

**Risk-based Regulation –
A Consultation for Awarding
Organisations**



February 2012

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Section 1 Purpose and scope

1. Last year we put in place the first stages of our new way of regulating awarding organisations. We are now setting out our plans for monitoring awarding organisations, giving them guidance and regulating their qualifications. We are also proposing some additions to the [General Conditions of Recognition](#) (2011).
2. We encourage all awarding organisations to read and comment on these proposals. We are arranging events to explain the proposals to awarding organisations and to hear their views, but we will be pleased to discuss the proposals with others too.
3. We set out in this consultation our approach to monitoring most awarding organisations. We will use a different approach for the small number of awarding organisations that award the majority of regulated qualifications¹ or that award GCSEs and GCEs.
4. Because of the scale and significance of their operations, we will develop a deep and close understanding of these awarding organisations and their risks and issues. We will be seeking assurance that each of these awarding organisations is managing its risks effectively. Our contact with this small number of awarding organisations will therefore be close and continuous. Although it would be disproportionate for us to have similar levels of ongoing engagement with most other awarding organisations, there may be times when we need extra assurance that they are managing specific risks. Where appropriate, we will have a period of ongoing contact with these organisations too.
5. We will explain separately to the affected awarding organisation how we will develop this understanding and the form of our engagement with them.

Background and context

6. We published the [General Conditions of Recognition](#) (2011) (referred to as ‘the conditions’) in May 2011. The conditions set out the rules that all awarding organisations must follow; they came into force on 18th July 2011.
7. We have met with the governing body and senior staff members of each awarding organisation to make sure that they understand the significance of the

¹ Five awarding organisations make 80 per cent of all awards.

conditions. Where these visits have given us significant cause for concern, we have already taken action.

8. By 18th May 2012 the chair of each awarding organisation must tell us whether the organisation is meeting the conditions in full or part. These statements supplement the other evidence that we have about an awarding organisation's performance. We use this evidence to help us to spot potential problems and to decide on which awarding organisations and qualifications we should focus our work.
9. In 2011 we also changed the way in which new organisations can be recognised to offer regulated qualifications. Since we introduced our new recognition criteria, we have not recognised any new organisations, although a few have applied. We are looking at the way in which we handle applications and the information available to applicants, but we are satisfied that the criteria are right. Organisations must show that they can develop, deliver and award qualifications to the right standard before they can be recognised.
10. In June 2011 we published our sanctions and enforcement policy, [Taking Regulatory Action](#) (2011). We are changing this policy because we have been given new powers.² We are consulting separately on our revised version of [Taking Regulatory Action](#).
11. Every qualification that we regulate is currently subject to an 'accreditation requirement'. This means that we check the design of each qualification before it is made available to learners. When we are confident that an awarding organisation is meeting its conditions, we will decide whether to lift the accreditation requirement for some or all of its qualifications.
12. However, for the time being some qualifications will remain subject to an accreditation requirement, whichever awarding organisation wishes to offer them, because we need to be sure that the qualifications are of sufficient demand and are fit for purpose before they are made available to learners. We set out in Section 3 the qualifications that will initially remain subject to the accreditation requirement.
13. We have already consulted widely on how we should regulate awarding organisations. We have taken into account the feedback that we have been given. We now welcome your comments on our developing approach to

² The Education Act 2011 amended our powers and in particular gave us the power to impose a financial sanction on an awarding organisation.

regulation and on the additional conditions of recognition. Please see the 'How to respond' section.

What will happen next?

14. By May 2012 each awarding organisation should have told us whether, in its view, it is meeting the conditions. We will consider its statement alongside the other information that we have about its qualifications and performance when we decide how we will monitor the awarding organisation this year. We will tell each awarding organisation about our plans. We will introduce some amended conditions, lift the accreditation requirement that currently applies to all qualifications and re-impose an accreditation requirement on specific awarding organisations and qualifications, and put in place guidance for awarding organisations.
15. We will explain to the small number of awarding organisations that will be subject to close and continuous contact what that will mean for them.
16. We will work with all awarding organisations to help them to understand what steps they need to take to make sure that all of their regulated qualifications appear on our [Register](#).

Publication of responses

17. We may publish or share with others some or all of the responses to this consultation. If you do not want your response to this consultation published, you must state clearly that your response is confidential to The Office of Qualifications and Examinations Regulation (Ofqual).

Section 2 Monitoring

18. We regulate about 180 awarding organisations. Each of these organisations designs, delivers and awards qualifications. A small number of awarding organisations provide almost all regulated qualifications and make the great majority of awards to learners. In contrast, some 150 awarding organisations between them make just 2 per cent of all awards.
19. Many of the qualifications that we regulate are also taken by learners in Wales – where the Welsh Government is the regulator – and Northern Ireland. In Northern Ireland, Ofqual regulates vocational qualifications and CCEA regulates general qualifications. We share information with the other regulators and work together when it is appropriate for us to do so.
20. Our priorities are to:
- secure (and where necessary recalibrate) the standards of qualifications, and promote confidence in them
 - secure a healthy, robust and efficient qualifications system.

Our priorities and our statutory objectives shape the way in which we regulate and how we will, therefore, monitor awarding organisations.

21. All awarding organisations must comply with the conditions. We will monitor whether they are doing so. But, like other regulators, our resources are limited. We will use the information we have to decide where we think there is the greatest risk to our priorities, and monitor to give us the best chance of spotting and addressing potential problems.

