

Decisions on changes to regulations for enquiries and appeals



In May 2016 we published a consultation seeking views on *changes to regulations for enquiries and appeals*¹. This followed on from our decisions², announced in May 2016, on our previous consultation on *improving reviews of GCSE, AS and A level marking, withdrawing the GCSE, GCE, Principal Learning and Project Code of Practice, and new requirements for setting GCSE and A level grade boundaries*³. We explained in our May 2016 decisions document the decisions we had made and that we were seeking further views on draft Conditions to bring about those decisions.

Our aims in making these changes were to:

- Remove rules that duplicate others.
- Make sure any errors in marking GCSEs, AS and A levels are found and corrected, in a way that is fair to all students.
- Make sure exam boards award qualifications in a consistent way.

We also sought further views on:

- A number of changes to our original proposals.
- Some areas which were not in our original consultation.
- The Conditions and guidance which would implement our proposals, including updated Conditions on which we had consulted previously.

We also proposed some other amendments to our Qualification Level Conditions and guidance for reformed GCSEs and A levels (GCEs).

¹ <https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525982/Decisions_on_marking_reviews_and_appeals_grade_boundaries_and_the_Code_of_Practice.pdf

³ <https://www.gov.uk/government/consultations/marking-reviews-appeals-grade-boundaries-and-code-of-practice> - Published in December 2015

We have reviewed the responses to the latest consultation and are now announcing our decisions. We are also publishing a more detailed analysis of the responses⁴ and a regulatory impact assessment⁵ alongside this document. We are grateful to everyone who responded to this and the previous consultations.

Guide for schools and colleges and statutory guidance

In response to concerns about the removal of the Code, the timescales involved and to ensure schools and colleges are aware of all the changes, we are publishing a guide to explain what the changes are. We invited feedback on a draft of the guide with representatives of schools and colleges and other stakeholders on whether it was accessible and useful. We revised the draft in light of their comments.

We have also further enhanced our statutory guidance to assist exam boards, schools and colleges to understand what our Conditions require for 2016 and beyond. We will keep our guidance under review and will enhance it further if required.

Summary of decisions

In the May 2016 decisions document referenced above, we detailed our decisions to implement changes for 2016 that were in line with or had been amended from our original proposals. We also detailed the decisions we are to implement for 2017 that were in line or had been amended from our original proposals.

We outlined in the May 2016 consultation our views and sought feedback on new proposals, proposals on the implementation timetable and additional guidance for 2016, to:

- Put in place specific requirements for exam boards to train and monitor markers and moderators (such requirements are currently imposed through the Code);
- Publish statutory guidance on how reviewers should determine whether a Marking Error has been made;
- Require exam boards to pilot the provision of the extended ground (that there had been a Marking Error⁶) for appeal in a small number of subjects in 2016;

⁴ <https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

⁵ <https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

⁶ The awarding of a mark or the arrival at an outcome of Moderation which could not reasonably have been given or arrived at given the evidence generated by the Learner(s) (and for Moderation, the centre's marking of that evidence), the criteria against which Learners' performance is differentiated and any procedures of the awarding organisation in relation to Moderation or marking, including in particular where the awarding of a mark or outcome of moderation is based on: an Administrative Error, a failure to apply such criteria and procedures to the evidence generated by the Learner(s) where that failure did not involve the exercise of academic judgment, or an unreasonable exercise of academic judgment.

- Decide when we should implement our decision to require exam boards to put in place arrangements so that Learners can ask for the results for centre-marked assessments before deciding whether to seek a review;
- Decide when we should implement the requirement that exam boards must make marked GCSE scripts available to centres in time for them consider whether to ask for a review.

We sought views on the impact on exam boards, schools and colleges of these proposals before considering a final decision.

Conditions, requirements and guidance

We set out in our consultation the qualification level Conditions with which we proposed to require exam boards to comply with in relation to reviews of marking, reviews of moderation and appeals for GCSE(9 to 1) qualifications; GCSE(A*- G) qualifications; reformed GCE qualifications; and pre-reform GCE qualifications.

We also set out the qualification level guidance we proposed to put in place on considering marking errors.

