

Regulatory impact assessment on our Consultation on changes to regulations for enquiries and appeals

Consultation on:

Conditions and guidance

Proposals for exam boards to continue to train and monitor markers and moderators

Proposals for piloting the grounds for appeals

Proposals for other amendments to General Conditions of Recognition and guidance



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Introduction

Between December 2015 and March 2016, we consulted on our proposals to:

- Remove the GCSE, GCE, Principal Learning and Project Code of Practice;
- Change the way exam boards review marking and moderation of GCSE, AS and A level assessments so that errors are corrected, but marks are otherwise not changed;
- Extend the grounds on which centres, and in some cases candidates, can appeal against marking and moderation decisions for GCSEs, AS and A levels following a review;
- Make sure exam boards continue to take a common approach on setting grade boundaries for GCSEs, AS and A levels.

Our analysis of this consultation and the decisions following it were published on 26 May.¹ On the same date, we published our regulatory impact assessment relating to the proposals, *Marking reviews, appeals, grade boundaries and Code of Practice: Regulatory Impact Assessment May 2016 (Ofqual/16/6012)*². This document should be read in conjunction with that regulatory impact assessment.

Between 26 May and 23 June 2016 we consulted on how Ofqual proposes to implement new arrangements for reviews of marking, reviews of moderation, and appeals for GCSE, AS and A level qualifications. Included in the consultation were drafts of the new and revised Conditions of Recognition necessary for the implementation of the decisions.

As noted above, as part of this consultation, we also consulted on the following additional issues:

- piloting a new ground on which appeals can be made (challenge marking or moderation on the grounds of a Marking Error);

1

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

2

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/526271/Regulatory_impact_analysis_-_marking_reviews_and_appeals_grade_boundaries_and_code_of_practice.pdf

- retaining specific requirements for exam boards to train original markers and moderators; and
- producing statutory guidance on how reviewers determine a Marking Error has been made.

We also proposed to amend the Conditions for 2016, which we consulted on previously, in some areas. In particular, these were to:

- require exam boards to only provide reasons for the decision of a review of marking upon request (as a transitional provision for 2016 only);
- require exam boards to provide reasons for the decision of a review of moderation, but permit the reasons to follow the decision to minimise delay;
- set a framework for key dates related to reviews and appeals – we set out our proposals for this framework;
- permit the review of centre-marked assessments, which students can request, does not have to take place within the centre, but could be conducted by a third party; and
- permit, but not require the return of GCSE scripts ahead of centre requests for reviews of marking or moderation in 2016.

We also proposed some other amendments to our Qualification Level Conditions and guidance for reformed GCSEs, AS and A levels. These were to:

- correct an error in Condition GCSE5 where the word 'skills' has been omitted;
- introduce a Qualification Level Condition for reformed GCSEs, AS and A levels that would require that a qualification could only be developed where
- subject level conditions exist in that subject.

This regulatory impact assessment only considers the impact of the areas covered in the latest consultation and so should be read in conjunction with *'Marking reviews, appeals, grade boundaries and Code of Practice: Regulatory Impact Assessment May 2016 (Ofqual/16/6012)'*.

Piloting a new ground on which appeals can be made (challenge marking or moderation on the grounds of a Marking Error) and introducing the new ground across all GCSEs, AS and A levels at review.

We are introducing new rules, which exam boards must follow when reviewing marks and offering other post-results services, in order to improve the current system and to address a number of deficiencies. We are introducing new Conditions to extend the grounds for appeal by including, as an additional ground of appeal, that the mark or moderation decision contained a Marking Error (or a Moderation Error). This will only be for three subjects at A level for 2016.

We assessed the regulatory impact of our proposals in section 4.6 of *'Marking reviews, appeals, grade boundaries and Code of Practice: Regulatory Impact Assessment May 2016 (Ofqual/16/6012)'*.

The purpose of the pilot is to further assess the impact of this change on a small number of subjects and to determine whether and when it would be appropriate to implement the change for all subjects, or whether further consultation and revision of the rules is required.

An alternative approach to introducing a pilot would be to introduce the new rules for Summer 2016 across all subjects. Given that there are some process changes required of exam boards and other stakeholders as a result of the new rules, there is a risk that introducing the changes in 2016 could lead to the implementation of processes that have not been sufficiently tested and trialled. Balanced against this risk is the concern that we should introduce the new rules and improve the system as soon as possible. Exam boards have been aware for some time of our concerns regarding deficiencies in the current system.