An overview of risk

22. We look at two factors when we assess risk:
- The **likelihood** of something going wrong with the design, delivery or award of a qualification
 - The **impact** or harm that will be done if something does go wrong with a qualification.
23. Problems are less likely to happen if an awarding organisation:
- has the resources and expertise that it needs
 - is well managed and governed

- regularly checks how well it is working and the quality and standard of its qualifications, listens to feedback and makes improvements
 - willingly cooperates with us.
24. An awarding organisation that is meeting its conditions will be doing these things anyway.
25. The impact or harm that will be caused if something does go wrong will be more serious if the awarding organisation is offering qualifications that are:
- taken by large numbers of learners
 - essential for learners' progression (for example into higher education or employment)
 - relied on to show that a person is competent to undertake a role that could have serious or harmful consequences if it were undertaken by someone who is not competent
 - used to determine a candidate's residency or citizenship status or have other public policy uses.
26. The qualifications that we regulate are diverse, and it is more likely that things will go wrong with some qualifications than others. For example, there can be incentives that encourage an awarding organisation to design a qualification to be too easy, or to be marketed as more challenging in its scope or size than it actually is. On the other hand, there are factors that mitigate the risk of things going wrong. For example, the effective oversight by a professional or standard setting body, that is motivated to secure the fitness for purpose of the qualification, should reduce the likelihood that the qualification will not be fit for purpose. We will take these factors into account when we assess the risk of something going wrong and how we should therefore regulate different qualifications, including whether we should impose an accreditation requirement.

Differentiating between awarding organisations

27. We will use all the information we have about an awarding organisation's performance and the qualifications that it provides when we decide how and when we should monitor it. This may include information shared with us by other regulators. We will update our monitoring plans if new information comes to light, and we will review at least annually the way in which we monitor each awarding organisation. We will tell an awarding organisation how we will monitor it and the reasons for our approach.

Signs that an awarding organisation is performing well

28. When we decide how we should monitor an awarding organisation we will look for signs that it is – or is not – performing well.
29. We would expect to find that an awarding organisation that is performing well:
- routinely checks whether it is meeting its conditions of recognition, quickly addresses any shortcomings, and aims to do more than achieve bare compliance
 - asks people who use its qualifications what they think about them, responds to their feedback and consistently gives a good service to learners and centres
 - sends to us for an accreditation decision, or puts directly onto [the Register](#), only qualifications that meet our requirements, and are of a good quality and an appropriate standard (and the qualifications that it actually provides are in line with the specification)
 - promptly, fully and honestly responds to our requests for information, tells us quickly when things go wrong, and takes responsibility for putting things right
 - is overseen by an effective governing body, and plans and manages changes to its governance and management arrangements
 - has adequate resources that it uses efficiently
 - makes sure that none of its other activities undermine, or could be seen to undermine, the standards of its qualifications or public confidence in regulated qualifications.

We will use fewer resources monitoring an awarding organisation that performs in this way than we will use monitoring an awarding organisation (that offers the same number and profile of qualifications) that does not.

Monitoring awarding organisations

30. We will watch for signs that things might be going wrong in an awarding organisation by, for example:
- reviewing data and other information the awarding organisation gives us, including its annual statement of compliance

- reviewing complaints made to us about the awarding organisation or its qualifications
 - scanning published information about its qualifications
 - listening to people's views on its qualifications
 - meeting with its key staff members
 - from time to time including the awarding organisation in focused reviews that will involve a sample of organisations – these will focus on aspects of qualification design, delivery, assessment or awarding, on specific conditions or on specific qualifications.
31. When we have lower confidence in an awarding organisation's performance, our monitoring will be more intensive and may include:
- an end-to-end audit of its ways of working
 - a full forensic audit to investigate whether it is meeting all of its conditions of recognition
 - a focused investigation by an Ofqual team into aspects of the way in which the awarding organisation works, when we have a specific cause or causes for concern
 - seeking and analysing extra data and information from the awarding organisation.
32. All awarding organisations will be included from time to time in our focused monitoring, when we will look at a sample of awarding organisations to see whether they are meeting certain conditions and/or how they meet the conditions in respect of specific qualifications. When we put the samples together, we will take into account:
- any evidence or allegation that an awarding organisation is not complying with the conditions that are the subject of the monitoring
 - the qualifications an awarding organisation provides
 - any other monitoring planned for the awarding organisation
 - whether the awarding organisation has been included in previous samples and, if so, what we found.

33. This monitoring will allow us to understand and report on how different awarding organisations meet the conditions, to highlight good practice and to find and deal with weaknesses. We will also use this type of monitoring to look at how different awarding organisations' qualifications compare, how they are securing the standards of their qualifications, the quality of the service that they provide, and whether the qualifications are fit for purpose. We will require any problems that we find to be addressed, using our regulatory powers where necessary.
34. Some awarding organisations provide very large numbers of 'high impact qualifications'. We must satisfy ourselves that these awarding organisations are reducing the risk that things will go wrong with these qualifications, so we will have close and continuous contact with them. This contact will help us to understand how an awarding organisation is working, how it is managing for itself the risks of something going wrong, and whether there has been any change to the way it is resourced, managed or governed that might increase that risk. The insights gained from these contacts should help us to spot where closer investigation is needed. It is not for us to tell an awarding organisation how to run its business, or to undermine its responsibility for its qualifications. But it is for us to challenge and test whether an awarding organisation is managing sufficiently the risks to its business. We will also look for signs that an awarding organisation is behaving in ways that undermine standards or confidence in qualifications.
35. We will explain separately to the small number of awarding organisations with which we will have planned close and continuous contact what this will mean for them.
36. We will publish reports of our monitoring activity and report on regulatory action that we take.
37. We will work with the other UK qualifications regulators where appropriate, to share information and coordinate monitoring activities.
38. Every year we will tell each awarding organisation how we plan to monitor it and the reasons for our approach. But if, during the course of the year, our initial view of the awarding organisation changes, we will, in turn, change our monitoring plans for that year.
39. We will tailor how we monitor each awarding organisation according to its performance and the qualifications that it offers, taking into account the impact if its qualifications do go wrong and the likelihood that they will. This means that an awarding organisation that offers only low impact qualifications and for

which we judge there to be a low likelihood of something going wrong will receive the lowest level of monitoring. On the other hand, an awarding organisation that offers very high impact qualifications and for which we judge there to be very high risk of something going wrong will receive the highest level of monitoring.