We proposed that most of the Conditions and guidance on which we consulted would apply to every qualification – GCSE(9 to 1) qualifications; GCSE(A*- G) qualifications; reformed GCE qualifications; and pre-reform GCE qualifications. Where this was the case, we have set out comments on these just once. We do not repeat them for each qualification.

To correct an error in Condition GCSE5 where the word ‘skills’ has been omitted

Our proposal to correct an error in GCSE5 was supported by all who commented. We have therefore decided to amend the Condition to include ‘skills’.

To introduce a Qualification Level Condition for reformed GCSEs and A levels (GCEs) that would require that a qualification could only be developed where subject level Conditions exist in that subject.

The comments received agreed with the proposed changes. We have decided to introduce Conditions so that GCSE, AS or A level qualifications could only be developed where subject level Conditions exist in that subject.

Condition GCSE17 – Review of marking of Marked Assessment Material

We had initially proposed that exam boards must report the reasons for any review at the same time as providing the outcome. Following our initial consultation, we decided that we would allow for reasons and outcomes to be provided separately. In addition,

we decided for 2016 that the reasons are to be provided by exam boards only on request rather than automatically.

We sought feedback on these decisions. Most of the exam boards indicated that the requirement to provide documented reasons on request will have a significant impact on their resources for 2016. As system changes would be required for most exam boards, they have raised concerns as to their ability to meet this requirement, especially when considering the proximity of this decision to the summer exams series. School and college respondents expressed the clear desire for reasons to be provided to get a better understanding of why decisions had been made.

Having considered the responses, we have decided to make no change to the need to provide reasons but to permit exam boards where necessary to transition to the new approach. This balances the need for a more transparent review system with the ability of the exam boards to deliver volume within a short timescale.

As a consequence of feedback and a request from exam boards, we are amending the wording of Condition GCSE17.5(j)(ii) to remove the word 'promptly'. This relates directly to the above concerns regarding the requirements placed upon exam boards and the expectations of schools and colleges for this requirement in 2016. The Condition will now read as follows:

- (ii) *where requested, report to the Learner (or as the case may be the Relevant Centre) the reasons documented by the Assessor carrying out the review, provided that the awarding organisation may specify a reasonable time period following the reporting of the outcome of the review during which such a request must be received.*

Exam boards will be required to provide reasons on request but there is no requirement for 2016 for those reasons to be provided with the outcome or within a certain timescale. We appreciate the need for schools and colleges to be aware that if they wish to appeal an outcome of a review, then they should ensure they do not wait to receive the reason for the outcome as they may miss the exam board appeal window. We have reflected this advice in our Guide⁷.

Condition GCSE21.1(h)

We sought feedback on a change to the above Condition which would require exam boards to publish a report each year which identifies changes to their review arrangements as a result of their monitoring of their reviews of marking and moderation. There was an error in the associated question. It should have read "...as

⁷ <https://www.gov.uk/guidance/regulation-of-gcses-as-and-a-levels-guide-for-schools>

a result of their monitoring.” However, the question posed read “...as a result of their monitoring of moderation.”

It is clear from the responses to this proposed change that although the question was incorrect, the draft Condition that we consulted on was understood by respondents. They identified that the requirement would have included the results of all monitoring activity and not that restricted to moderation.

We have decided therefore to implement the Condition as proposed.

Put in place specific requirements for exam boards to train and monitor markers and moderators (such requirements are currently imposed through the Code)

Most respondents strongly agreed that we should require exam boards to train and monitor their markers and moderators.

We have decided to introduce the Condition that would require this.

Publish statutory guidance on how reviewers should determine whether a Marking Error has been made

There was a strong general agreement from respondents for the need for guidance in this area. Some respondents raised concerns as to the nature of the test to be applied upon review and appeal. However, we received very little specific feedback on the guidance itself. Concerns were raised by some respondents that the guidance did not adequately explain the approach that reviewers could take when determining a Marking Error, and we have therefore made some amendments to the guidance to reflect those requests for clarification.

Require exam boards to pilot the provision of the extended ground (that there had been a Marking Error⁸) for appeal in a small number of subjects in 2016 prior to implementing the provision for all GCSEs and A levels

We proposed to require exam boards to pilot the new ground for appeal, that being on the grounds of a Marking Error having been made, in three subjects – A level mathematics, A level geography, and A level religious studies.