A further alternative approach might be to introduce the new rules for summer 2017 across all subjects. This approach was advocated by one of the exam boards. However, given there are a number of changes to process required of exam boards and other stakeholders in order to implement the new rules, it is appropriate to trial the proposals on a limited number of subjects before full implementation.

It is also unclear what the impact of the new rules will be on the numbers of requests for appeals of marking and moderation. If there was a large increase it might necessitate further system change for exam boards, and make it difficult for exam boards to meet their deadlines. By limiting the pilot to a small number of subjects, exam boards will be able to ascertain what the impact of the changes will be within a limited and contained area, and hence be able to gauge the impact of the changes

on the volume of requests they are likely to receive, in advance of any wider implementation.

Holding the trial in summer 2016 across a limited number of subjects will:

- Enable exam boards to implement the changes for summer 2016 within a controlled sample of qualifications.
- Enable exam boards to assess the impact of the changes before making any adjustments to standard systems across all qualifications.
- Enable Ofqual to assess positive or negative impacts of the changes before full implementation.
- Enable Ofqual to carry out further consultation on revising any Conditions of Recognition before full implementation if, following analysis of the pilot, Ofqual considers such revision to be appropriate to ensure that the changes are fully effective.

In our consultation, we proposed to introduce the new ground of appeal across all GCSEs, AS and A levels from March 2017. Some exam boards raised concerns about this timescale. The new ground will not be introduced more widely until a date specified in a notice published by Ofqual. This allows flexibility and will allow Ofqual to determine, following analysis of the pilot and further consideration of the impact, when the new ground should be introduced more widely, as well as whether Ofqual should carry out further consultation on revising any Conditions of Recognition.

The costs of the pilot will be limited, as only a small number of subjects are affected. However, it will be necessary for exam boards to produce, and system test, new documentation and procedures for the delivery of an appeals service. It will also be necessary for them to develop training materials for all those involved in the process. We would expect, following successful delivery of the pilot, that these procedures and training materials (with any necessary amendments) could be introduced into standard processes before full implementation. This will depend on whether the proposals are implemented with or without any change following the pilot.

Exam boards will be required to communicate the different appeal arrangements for the pilot subjects. There will be an impact on centres and Learners, who will need to understand which appeal arrangements apply to a qualification and bring any appeal on the applicable grounds of appeal for the qualification.

The implementation of the new rules requires, in some cases, system changes by the exam boards. The pilot will allow the exam boards to user test the amended

processes across a limited number of subjects before finalising any replacement systems. It will therefore lessen the risk of exam boards finding it necessary to change systems twice.

Some respondents to the consultation raised concerns over whether there was sufficient time to develop processes, conduct training and engage with stakeholders for the pilot to commence in 2016. Given the limited number of qualifications in the pilot and the limited number of appeals to which the new rules will apply during the pilot, we consider there is sufficient time.

The subjects consulted on for pilot in summer 2016 were A levels in maths, religious studies and geography. Some respondents raised concerns about the subjects chosen. Having considered these concerns, we propose to conduct the pilot for A levels in physics, religious studies and geography.

In evaluating the pilot, and considering when to implement the approach across all GCSE, AS and A levels (or whether to carry out further consultation on revising any Conditions of Recognition) we will carry out further work to assess the costs to exam boards and others and any other relevant impacts.

Retaining specific requirements for exam boards to train original markers and moderators

By withdrawing the Code of Practice as it applies to GCSEs, AS and A levels we will remove unnecessary duplication with our broader regulations. However, the withdrawal of the Code of Practice means the express regulatory requirements to train original markers and moderators would be withdrawn, unless similar requirements are added to the Conditions of Recognition.

All exam boards currently train original markers and moderators and they will continue to do so. There will therefore be little direct impact as a result of the implementation of these requirements, as existing arrangements will continue in place. We would expect any changes required to comply with the new Conditions to be minor.

Producing statutory guidance on how reviewers determine a Marking Error has been made

We consider the introduction of statutory guidance on how reviewers determine a Marking Error has been made will assist in ensuring that a consistent approach is taken across exam boards. The guidance will also assist other stakeholders, including students, teachers and other school and college staff in understanding the grounds for a review or appeal of marking or moderation.

Some respondents to the consultation stated the guidance we proposed was not sufficiently clear to assist in determining what exam boards must do to comply with the requirements around determining Marking Errors. We have considered the specific comments on the guidance which were provided and have made some changes to the guidance.