40. We have illustrated below the different types of monitoring that awarding organisations might experience.

Awarding organisation A offers just one specialist qualification to about 500 learners each year. A has told us that it meets its conditions of recognition in full. We have no information that suggests this is not the case. A responds quickly to our requests for information. It seems to us that the governing body has effective oversight of the organisation's qualification and awarding functions, and that the organisation is well resourced. The qualification is used to indicate competence in a work area. Harm could be done if the qualification was wrongly awarded or if standards were not secure. But the learners taking the qualification are usually supported by their employers. Employers in this sector understand the qualification and how it is assessed, and much of the learning and the assessment is work-based.

In year 1, we look at A's compliance statement and the data it has given us about the qualifications it has awarded in the last year. These do not give us any concerns. We judge that A is offering a medium impact qualification and that there is a low likelihood that something will go wrong.

In year 2 we include A in a sample of organisations that we are monitoring to see whether its work-based assessments are valid and reliable. We find that A's approach to these assessments meets the conditions of recognition. A sends us its annual compliance statement and data at the end of year 2. These show a very significant increase in the number of learners taking its qualification, but A hasn't increased its resources to deal with this. We have received some complaints from learners about delays in the time A is taking to give them their results. We now think there is a medium likelihood that something has gone or might go wrong.

At the start of year 3, because we are concerned about A's ability to deal with extra learners, we let A know that we will be doing a 'cause for concern' review. We tell A why we are worried and how we will be monitoring it. We find that problems happened because of an unexpected increase in the number of learners – the only other awarding organisation offering qualifications for this sector decided not to enrol any new candidates. A has now recruited more experienced staff; it is issuing results on time, and the complaints have stopped. We think that the likelihood of something going wrong has reduced.

In year 4 we monitor A's statement of compliance and data returns but we have no other contact with A because we want to focus our resources on awarding organisations and qualifications that are giving us more concern.

Awarding organisation B is a large organisation and awards about 100,000 qualifications each year. Many of the qualifications offered by B are used to support learners to progress into higher education – they are high impact qualifications. B has told us that it meets its conditions of recognition in full. We have no evidence to the contrary. B responds quickly and fully to our requests for information. It seems to us that B's governing body has effective oversight of B's qualifications and the way in which it works. Although we are confident that the awarding organisation is performing well, the consequences if something went wrong with its qualifications would be significant.

In year 1 we hold monthly meetings with B's senior staff. We use these meetings to help us to understand how B works, and we probe and challenge what we are told to determine how confident we can be in the awarding organisation. We find that B manages risks very well – it has good safeguards in place to stop anything going wrong. Every new qualification is thoroughly reviewed by a panel before it is either sent to us for an accreditation decision or put directly onto [the Register](#). The panel is made up of senior staff from B who have not been involved with developing the qualification, and qualification design, and assessment and subject experts who do not work for B. We include B in a sample of awarding organisations that we are reviewing to understand how they meet the condition on making reasonable adjustments for disabled learners (condition G6). We find that B meets this condition. At the end of the year, B sends us its annual compliance statement and data returns – these do not include anything unexpected. We judge that the likelihood of something going wrong continues to be low but the impact if it did would still be high.

In year 2 we continue to have regular meetings with B. We include B in a sample of awarding organisations to help us to understand how those organisations are meeting condition H3, which requires them to make sure that their qualifications are of consistent standard with other comparable qualifications. We find that B meets this condition. At the end of the year, B sends us its compliance statement and data returns – these do not include anything unexpected.

In year 3 we continue to have meetings with B. Three of B's qualifications are included in a comparability study. Its qualifications are found to be comparable with others and to meet the required standard. B sends us its annual compliance and data returns, and again these do not include anything new.

In year 4 we continue to have monthly meetings with B, but we do not involve B in any other monitoring – it sends us its annual compliance statement and data returns as usual.

Awarding organisation C offers a mixture of qualifications taken by about 300,000 learners each year. C sent in its last compliance statement and data returns late. It has told us that three of its senior officers had resigned following allegations of misconduct – but it did not tell us this until two months after the event. We have received a number of complaints from employers who allege that C's qualifications have been awarded to people who are not competent.

We judge that the likelihood of something going wrong with C is high, and because of the volume of qualifications that it awards each year, the impact would also be high. We undertake a full end-to-end audit of C during the first month of year 1. We find that C is breaching a number of its conditions, and we direct it to comply. We also make any new qualifications C wants to offer subject to an accreditation requirement. For the first six months of the year, a small monitoring team makes monthly visits to C to track its progress towards meeting the directions. At this point we judge C to be stable, with a new and effective senior team in place. We have stopped receiving complaints, and the feedback that we have sought indicates that C is now properly awarding qualifications. We reduce the frequency of our visits to every other month, because we judge that the likelihood of something going wrong has gone down. C sends us its annual compliance statement and data returns on time. These confirm that the governing body has overseen a top-to-bottom review of C's ways of working and that the new team has made significant improvements.

In year 2 we include C in samples for two reviews – on the reliability and validity of work-based assessment, and on identifying and managing risk. We find that it is broadly meeting the conditions in these areas, although we highlight where there is room for improvement. We include two of C's qualifications in comparability studies. We find that the qualifications are comparable with others included in the study and are of the right standard. We hold quarterly meetings with C to make sure that its reforms are still working. C sends us its compliance statement and data returns on time, and these do not raise any concerns. We now judge the likelihood of something going wrong to be low.