Responses to this proposal were mixed. Some respondents strongly agreed with the proposal, and expressed a desire for it to be rolled out across all qualifications with

⁸ The awarding of a mark or the arrival at an outcome of Moderation which could not reasonably have been given or arrived at given the evidence generated by the Learner(s) (and for Moderation, the centre's marking of that evidence), the criteria against which Learners' performance is differentiated and any procedures of the awarding organisation in relation to Moderation or marking, including in particular where the awarding of a mark or outcome of moderation is based on: an Administrative Error, a failure to apply such criteria and procedures to the evidence generated by the Learner(s) where that failure did not involve the exercise of academic judgment, or an unreasonable exercise of academic judgment.

immediate effect. Some of those who agreed with the proposal recognised that there was benefit in piloting in 2016.

The exam boards expressed concerns that it was too late to run a pilot of the extended ground. They raised concerns associated with ensuring schools and colleges understood how the pilot would work in practice; the challenges to ensure reviewers and appeal panel members were adequately trained; and the development and implementation of new procedures.

We have engaged further with exam boards following the end of the consultation and discussed with them their current operating models and what would be achievable given the timescales. Although we recognise that the exam boards will need to invest in training their appeal panellists, we do not consider this to be unduly burdensome given the requirements already contained within the Code.

Exam boards have indicated that to include A level mathematics in the pilot could have been problematic without the inclusion of further maths. We have considered this further with the exam boards, and decided that A level physics will provide a suitable replacement.

We have considered all of the responses and decided that we will require exam boards to pilot the new ground of appeal for three subjects – A level geography, A level religious studies, and A level physics. We will evaluate the pilot and determine whether the requirements should be revisited in light of our findings and feedback received from exam boards, schools and colleges. We will not make a decision as to whether to roll out the new ground of appeal until we have completed our evaluation.

Require exam boards to provide reasons for the decision of a review of marking automatically, but after the outcome of the review (after the transitional period)

We consulted on requiring exam boards to provide reasons for the outcome of a review of marking automatically from March 2017. Reasons could be provided after the outcome itself, and exam boards would be required to set a target time period for the provision of reasons.

Many respondents to the consultation agreed with the proposal. However, a number of exam board respondents raised concerns about the impact of the requirement, in particular in relation to system changes which would be required.

In light of the responses, we plan to revise our proposals and introduce Conditions which will allow us to decide an implementation date for the requirement for reasons to be provided automatically at a later date.

Set a framework for key dates related to reviews and appeals

We are introducing Conditions allowing Ofqual to set a framework for key dates related to reviews and appeals. Exam boards would need to ensure that the dates they put in place for their review arrangements and appeals process comply with Ofqual's framework.

We consulted on a proposed framework for introduction in summer 2017 for all reformed qualifications. While some respondents agreed with this framework, some respondents raised concerns over the dates in the proposed framework.

We have not yet made a decision on the dates to be included in the framework. We are continuing to gather evidence on the impact on exam boards and other stakeholders. We will introduce Conditions which allow Ofqual to set the dates for the framework at a later date.

Permitting the review of centre-marked assessments to be undertaken by a third party

We plan to allow reviews of centre-marked assessments to be undertaken by a third party (on the centre's behalf). A number of respondents stated that this would be helpful in lessening the impact of the requirement on centres. However, a concern was also raised that adding another party in the process would complicate matters further and may lead to logistical problems.

We consider that allowing such reviews to be undertaken by a third party will lessen the burden on centres. Such reviews could also be undertaken within the centre. It will be for exam boards, through their contractual arrangements with centres, to ensure that any arrangements which a centre has with a third party are fit for purpose and allow reviews to be carried out in line with the relevant requirements.

We decided we will require exam boards to put in place arrangements so that Learners can ask for the results for centre-marked assessments before deciding whether to seek a review, but sought views on when we should implement this decision

We have considered all of the responses to this proposal, which were mixed. We have deferred our decision as to when we would require this to come into force so that we can undertake further analysis of potential impact. We will introduce the Conditions that will require this, but will not bring them into force until such time as we consider it appropriate to do so.