Since the appeal pilot referred to above will involve determining when a Marking Error has been made, we will assess following the pilot whether any changes should be made to the guidance to assist its effectiveness.

Require exam boards to only provide reasons for the decision of a review of marking upon request (as a transitional provision)

In light of responses to the consultation carried out between December 2015 and March 2016, we modified our original proposals so that exam boards would not be required to provide reasons following a review of marking automatically for 2016. Instead, the Conditions we proposed to introduce would include a transitional provision requiring exam boards to provide such reasons promptly on request. We assessed the regulatory impact of our proposals in section 3.5 of *'Marking reviews, appeals, grade boundaries and Code of Practice: Regulatory Impact Assessment May 2016 (Ofqual/16/6012)'*.

Respondents to the consultation noted that having to make requests for reasons to be provided will have an impact on centres. A number of respondents to the consultation, in particular a number of exam boards, raised concerns over the feasibility of operationalising the capturing and provision of reasons for decisions of a review of marking for 2016 (even if only on request).

We do not believe it is unnecessarily burdensome to require exam boards to ensure that reasons are recorded when a review of marking is carried out. As noted in our previous assessment, the requirement flows from the thought process the reviewer must follow when reviewing marking, and provides an audit trail that should show that the correct procedure has been followed. Such requirements support existing requirements contained within General Condition A5 and General Condition H5.

However, having considered the responses to the consultation, we will modify the Conditions we consulted on. This means during the transitional period, exam boards will be required to provide reasons on request, but without an express requirement to do so promptly. This acknowledges that requiring changes to exam boards' systems to facilitate the provision of reasons promptly in 2016 may have been disproportionate.

This change will reduce the impact on exam boards, whilst still requiring reasons to be provided on request, which will add transparency to the system and help schools, colleges and Learners to make more informed decisions about reviews in the future. The change means exam boards will not be required to provide reasons prior to a deadline for appeals, although an exam board may choose to do so.

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 proposed timescale. 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 allow us to decide on an implementation date for the requirement for reasons to be provided automatically at a later date.

We propose to conduct some further work to assess the impact of the requirement before making a decision on the date of implementation. We will consider the relevant impacts further before coming to a decision. We may still decide that the requirement should be implemented before Summer 2017.

Some respondents to the consultation noted that allowing exam boards to provide reasons after communicating the outcome of the review will lead to further administration for centres, and exam boards.

However, it was also noted that there would be a beneficial impact for Learners if the requirement to provide reasons does not delay the outcome of the review. Given this beneficial impact, we consider that it is appropriate to allow reasons to be provided afterwards. It will be for each exam board to provide the reasons in line with its target time period.

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, and exam boards would need to ensure the dates they put in place for their review arrangements and appeals process comply with Ofqual's framework.

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

We have not yet made a decision on the detail of the framework. We continue to gather evidence on the impact on exam boards and other stakeholders. We will introduce Conditions which allow Ofqual to set a framework at a later date.

Requiring exam boards to report changes to their review arrangements following monitoring

We are introducing Conditions requiring exam boards to provide an annual report setting out data relating to their review arrangements and appeals process. We assessed the regulatory impact of our proposals in section 4.5 of *'Marking reviews, appeals, grade boundaries and Code of Practice: Regulatory Impact Assessment May 2016 (Ofqual/16/6012)'*.

In light of responses to the consultation carried out between December 2015 and March 2016, we modified our original proposals to require exam boards to report on changes to their review arrangements following monitoring, rather than to report on the results of monitoring.

The Conditions we are introducing require exam boards to publish their review arrangements. Given this, we consider the impact on requiring exam boards to detail changes to their review arrangements in the annual report will be minor. The requirement we are introducing will have a lesser impact on exam boards than the requirement originally consulted on in December 2015.

Permit 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 this would be helpful in lessening the impact of the requirement on centres. However, a concern was raised that adding another party in the process would complicate matters further and may lead to logistical problems.

We consider allowing such reviews to be undertaken by a third party will lessen the burden on some centres, although we do not expect third parties to be used routinely. It will be for exam boards, through their contractual arrangements with centres, to ensure 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.

Put in place requirements so that Learners can ask for the results of centre-marked assessments

We are introducing Conditions requiring that, where assessments are marked by a centre, students should be provided with the mark for that assessment ahead of moderation to enable the students to consider whether to request a review of that marking. We assessed the regulatory impact of our proposals in section 4.3 of *'Marking reviews, appeals, grade boundaries and Code of Practice: Regulatory Impact Assessment May 2016 (Ofqual/16/6012)'*.