In year 3 we include C in the sample for a review into the security of assessment materials. We find that C is complying with the conditions looked at in this review.

In year 4 we limit our monitoring of C to analysing its annual compliance statement and data returns.

Comments on Section 2

Our proposed approach to monitoring takes into account the likelihood of something going wrong with a qualification and the impact if it does. We invite your comments on the approach.

Section 3 Regulating qualifications

What is a regulated qualification?

41. Legislation³ defines which qualifications are regulated. A qualification is regulated (by Ofqual) when:
- it is awarded by an awarding organisation that we have recognised to award the qualification
 - there are, or there are likely to be, learners who are assessed for the qualification wholly or mainly in England or (for vocational qualifications) Northern Ireland.
42. A regulated qualification remains a regulated qualification wherever it is taken. This means that if a regulated qualification is taken by learners in, say, Spain, Tunisia or Uruguay, it is still a regulated qualification when it is taken by those learners, and the qualification must be delivered and awarded in line with the conditions of recognition to which the awarding organisation is subject. On the other hand, if the qualification has been designed to meet the specific needs of learners in those countries and so is not available to learners in England or Northern Ireland, it will not be a regulated qualification.⁴ This is an area where we will provide guidance.

³ The Apprenticeships, Skills, Children and Learning Act 2009.

⁴ Although it will not be regulated by Ofqual it might be regulated by another body.

How we will regulate different qualifications

43. Each awarding organisation is answerable for the quality and standards of its qualifications, and it should make sure that all of its regulated qualifications are designed, delivered and awarded in line with the conditions of recognition. We can take action against an awarding organisation that provides qualifications that are not good enough, but it is of course better that problems do not arise in the first place. There are safeguards that we can put in place to reduce the likelihood that something will go wrong with a qualification.
44. The main safeguards that we can put in place are as follows:
- (i) Limiting which organisations can award specific qualifications and/or applying additional conditions to those organisations. An awarding organisation can award only the regulated qualifications that it is recognised to award. Last year we introduced the recognition criteria. An awarding organisation that wants to be recognised to award additional types of qualifications must show us that it can meet the criteria in the context of those qualifications.
 - (ii) Setting specific rules about the way the qualification must be designed, delivered, assessed and awarded – qualification requirements.
 - (iii) Applying an accreditation requirement to a qualification, whoever is awarding it.⁵
 - (iv) Checking aspects of the qualification once it is being taken by learners.
 - (v) Seeking and responding to feedback from people who are using the qualification.
 - (vi) Regularly checking how the qualification compares with others that serve a similar purpose.
 - (vii) Regularly checking the standard of a qualification before it is awarded and intervening when necessary to make sure that the standard of the qualification is consistent with other comparable qualifications and with the standard previously applied.

⁵ We can also apply an accreditation requirement to a specific awarding organisation in respect of some or all of its qualifications, even when the qualification is not routinely subject to an accreditation requirement.

- (viii) In response to concerns, or as an occasional exercise, checking how the qualification compares with others that serve a similar purpose.
 - (ix) In response to concerns, or as an occasional exercise, investigating the standard of a qualification and intervening when necessary to make sure that the standard of the qualification is consistent with other comparable qualifications and with the standard previously applied.
45. We are undertaking further work to understand which checks and balances in the system reduce the risk of things going wrong with a qualification. We will use the understanding we get from this work to decide where we most need to put additional safeguards in place.
46. In the meantime, we have made an initial grouping of the qualifications that we regulate. We will use these initial groupings to plan how we allocate our resources and to decide which qualifications should continue to be subject to an accreditation requirement. We have taken into account our current understanding of:
- the impact if something goes wrong with the qualification – both on learners and on others who rely on the qualification, such as employers and higher education institutions
 - the purpose of the qualification – for example, if it provides eligibility to progress to higher level qualification, if it is required for citizenship, or if employers or members of the public rely on the qualification as evidence of an individual's competence to perform a specific role
 - the number of learners who typically take the qualification
 - the factors within the system that may work against standards being maintained – for example, the use of qualifications as school accountability or teacher performance measures
 - the factors within the system that mitigate the risk that standards will not be maintained – for example, the effectiveness of the external oversight and challenge from higher education institutions or professional bodies
 - the importance of comparability – for example, when different awarding organisations offer their own versions of the same qualification.
47. We are not suggesting that all qualifications in a group are the same, similar or comparable. Neither do the groups rank qualifications in any way. We show in the table below the level of the regulatory safeguards that we will initially put in

place for the qualifications. We have described these as high, medium or low. We will use more of the safeguards listed above for those qualifications that we judge need a high level of regulatory safeguards than we will for other qualifications.

48. Currently all qualifications are subject to an accreditation requirement. This means that we check each new qualification before it can be made available to learners. We should not need to do this if every awarding organisation is fully and consistently complying with its conditions of recognition and is prepared to be answerable for each of its qualifications.
49. We plan to use the accreditation requirement selectively in the future. We will:
 - lift the accreditation requirement that applies to all regulated qualifications after 18th May 2012, once the deadline has passed for awarding organisations to submit their statements of compliance with the conditions of recognition
 - impose accreditation requirements on specific qualifications (see the table below) – this requirement will apply to the qualification regardless of the awarding organisation that wishes to offer it
 - impose an accreditation requirement on specific awarding organisations' qualifications.
50. We show in the table below the qualifications on which an accreditation requirement will, for the time being, remain in place. We judge that the risk of removing the accreditation requirement from these qualifications at this stage is too high. This is because we do not yet have confidence that, without additional checks, the standard and comparability of these qualifications will be sufficient, and because if something goes wrong with these qualifications, the impact could be significant.
51. Where we cannot be confident that an awarding organisation will develop, deliver and award qualifications that are of a consistently good quality and appropriate standard, or that it is meeting its conditions of recognition, we will make some or all of its qualifications subject to an accreditation requirement. We will look at the evidence we have about the awarding organisation's compliance with the conditions, the quality of the qualifications that it has previously designed, and the effectiveness with which it has secured standards. We will tell each awarding organisation which of its qualifications are subject to an accreditation requirement.