We decided we will require exam boards to make marked GCSE scripts available to centres in time for them to consider whether to ask for a review, but sought views on when we should implement this decision

As above, we have considered the responses to this proposal. Schools and colleges were clear in their responses that they wished this requirement to be brought into force sooner rather than later. Responses from exam boards differed. One indicated that they were in a position to meet the requirement this year. For the others, they told us that system changes would be required in order to be able to meet the requirement and, to varying degrees, this could prevent them from complying with the requirement without incurring considerable costs. One indicated that they would not be able to implement the system changes required before 2020. We recognise that schools and colleges wish for this to happen as soon as possible. We have determined to defer our decision as to when this should come into force in order that we can undertake some further analysis with exam boards regarding the potential impact. We will introduce the Conditions that will require this, but will not bring them into force until such time as we consider it appropriate to do so.

Removal of the automatic protection for candidates who received an incorrect result on a review of moderation

The Code provides an automatic protection for students who, on a review of moderation, were found to have been given a grade that was higher than their work deserved. We announced in our May Decisions document that there would not be such a protection from this year on. Concerns have been raised with us that not all schools will be aware of this change and that the change could potentially prejudice some candidates.

For that reason, we have decided that, for 2016, we will amend our decision in relation to reviews of moderation and amend our Conditions to keep in place the same level of protection that is in place currently under the Code. We consider this is a decision that is in the interests of candidates and should avoid any confusion that could occur this summer.

We maintain our view that removing the automatic protection is the correct decision to make. We will introduce the Conditions that will require this, but will not bring them into force until such time as we consider it appropriate to do so.

Withdrawal of the Code of Practice

The Code will remain in force for Project and Principal Learning qualifications only, and we will undertake a further consultation later in the year with proposals to replace it for those specific qualifications.

We have already determined that the Code of Practice will be withdrawn in 2016 in relation to GCSEs, AS and A levels. To allow as smooth a transition from the Code to the new rules, we have determined that the Code will remain in force for AS and A levels until AS and A level results day when the new Qualification Level Conditions for GCE and Pre-reform GCE in relation to reviews and appeals will come into force. For

the avoidance of doubt the Code will cease to apply for GCEs as at 23.59 hours on Wednesday 17 August 2016. The GCE Qualification Level Conditions and Requirements (Condition 10 onwards) and the Pre-reform GCE Qualification Level Conditions and Requirements (Condition 3 onwards) will come into force at 00.01 on Thursday 18 August 2016.

We have also determined that the Code will remain in force for GCSEs until GCSE results day 2016 when the new Qualification Level Conditions, GCSE(A* to G) and GCSE(9 to 1) in relation to reviews and appeals will come into force. For the avoidance of doubt, the Code will cease to apply to both GCSE(A* to G) and GCSE(9 to 1) as at 23.59 hours on Wednesday 24 August 2016. The GCSE(A* to G) Conditions and Requirements (Condition 2 onwards) and the GCSE(9 to 1) Conditions and Requirements (Condition 10 onwards) will come into force at 00.01 on Thursday 25 August 2016.

Equalities Impact

We sought feedback in relation to how any of our proposals may impact, either positively or negatively, on persons who share a protected characteristic, and whether there were any potential impacts we had not identified. We also sought feedback on any additional steps we could take to mitigate any negative impact resulting from these proposals. The majority of respondents did not identify any further impacts or steps that we had not already identified.

Next Steps

We have decided to implement our Conditions, requirements and guidance for the:

- Reformed GCE Qualification Level Conditions and Requirements
- Reformed GCE Qualification Level Guidance
- Pre-reform GCE Qualification Level Conditions and Requirements
- Pre-reform GCE Qualification Level Guidance

From 00.01 hours on Thursday 18 August 2016.

The GCSE, GCE, Principal Learning and Project Code of Practice will no longer apply to GCEs from 23.59 hours on Wednesday 17 August 2016.

We have decided to implement our Conditions, requirements and guidance for the:

- GCSE(A* to G) Qualification Level Conditions and Requirements
- GCSE(A* to G) Qualification Level Guidance

- GCSE(9 to 1) Qualification Level Conditions and Requirements
- GCSE(9 to 1) Qualification Level Guidance

from 00.01 hours on Thursday 25 August 2016.

The GCSE, GCE, Principal Learning and Project Code of Practice will no longer apply to all GCSE qualifications as from 23.59 hours on Wednesday 24 August 2016.