We asked questions in the consultation on when would be the earliest we should implement this requirement and asked for further information on its impact.

It is likely there would be cost impacts on schools and colleges, and on exam boards, should these requirements be in place. Systems and processes enabling Learners to be provided with the results of their centre marked assessments would need to be developed.

As well as this, a number of further impacts were raised by respondents to the consultation. These included the negative impacts on teachers and candidates of being required to focus on the review of marking of centre marked assessments in the period shortly before the summer exam series. Some respondents noted there would be an increased risk that centre assessment marks would not be ready in time to meet exam boards' moderation deadlines.

None of the respondents thought this requirement should be implemented before 2017 and some suggested 2018.

Having considered the consultation responses, we have not yet made a decision on when this requirement should be implemented. We continue to gather evidence in relation to the impact of the requirement. The Conditions we introduce will allow us to make a decision on implementation at a later date and, if appropriate, to carry out further consultation on any revisions to the Conditions.

The size of the impact of these proposed changes will reduce over the next few years, as reformed GCSEs, AS and A levels contain a lower proportion of centre marked assessments than legacy qualifications.

In making our final decision on the implementation date we will weigh the costs and other negative impacts against the potential beneficial impacts of the requirement.

Implement the requirement that exam boards must make marked GCSE scripts available to centres in time for them to consider whether to ask for a review

Currently schools and colleges can ask an exam board to return a marked AS or A level script to help them to decide whether to request a review of marking. We propose to keep this requirement in place and to allow exam boards to charge a fee for the service if they wish.

In section 4.1 of *'Marking reviews, appeals, grade boundaries and Code of Practice: Regulatory Impact Assessment May 2016 (Ofqual/16/6012)'*, we assessed the regulatory impact of requiring exam boards to provide centres with access to scripts for GCSEs. We noted that the requirement for exam boards to make marked GCSE scripts available to centres in time for them to consider whether to ask for a review, should reduce the number of speculative requests for a review. In turn this should reduce the overall cost of post-results services to schools and colleges, and in some cases Learners. We also noted exam boards have told us that to implement this proposal they will need to make changes to their IT systems.

We are introducing Conditions requiring exam boards to make available GCSE scripts. We asked a question in the consultation on when the requirement to make these available in time to help schools and colleges decide whether to request a review of marking should be implemented. We received a range of responses.

We propose to conduct some further work to assess the impact of the requirement before making a decision on the date of implementation. We will consider the relevant impacts further before coming to a decision.

Correct an error in Condition GCSE5 where the word 'skills' has been omitted

This change relates to an error in a current Condition. This requirement was already widely understood to be referring to skills and has been interpreted in line with our proposed approach. This minor change will not impact on the exam boards required to meet this Condition.

Introduce a Qualification Level Condition for reformed GCSEs, AS and A levels that would require that a qualification could only be developed, where subject level conditions exist in that subject

We are introducing Conditions for reformed GCSEs, AS and A levels, to require that a qualification can only be developed where subject level conditions exist in that subject.

This follows our consultation *Completing GCSE, AS and A level reform*³, which commenced in 2014. Exam boards have been aware of this proposal since that time and so we do not consider that there will be any impact on exam boards in relation to qualifications currently in development.

The Conditions will have an impact on exam boards. If they propose to offer a new qualification for which subject level conditions do not exist, they will need to engage with Ofqual. That qualification can only be offered if Ofqual agrees to introduce subject level conditions for it. Such engagement would take up exam boards' time and resources and so incur a cost.

Consequently, this would impact on other stakeholders requesting that exam boards offer new qualifications.

Our previous regulatory impact assessment of this proposal was included in *Analysis of the Completing GCSE, AS and A level Reform Consultation*⁴. Comments made on the impact of the proposed requirement included the following:

- Reducing the independence of exam boards could adversely affect innovative research into subject content and qualifications development.
- A prescriptive regulatory framework could increase the burden upon them and endanger flexibility and innovation.

Having considered the impacts of the requirement, we consider exam boards should not have free rein to develop subjects where we cannot be confident of their standard, and should be prevented from producing variations of a subject unless there is a strong case to do so. We will give due consideration to any proposals for additional subjects. We consider this to be a proportionate requirement.

³ <https://www.gov.uk/government/consultations/gcses-as-and-a-levels-new-subjects-to-be-taught-in-2015>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/381969/2014-12-02-analysis-of-the-completing-gcse-as-and-a-level-reform-consultation.pdf

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