| Qualifications | Level of regulatory safeguards | Accreditation requirement applied to the qualification(s) |
|---|---|--|
| GCSEs and other level 1, 2 or 1/2 qualifications used to indicate learners' attainment on completion of compulsory schooling or to measure school performance | High ⁶ | Yes |
| GCEs, AS and other level 3 qualifications used to demonstrate eligibility for progression to higher education | High | Yes |
| Functional skills | High | Yes |
| English for Speakers of other Languages (ESOL) qualifications | High | Yes |
| Qualifications that an individual is required by law to have gained in order to undertake a specific role | Low to high, depending on the effectiveness of the oversight of the qualification by other bodies | This will be determined on a qualification by qualification basis |
| Qualifications taken for personal growth and enjoyment | Low ⁷ | No, unless an accreditation requirement is applied to an individual awarding organisation. |
| Qualifications that indicate that an individual can undertake a | Medium ⁸ | No, unless an accreditation requirement is applied |

⁶ We will typically use safeguards (i)–(vii).

⁷ We will typically use safeguards (viii) and (ix).

⁸ We will typically use safeguards (i), (iv), (v), (viii) and (ix).

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| specific role in the workplace | | to the individual awarding organisation |
| Qualifications that are designed only to meet the needs of a named employer or other organisation | Low | No, unless an accreditation requirement is applied to the individual awarding organisation |

52. Where an awarding organisation is recognised to both teach and award qualifications, we may put in place additional safeguards to make sure that standards are maintained. Where an awarding organisation is recognised to award qualifications that facilitate credit accumulation and transfer (CAT), we will apply rules that enable such transfer to work effectively.

Regulatory requirements for qualifications

53. An awarding organisation must make sure that any qualification that it offers or plans to offer meets the relevant regulatory requirements. We have set this out in general condition D5. This condition applies whether or not a qualification is subject to an accreditation requirement. (Where the accreditation requirement applies, we treat the regulatory requirements as accreditation criteria.)

54. An awarding organisation that wishes to offer a qualification that is subject to an accreditation requirement will need to send it to us to check. When we decide whether the proposed qualification should be accredited, we will judge whether it meets the regulatory requirements for the qualification.

55. Where a qualification is not subject to an accreditation requirement, the awarding organisation itself must confirm that the qualification meets the appropriate regulatory requirements. We may check how effectively it is doing this as part of our regular monitoring programme, or if we have cause for concern.

56. We publish the requirements for each qualification on our website. The requirements are as follows:

An awarding organisation must not be in breach of any of its conditions in a way that causes us significant concerns about the awarding organisation's ability to deliver the qualification.

Also, all qualifications, irrespective of title or type, must meet the [General Conditions of Recognition](#) (2011), specifically:

- Section D
- Section E
- Section F
- Section G
- Section H.

In addition, qualifications designed to facilitate credit accumulation and transfer (CAT) must meet the *Regulatory Arrangements for the Qualifications Credit Framework* (QCF):

- Section 1 – The design specifications of the QCF:
All requirements.
- Section 3 – Requirements for organisations developing and submitting units to form part of accredited qualifications:
Requirements 3.2 and 3.3.
- Section 4 – Requirements for organisations developing rules of combination for accredited qualifications:
Requirements 4.2–4.4.
- Section 5 – Requirements for awarding organisations:
Requirements 5.3, 5.6 h & i, 5.11 c, d & g, 5.12, 5.13 and 5.14.
- Annex B – Glossary.
- Annex E – QCF level descriptors.

In addition, for qualifications with a specific title, the following regulations apply:

Qualifications with the title GCSE

All of the following:

- GCSE Qualification Criteria
- GCSE Subject Criteria
- Controlled Assessment Regulations for GCSE
- Regulations for Quality of Written Communication

Qualifications with the title GCE

All of the following:

- GCE Qualification Criteria
- GCE Subject Criteria
- GCE Applied A Level Subject Criteria (where applicable)
- Regulations for Quality of Written Communication

Qualifications with the title Functional Skills

All of the following:

- Functional Skills Qualification Criteria
- Functional Skills Subject Criteria
- Controlled Assessment Regulations for Functional Skills

Qualifications with the title Principal Learning

Both of the following:

- Diploma Subject Criteria
- Diploma Principal Learning Performance Descriptors

Qualifications with the title Project

One of the following:

- Foundation Project Criteria

- Extended Project Criteria
- Higher Project Criteria

Qualifications with the title 14–19 Diploma

All of the following:

- Criteria for the Accreditation of Foundation, Higher and Advanced
- Diploma Qualifications
- Diploma Subject Criteria
- Diploma Principal Learning Performance Descriptors

One of the following:

- Foundation Project Criteria
- Extended Project Criteria
- Higher Project Criteria

All of the following:

- Functional Skills Qualification Criteria
- Functional Skills Subject Criteria
- Controlled Assessment Regulations for Functional Skills

Qualifications with the title ESOL

- Criteria for ESOL Qualifications

Qualifications with the title Entry Level

- Criteria for Entry-level Qualifications

Qualifications with the title AEA

Both of the following:

- Criteria for Advanced Extension Awards (AEAs)
- Advanced Extension Award Test Specifications

Qualifications with the title NVQ

One of the following:

- Criteria for National Vocational Qualifications (NVQs)
- Operating rules for using the term 'NVQ' in a QCF qualification title (where applicable)

