that they must consciously consider it when making decisions about their approach. Where an awarding organisation has reason to depart from the guidance, it can do so. The obligation on an awarding organisation is to comply with the Conditions.

Publishing additional guidance could increase the overall impact of our regulatory requirements in terms of the amount of information to which awarding organisations must have regard.

Conversely, providing guidance should help awarding organisations to understand better how to comply with our requirements. This is particularly so in relation to the novel and exceptional regulatory arrangements we have put in place for summer 2020. In several respects, the guidance we have proposed in this consultation reflects requests made by awarding organisations that we should produce such guidance.

On balance, we consider the beneficial effect of the proposed guidance, helping awarding organisations to comply with the GQCovid framework, is likely to outweigh the costs associated with having regard to that guidance.

Question 6: Do you have any comments on the regulatory impact of our proposals?

For specific comments, please refer to the relevant paragraph number in your response.

Introduction of proposed guidance

We encourage comments and feedback on our proposals.

We will host a consultation event for affected awarding organisations to allow for further questions, review and feedback. We would encourage awarding organisations to attend this event, as well as providing formal feedback to our consultation.

Following the consultation we will consider all of the responses we receive, and we will decide whether to introduce the draft guidance, either as now presented or amended.

We aim to publish our decisions, and any guidance we decide to set, before **31 July 2020**. In view of the current exceptional circumstances, any guidance we publish will have immediate effect.

Annexes

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 dp.requests@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. 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.

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, 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.

Annex B

Ofqual's role, objectives and duties

The Apprenticeship, Skills, Children and Learning Act 2009

Ofqual has five statutory objectives, set out in the Apprenticeship, Skills, Children and Learning Act 2009;

- 1) The qualification standards objective**, which is to secure that the qualifications we regulate:
 - a) give a reliable indication of knowledge, skills and understanding; and b)
 - indicate:

- i) a consistent level of attainment (including over time) between comparable regulated qualifications; and
 - ii) a consistent level of attainment (but not over time) between qualifications we regulate and comparable qualifications (including those awarded outside of the UK) that we do not regulate
- 2) **The assessment standards objective**, which is to promote the development and implementation of regulated assessment arrangements which:
 - a) give a reliable indication of achievement, and
 - b) indicate a consistent level of attainment (including over time) between comparable assessments
- 3) **The public confidence objective**, which is to promote public confidence in regulated qualifications and regulated assessment arrangements
- 4) **The awareness objective**, which is to promote awareness and understanding of:
 - a) the range of regulated qualifications available,
 - b) the benefits of regulated qualifications to Students, employers and institutions within the higher education sector, and
 - c) the benefits of recognition to bodies awarding or authenticating qualifications
- 5) **The efficiency objective**, which is to secure that regulated qualifications are provided efficiently, and that any relevant sums payable to a body awarding or authenticating a qualification represent value for money.

We must therefore regulate so that qualifications properly differentiate between Students who have demonstrated that they have the knowledge, skills and understanding required to attain the qualification and those who have not.

We also have a duty under the Apprenticeship, Skills, Children and Learning Act 2009 to have regard to the reasonable requirements of relevant Students, including those with special educational needs and disabilities, of employers and of the higher education sector, and to aspects of government policy when so directed by the Secretary of State.

The Equality Act 2010

As a public body, we are subject to the public sector equality duty. This duty requires us to have due regard to the need to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act 2010
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it

The awarding organisations that design, deliver and award qualifications are required by the Equality Act, among other things, to make reasonable adjustments

for disabled people taking their qualifications, except where we have specified that such adjustments should not be made.

When we decide whether such adjustments should not be made, we must have regard to:

- a) the need to minimise the extent to which disabled persons are disadvantaged in attaining the qualification because of their disabilities
- b) the need to secure that the qualification gives a reliable indication of the knowledge, skills and understanding of a person upon whom it is conferred
- c) the need to maintain public confidence in the qualification

We are subject to a number of duties and we must aim to achieve a number of objectives. These different duties and objectives can, sometimes conflict with each other. For example, if we regulate to secure that a qualification gives a reliable indication of a Student's knowledge, skills and understanding, a Student who has not been able to demonstrate the required knowledge, skills and/or understanding will not be awarded the qualification.

A person may find it more difficult, or impossible, to demonstrate the required knowledge, skills and/or understanding because they have a protected characteristic. This could put them at a disadvantage relative to others who have been awarded the qualification.

It is not always possible for us to regulate so that qualifications give a reliable indication of knowledge, skills and understanding and advance equality between people who share a protected characteristic and those who do not. We must review all the available evidence and actively consider all the available options before coming to a final, justifiable decision.

Qualifications cannot mitigate inequalities or unfairness in the education system or in society more widely that might affect, for example, Students' preparedness to take the qualification and the assessments within it. While a wide range of factors can have an impact on a Student's ability to achieve a particular assessment, our influence is limited to the qualification design and assessment.

We require awarding bodies to design qualifications that give a reliable indication of the knowledge, skills and understanding of the Students that take them. We also require awarding organisations to avoid, where possible, features of a qualification that could, without justification, make a qualification more difficult for a Student to achieve because they have a particular protected characteristic. We require awarding organisations to monitor whether any features of their qualifications have this effect.

In setting our proposed requirements, we want to understand the possible impacts of the proposals on Students who share a protected characteristic. The protected characteristics under the Equality Act 2010 are:

- age
- disability
- gender reassignment
- marriage and civil partnerships

- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

With respect to the public sector equality duty under section 149 of the Equality Act, we are not required to have due regard to impacts on those who are married or in a civil partnership.



© Crown Copyright 2020

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated.

To view this licence, visit

www.nationalarchives.gov.uk/doc/open-government-licence/

or write to

Information Policy Team, The National Archives, Kew, London TW9 4DU

Published by:

ofqual

Earlsdon Park
53-55 Butts Road
Coventry
CV1 3BH

0300 303 3344
public.enquiries@ofqual.gov.uk
www.gov.uk/ofqual