Submitting qualifications

57. All regulated qualifications must appear on our public [Register](#) of qualifications. When an awarding organisation wants to make a new qualification available, it must enter the details of the qualification onto our Regulatory IT System (RITS). We expect that some awarding organisations will identify qualifications that are regulated qualifications (see paragraph 41) but are not yet on [the Register](#). They will need to address this, but we appreciate that this will take some time. We propose to ask each awarding organisation to identify which qualifications it needs to add to [the Register](#), and to indicate how long it will need to do so. We will then monitor its progress.
58. If the qualification is not subject to an accreditation requirement, it will go straight onto [the Register](#) when the awarding organisation submits it. It will then be immediately visible to candidates and centres.
59. When an awarding organisation sends us a qualification, it must confirm that the regulatory requirements for the qualification are met in full. It must do this whether or not the qualification is subject to an accreditation requirement.
60. If the qualification is subject to an accreditation requirement, we will first check that it meets our criteria. If the criteria are met in full, we will accredit it and add the qualification to [the Register](#). Otherwise, we cannot accredit the qualification.
61. Where a qualification is subject to an accreditation requirement, the awarding organisation must give us evidence to show that the regulatory requirements are met in full. This must include:
- the qualification specification⁹
 - sample assessment materials and/or assessment criteria

⁹ As set out in E3 of the General Conditions of Recognition.

- procedures for standardisation and/or verifying/moderating assessment decisions
 - details of any alternative assessment methods
 - guidance and any additional information provided to centres to help them to deliver and assess (where appropriate) the qualification
 - evidence of support from users of the qualification and interested parties.
62. Where we find that a qualification does not meet the accreditation criteria, we will reject it. The awarding organisation will then have the option of changing the qualification so that it does meet the criteria and submitting it to us anew. We will treat it as a fresh application. An awarding organisation should submit a qualification only if it is confident that the qualification fully meets the regulatory requirements, in line with general condition D5.
63. If we find that a qualification does not meet the requirements, we may ask the awarding organisation how it came to a different view. If an awarding organisation repeatedly submits qualifications that do not meet the requirements, we will look into how it designs and approves qualifications. We will consider whether it is meeting its conditions, and take action if it is not.
64. [The Register](#) will not distinguish between qualifications that are and are not subject to an accreditation requirement. All qualifications on [the Register](#) must meet the regulatory requirements on an ongoing basis.
65. We will sample qualifications that an awarding organisation has put straight onto [the Register](#) to make sure that the qualifications meet all of the regulatory requirements. If we find that an awarding organisation's qualifications are not meeting the requirements in full, we will consider taking regulatory action. This might include giving an awarding organisation a direction and/or making some or all of its qualifications subject to an accreditation requirement and/or imposing on it a financial penalty.

Comments on Section 3

We propose to apply different regulatory safeguards to different qualifications. We welcome your comments on our proposals.

We propose for the time being to make certain qualifications subject to an accreditation requirement. We welcome your comments on our proposed use of the requirement.

Section 4 The scope of each awarding organisation's recognition

66. Each awarding organisation is recognised to award specific qualifications or types of qualifications. (The legislation describes this as being recognised to award 'descriptions' of qualifications.) We plan to align each awarding organisation's current recognition(s) with the groups of qualifications set out in Section 3. We propose that an awarding organisation should be recognised to offer all qualifications that fall within a group, but recognition could in some cases be restricted, either by us or at the request of an awarding organisation.
67. We will map which qualifications each awarding organisation is currently recognised to award against the groups. Existing awarding organisations will not have to do anything to keep their current recognition(s). We will contact each awarding organisation to ask whether it still wishes to be recognised for these groups and to explain how it could surrender recognition for any groups that it does not use.
68. If an awarding organisation is recognised to award qualifications that fall within a group of qualifications, then all of its qualifications in that group will be regulated qualifications, provided that they are offered, or may reasonably be expected to be offered, to learners assessed in England or (for vocational qualifications) Northern Ireland. Some awarding organisations have in the past offered a mixture of regulated and unregulated qualifications of the type that they are recognised to award. They have distinguished between them by whether or not they put them forward for accreditation. Because not all qualifications now have to be put forward for accreditation – the focus is on regulating the organisation – awarding organisations can no longer rely on this distinction. The legislation makes it clear that an awarding organisation cannot

offer (in England or Northern Ireland) unregulated versions of qualifications that it is recognised to offer. This reduces the risk that people will be confused or misled into thinking that a qualification is regulated when it is not.

69. We have reduced this risk further by making it a condition that an awarding organisation must not represent unregulated qualifications (i.e. qualifications offered outside the terms of its recognition, or not offered in England or – for vocational qualifications – Northern Ireland) in a way that might lead users to think that they are regulated.
70. Where an awarding organisation is currently offering as an unregulated qualification a qualification that falls within the terms of its recognition, it is breaching its conditions (because accreditation, which currently applies to all qualifications, has not been sought). The awarding organisation has the following options:
 - stop offering the unregulated qualification
 - check that the qualification meets the relevant regulatory requirements and submit it either for accreditation (for qualifications where an accreditation requirement applies) or (in the future) for entry directly onto [the Register](#)
 - ask us to change the organisation's recognition so that it does not cover the qualifications concerned (assuming that it does not offer similar regulated qualifications).
71. When we contact each awarding organisation about the scope of its recognition, we will also ask how it is dealing with any such qualifications.
72. If an awarding organisation does not wish to be recognised to award qualifications that come within a group(s) for which it is, and wishes to remain, recognised, we will consider whether it can have an 'opt out' for specific qualifications. We will only allow this 'opt out' facility where we can do so without risk that people will be confused about which qualifications are and are not regulated.
73. An awarding organisation can only offer qualifications for which we publish specific requirements if it is recognised to do so. Therefore no awarding organisation, whether or not it is recognised, can offer unregulated versions of qualifications such as GCSEs, GCEs or Functional Skills.
74. We have the power to keep under review an awarding organisation's 'connected activities' and take action if we judge that it is breaching conditions

because of the way in which it conducts these activities. Provision of unregulated qualifications is a connected activity.

Qualifications on the Register

75. All regulated qualifications must appear on [the Register](#). We know there are a large number of qualifications on the Register that are not being used. This is not helpful to people who use [the Register](#) to find qualifications. If an awarding organisation has listed against its name on [the Register](#) a number of qualifications that are not actually in use, it also gives us a misleading picture of the volume of its activity and how we should therefore monitor it.
76. We expect each awarding organisation to keep its entries on [the Register](#) up to date. We will give each awarding organisation an opportunity to withdraw qualifications from [the Register](#) that are not active. We will contact each awarding organisation individually, setting out what it needs to do to withdraw qualifications that are not being used. We will be undertaking a similar exercise with the bank of QCF units.

Comments on Section 4

We have explained that an awarding organisation must make sure its regulated qualifications appear on [the Register](#). We would welcome your comments on this section and we invite you to raise any questions that you have about the steps that you will need to take.

Section 5 Guidance

77. We will publish guidance to help awarding organisations understand whether or not they are complying with the [General Conditions of Recognition](#) (2011). We have asked awarding organisations about the style and format of the guidance they would find useful. They have encouraged us not to publish extensive guidance. Awarding organisations are concerned that guidance may over time be viewed as a further set of rules and stop them using diverse, innovative and efficient ways of meeting the conditions.
78. Legislation requires an awarding organisation to 'have regard' to guidance that we publish. But we intend that the guidance that we publish should not act as an additional set of rules nor prescribe specific ways of working.

79. As we develop guidance, we will publish drafts on our website and invite awarding organisations and others to comment. We may also hold some focus groups to discuss drafts. We will review guidance that has been published in the past, and decide what we should retain, what we should rewrite and what is no longer needed.
80. At this stage we would like your views on the style of guidance that we plan to use, as well as on the content of draft guidance on how an awarding organisation might judge whether or not it is meeting condition A8. Condition A8 deals with the steps that an awarding organisation must take to prevent malpractice and maladministration, and investigate and deal with incidents of malpractice and maladministration if they occur. The draft guidance is set out in Appendix A.

Comments on Section 5

We would welcome your comments on the proposed approach to guidance and on the draft guidance on condition A8.

Section 6 General Conditions of Recognition

81. We plan to make some additions to the conditions that we imposed on awarding organisations on 18th July 2011, and with one exception these should take effect from 19th May 2012.

Inactive awarding organisations

82. The first new condition is to address a situation in which an awarding organisation is recognised to award regulated qualifications but it does not do so. The organisation might, for example, have sought recognition solely to enhance its status in an overseas market. We propose to introduce the following new conditions:

A1.3 An awarding organisation must:

- (a) ensure that, within two years of first being recognised for the award of qualifications, it has submitted a qualification to the Register, and

- (b) take all reasonable steps to ensure that, once it has awarded a qualification, no two-year period has passed in which it has not awarded a qualification in accordance with its Conditions of Recognition.

Guided learning hours

83. We intend to introduce new conditions on guided learning hours. Guided learning hours are a measure of the size of a qualification and are used for many different purposes. In the future, this will include whether part-time learners are studying sufficiently for the purposes of the new duty on 17- and 18-year-olds to participate in education and training, due to be introduced in September 2013 (for 17-year-olds) and 2015 (for 18-year-olds). We will publish criteria on guided learning hours. The new draft conditions are as follows:

E6.3 An awarding organisation must ensure that in assigning a number of hours of guided learning to the qualification:

- (a) it complies with criteria that may be published by Ofqual and revised from time to time
- (b) it assigns a number of hours of guided learning that is reasonable and can be justified by evidence.

E6.4 An awarding organisation must keep under review, and revise where necessary, the number of hours of guided learning that has been assigned to the qualification.

E6.5 When requested to do so by Ofqual (in writing), an awarding organisation must promptly submit to Ofqual evidence to justify why a particular number of guided learning hours has been assigned to the qualification.

E6.6 Where, following such a request, Ofqual specifies to an awarding organisation (in writing) requirements in relation to the number of guided learning hours to be assigned to the qualification, the awarding organisation must revise the number of guided learning hours so that it complies with those requirements.

84. In addition, we will put in place conditions to require that guided learning hours are included in a qualification's specification and that an awarding organisation states in the specification whether the qualification is relevant for the purposes of 17- and 18-year-olds' duty to participate. The draft conditions are as follows:

- E3.2 An awarding organisation must ensure that the specification for a qualification sets out:
- (k) the number of hours of guided learning most recently assigned to the qualification
 - (l) whether or not the qualification is (in the opinion of the awarding organisation or as otherwise specified by Ofqual) relevant for 2008 Act purposes.

Regulated qualifications must appear on the Register

85. We propose to introduce a new condition to make it clear that an awarding organisation is responsible for making sure that every regulated qualification that it offers is included on the Register, even if it is not subject to an accreditation requirement. This will allow us to meet our legal duty to publish a register that lists all regulated qualifications and will be particularly relevant once the current blanket accreditation requirement is lifted. We therefore propose to introduce the following condition:

Condition E6

- E6.1 An awarding organisation must not make available a qualification unless it has first submitted that qualification to the Register.
- E6.2 An awarding organisation must ensure that its submission of a qualification to the Register:
- (a) is in a form that may be published by Ofqual and revised from time to time
 - (b) includes the number of hours of guided learning that the awarding organisation has assigned to the qualification
 - (c) contains only accurate information
 - (d) contains all information about the qualification that is requested on the form.

Extra safeguards on confidentiality

86. Recent events have highlighted the importance that awarding organisations must attach to maintaining the confidentiality of assessment materials. We intend to augment existing conditions G4.1 and G4.2 with the following conditions:

- G4.3 In particular, an awarding organisation must take all reasonable steps to ensure that such confidentiality is maintained where it (or any person connected to it) provides training or training materials in relation to a qualification to Learners or Learners' representatives.
- G4.4 An awarding organisation must take all reasonable steps to ensure that no person connected to it offers to disclose information about the assessment or the content of assessment materials where that information is (or is said or implied to be) confidential.

Delivering assessments that are fit for purpose

87. We intend to introduce a new condition G9. The purpose of this condition is to close a potential loophole that might otherwise stop us acting on an error in a paper where the error was made prior to the introduction of the conditions. We propose that this condition should come into effect on 1st May 2012 and should be as follows:

- G9.1 An awarding organisation must ensure that every assessment for a qualification that it makes available is delivered effectively and efficiently.
- G9.2 An awarding organisation must ensure that, on delivery of every assessment for a qualification that it makes available, the assessment:
- (a) is fit for purpose
 - (b) permits Reasonable Adjustments to be made, while minimising the need for them
 - (c) allows each Learner to generate evidence which can be Authenticated
 - (d) allows each specified level of attainment detailed in the specification to be reached by a Learner who has attained the required level of knowledge, skills and understanding
 - (e) allows Assessors to be able to differentiate accurately and consistently between a range of attainments by Learners.
- G9.3 An awarding organisation must ensure that, on delivery of every assessment for a qualification that it makes available, the content of the assessment:
- (a) is fit for purpose

- (b) is appropriate for the method of assessment chosen
- (c) is consistent with the specification for that qualification.

Comments on Section 6

We invite your comments on the additional conditions that we intend to impose on all awarding organisations.

Appendix A – Draft guidance

Examples of ‘Positive Indicators’ that would suggest an awarding organisation is complying with general condition A8 on preventing, investigating and dealing with malpractice and maladministration.

The awarding organisation:

- builds into its ways of working steps that would reduce the risk of malpractice or maladministration happening
- makes sure that relevant staff members understand and routinely take these steps
- sets out in up-to-date policies, practices and procedures how it prevents, identifies and addresses malpractice and maladministration, and these cover, among other things:
 - plagiarism, collusion, tampering, breach of confidentiality of assessment materials
 - incidents that occur outside of England or Northern Ireland (if it operates elsewhere)
- knows what to do if evidence of malpractice or maladministration comes to light, whether in the organisation itself or within a third party involved with the design, delivery or award of a qualification
- acts quickly when it has evidence of malpractice or maladministration
- learns from its experiences of dealing with malpractice and maladministration and improves its ways of working when it needs to

- captures, logs and addresses all suspicions and evidence of malpractice, and can make this available as required to demonstrate compliance.

The awarding organisation uses and reviews regularly a standardised investigations policy and approach that sets out:

- who investigates concerns about malpractice or maladministration
- how the investigation is undertaken
- when and how interested parties will be notified lawfully
- how interviews should be conducted
- how facts will be gathered and evidence found, collated and stored
- how documentary evidence will be verified
- how confidentiality of materials is assured
- how reports of its investigations will be structured, presented and their accuracy assured
- how and when any visits to centres will be announced and undertaken
- the principles to be followed when it undertakes joint investigations with other bodies.

The awarding organisation has on record:

- clear terms of reference for all the investigations that it has undertaken
- a log of all allegations, including those that were not investigated – perhaps due to insufficient or inadequate information – that it cross-references if new information is provided.

Examples of ‘Negative Indicators’ would suggest an awarding organisation is not complying with general condition A8

The awarding organisation:

- has used an individual or centre to assist with, or lead, an investigation when there is a suspicion or allegation that the individual or centre was itself connected to the malpractice and maladministration being investigated
- does not routinely take steps to minimise the risk that malpractice or maladministration will happen

- has not stopped incidents of malpractice or maladministration happening again
- has not followed its own procedures when investigating a matter
- has not properly validated evidence collected during an investigation
- has not contacted all relevant parties, including but not limited to learners, in the course of conducting an investigation
- has not safely kept records and documents relating to the incident and investigation for an appropriate period
- has not been able to enforce action it has taken against those involved in malpractice or maladministration.

How to respond

Please respond to the questions we have asked using one of the following methods:

- completing the online response form at <http://comment.ofqual.gov.uk/risk-based-regulation/respond>
- emailing a completed response form to consultations@ofqual.gov.uk – Please include the consultation title as your email subject.
- emailing your response in an alternative format to consultations@ofqual.gov.uk – please include the consultation title as your email subject.
- posting your response to:

Risk-based Regulation
Ofqual
Spring Place
Coventry Business Park
Herald Avenue
Coventry
CV5 6UB

Responses should be sent to us no later than 23rd April 2012.

Information about you

We collect some standard details about all those who respond to our consultations. The information you provide will be held by us. It will only be used to help us to shape our policies and regulatory activity. We may wish to publish your views. Please indicate clearly if you wish your response to be confidential. Please provide us with the following information set out under the headings below.

- Name
- Organisation – please select from the following list:
 - School/college
 - Training provider
 - Higher education institute
 - Awarding organisation
 - Student/learner
 - Parent/carer
 - Employer
 - Representative group / interest group
 - Government body / organisation (national and local)
 - Other (including general public)
- Organisation name
- Role
- Nation – please select from the following list:
 - England
 - Northern Ireland
 - Other UK
 - International

- Email address

Please indicate whether we may contact you to find out more information about your response.

We wish to make our publications widely accessible. Please contact us if you have any specific accessibility requirements

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